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HOUSE BILL NO. 1918

Offered January 12, 2011

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A BILL to amend and reenact §§ 19.2-8 and 36-106 of the Code of Virginia, relating to the Uniform Statewide Building Code; limitation on prosecutions for violation.

Patron—Merricks

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 19.2-8 and 36-106 of the Code of Virginia are amended and reenacted as follows:**

§ 19.2-8. Limitation of prosecutions.

A prosecution for a misdemeanor, or any pecuniary fine, forfeiture, penalty or amercement, shall be commenced within one year next after there was cause therefor, except that a prosecution for petit larceny may be commenced within five years, and for an attempt to produce abortion, within two years after commission of the offense.

A prosecution for violation of laws governing the placement of children for adoption without a license pursuant to § 63.2-1701 shall be commenced within one year from the date of the filing of the petition for adoption.

A prosecution for making a false statement or representation of a material fact knowing it to be false or knowingly failing to disclose a material fact, to obtain or increase any benefit or other payment under the Virginia Unemployment Compensation Act (§ 60.2-100 et seq.) shall be commenced within three years next after the commission of the offense.

A prosecution for any violation of § 10.1-1320, 62.1-44.32 (b), 62.1-194.1, or Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of Title 62.1 that involves the discharge, dumping or emission of any toxic substance as defined in § 32.1-239 shall be commenced within three years next after the commission of the offense.

Prosecution of Building Code violations under § 36-106 shall commence within one year of discovery of the offense by the owner or by the building official; provided that such discovery occurs within two years of the date of initial occupancy or use after construction of the building or structure, or the issuance of a certificate of use and occupancy for the building or structure, whichever is later. However, prosecutions under § 36-106 relating to the maintenance of existing buildings or structures as contained in the Uniform Statewide Building Code shall commence within one year of the discovery of the offense by the building official.

Prosecution of any misdemeanor violation of § 54.1-111 shall commence within one year of the discovery of the offense by the complainant, but in no case later than five years from occurrence of the offense.

Prosecution of nonfelonious offenses which constitute malfeasance in office shall commence within two years next after the commission of the offense.

Prosecution of any violation of § 55-79.87, 55-79.88, 55-79.89, 55-79.90, 55-79.93, 55-79.94, 55-79.95, 55-79.103, or any rule adopted under or order issued pursuant to § 55-79.98, shall commence within three years next after the commission of the offense.

Prosecution of illegal sales or purchases of wild birds, wild animals and freshwater fish under § 29.1-553 shall commence within three years after commission of the offense.

Prosecution of violations under Title 58.1 for offenses involving false or fraudulent statements, documents or returns, or for the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof, or for the offense of willfully failing to pay any tax, or willfully failing to make any return at the time or times required by law or regulations shall commence within three years next after the commission of the offense, unless a longer period is otherwise prescribed.

Prosecution of violations of subsection A or B of § 3.2-6570 shall commence within five years of the commission of the offense, except violations regarding agricultural animals shall commence within one year of the commission of the offense.

A prosecution for a violation of § 18.2-386.1 shall be commenced within five years of the commission of the offense.

A prosecution for any violation of the Campaign Finance Disclosure Act, Chapter 9.3 (§ 24.2-945 et seq.) of Title 24.2, shall commence within one year of the discovery of the offense but in no case more than three years after the date of the commission of the offense.

A prosecution of a crime that is punishable as a misdemeanor pursuant to the Virginia Computer

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HB1918

59 Crimes Act (§ 18.2-152.1 et seq.) or pursuant to § 18.2-186.3 for identity theft shall be commenced
60 before the earlier of (i) five years after the commission of the last act in the course of conduct
61 constituting a violation of the article or (ii) one year after the existence of the illegal act and the identity
62 of the offender are discovered by the Commonwealth, by the owner, or by anyone else who is damaged
63 by such violation.

64 Nothing in this section shall be construed to apply to any person fleeing from justice or concealing
65 himself within or without the Commonwealth to avoid arrest or be construed to limit the time within
66 which any prosecution may be commenced for desertion of a spouse or child or for neglect or refusal or
67 failure to provide for the support and maintenance of a spouse or child.

68 § 36-106. Violation a misdemeanor; civil penalty.

69 A. It shall be unlawful for any owner or any other person, firm or corporation, on or after the
70 effective date of any Code provisions, to violate any such provisions. Any such violation shall be
71 deemed a misdemeanor and any owner or any other person, firm or corporation convicted of such a
72 violation shall be punished by a fine of not more than \$2,500. In addition, each day the violation
73 continues after conviction or the court-ordered abatement period has expired shall constitute a separate
74 offense. If the violation remains uncorrected at the time of the conviction, the court shall order the
75 violator to abate or remedy the violation in order to comply with the Code. Except as otherwise
76 provided by the court for good cause shown, any such violator shall abate or remedy the violation
77 within six months of the date of conviction. Each day during which the violation continues after the
78 court-ordered abatement period has ended shall constitute a separate offense. Any person convicted of a
79 second offense committed within less than five years after a first offense under this chapter shall be
80 punished by a fine of not less than \$1,000 nor more than \$2,500. Any person convicted of a second
81 offense committed within a period of five to 10 years of a first offense under this chapter shall be
82 punished by a fine of not less than \$500 nor more than \$2,500. Any person convicted of a third or
83 subsequent offense involving the same property committed within 10 years of an offense under this
84 chapter after having been at least twice previously convicted shall be punished by confinement in jail for
85 not more than 10 days and a fine of not less than \$2,500 nor more than \$5,000, either or both. No
86 portion of the fine imposed for such third or subsequent offense committed within 10 years of an
87 offense under this chapter shall be suspended.

88 B. Violations of any provision of the Building Code, adopted and promulgated pursuant to § 36-103,
89 that results in a dwelling not being a safe, decent and sanitary dwelling, as defined in § 25.1-400, in a
90 locality where the local governing body has taken official action to enforce such provisions, shall be
91 deemed a misdemeanor and any owner or any other person, firm, or corporation convicted of such a
92 violation shall be punished by a fine of not more than \$2,500. In addition, each day the violation
93 continues after conviction or the expiration of the court-ordered abatement period shall constitute a
94 separate offense. If the violation remains uncorrected at the time of the conviction, the court shall order
95 the violator to abate or remedy the violation in order to comply with the Code. Except as otherwise
96 provided by the court for good cause shown, any such violator shall abate or remedy the violation
97 within six months of the date of conviction. Each day during which the violation continues after the
98 court-ordered abatement period has ended shall constitute a separate offense. Any person convicted of a
99 second offense, committed within less than five years after a first offense under this chapter shall be
100 punished by confinement in jail for not more than five days and a fine of not less than \$1,000 nor more
101 than \$2,500, either or both. Provided, however, that the provision for confinement in jail shall not be
102 applicable to any person, firm, or corporation, when such violation involves a multiple-family dwelling
103 unit. Any person convicted of a second offense committed within a period of five to 10 years of a first
104 offense under this chapter shall be punished by a fine of not less than \$500 nor more than \$2,500. Any
105 person convicted of a third or subsequent offense involving the same property, committed within 10
106 years of an offense under this chapter after having been at least twice previously convicted, shall be
107 punished by confinement in jail for not more than 10 days and a fine of not less than \$2,500 nor more
108 than \$5,000, either or both. No portion of the fine imposed for such third or subsequent offense
109 committed within 10 years of an offense under this chapter shall be suspended.

110 C. Any locality may adopt an ordinance which establishes a uniform schedule of civil penalties for
111 violations of specified provisions of the Code which are not abated, or otherwise remedied through
112 hazard control, promptly after receipt of notice of violation from the local enforcement officer.

113 This schedule of civil penalties shall be uniform for each type of specified violation, and the penalty
114 for any one violation shall be a civil penalty of not more than \$100 for the initial summons and not
115 more than \$350 for each additional summons. Each day during which the violation is found to have
116 existed shall constitute a separate offense. However, specified violations arising from the same operative
117 set of facts shall not be charged more frequently than once in any 10-day period, and a series of
118 specified violations arising from the same operative set of facts shall not result in civil penalties which
119 exceed a total of \$4,000. Designation of a particular Code violation for a civil penalty pursuant to this
120 section shall be in lieu of criminal sanctions, and except for any violation resulting in injury to persons,

121 such designation shall preclude the prosecution of a violation as a misdemeanor.

122 Any person summoned or issued a ticket for a scheduled violation may make an appearance in
123 person or in writing by mail to the department of finance or the treasurer of the locality prior to the date
124 fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability, and pay the
125 civil penalty established for the offense charged. Such persons shall be informed of their right to stand
126 trial and that a signature to an admission of liability will have the same force and effect as a judgment
127 of court. As a condition of waiver of trial, admission of liability, and payment of a civil penalty, the
128 violator and a representative of the locality shall agree in writing to terms of abatement or remediation
129 of the violation within six months after the date of payment of the civil penalty.

130 If a person charged with a scheduled violation does not elect to enter a waiver of trial and admit
131 liability, the violation shall be tried in the general district court in the same manner and with the same
132 right of appeal as provided for by law. In any trial for a scheduled violation authorized by this section,
133 it shall be the burden of the locality to show the liability of the violator by a preponderance of the
134 evidence. An admission of liability or finding of liability shall not be a criminal conviction for any
135 purpose.

136 If the violation concerns a residential unit, and if the violation remains uncorrected at the time of
137 assessment of the civil penalty, the court shall order the violator to abate, or otherwise remedy through
138 hazard control, the violation in order to comply with the Code. Except as otherwise provided by the
139 court for good cause shown, any such violator shall abate, or otherwise remedy through hazard control,
140 the violation within six months of the date of the assessment of the civil penalty.

141 If the violation concerns a nonresidential building or structure, and if the violation remains
142 uncorrected at the time of assessment of the civil penalty, the court may order the violator to abate, or
143 otherwise remedy through hazard control, the violation in order to comply with the Code. Any such
144 violator so ordered shall abate, or otherwise remedy through hazard control, the violation within the time
145 specified by the court.

146 D. Any owner or any other person, firm or corporation violating any Code provisions relating to lead
147 hazard controls that poses a hazard to the health of pregnant women and children under the age of six
148 years who occupy the premises shall, upon conviction, be guilty of a misdemeanor and shall be subject
149 to a fine of not more than \$2,500. If the court convicts pursuant to this subsection and sets a time by
150 which such hazard must be controlled, each day the hazard remains uncontrolled after the time set for
151 the lead hazard control has expired shall constitute a separate violation of the Uniform Statewide
152 Building Code.

153 The landlord shall maintain the painted surfaces of the dwelling unit in compliance with the
154 International Property Maintenance Code of the Uniform Statewide Building Code. The landlord's failure
155 to do so shall be enforceable in accordance with the Uniform Statewide Building Code and shall entitle
156 the tenant to terminate the rental agreement.

157 Termination of the rental agreement or any other action in retaliation against the tenant after written
158 notification of (i) a lead hazard in the dwelling unit or (ii) that a child of the tenant, who is an
159 authorized occupant in the dwelling unit, has an elevated blood lead level, shall constitute retaliatory
160 conduct in violation of § 55-248.39.

161 E. Any prosecution under this section shall be commenced within ~~two~~ years *one year* as provided in
162 § 19.2-8.