

1 HB325
2 156966-1
3 By Representative DeMarco
4 RFD: Judiciary
5 First Read: 21-JAN-14

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8 SYNOPSIS: Under existing law, there is a general
9 three-year statute of limitations for felonies.
10 Under the Alabama Supreme Court's decision in Ex
11 parte Rosborough, 909 So. 2d 772 (Ala. 2004), the
12 offense of theft by deception is complete and the
13 applicable statute of limitations begins to run
14 when the defendant obtains money from the victim
15 through the use of deception. Under this decision,
16 in certain cases, the statute of limitations may
17 expire before the victim is aware of the theft.

18 This bill would increase the statute of
19 limitations for all felonies, except for the
20 conversion of public revenues, certain offenses
21 that have no limitation, or any other felony that
22 has a specified limitation, from three years to
23 five years.

24 This bill would also provide that the
25 statute of limitations for prosecutions of theft by
26 deception and certain securities violations do not
27 commence or begin to accrue until discovery of the

1 facts constituting the deception, after which the
2 prosecution must be commenced within five years.

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4 A BILL
5 TO BE ENTITLED
6 AN ACT

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8 To amend Sections 8-6-18, 13A-8-2, and 15-3-1, Code
9 of Alabama 1975, to increase the statute of limitations for
10 certain felonies; and to provide that the statute of
11 limitations for prosecutions of theft by deception and certain
12 securities violations do not commence or begin to accrue until
13 discovery of the facts constituting the deception.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. Sections 8-6-18, 13A-8-2, and 15-3-1,
16 Code of Alabama 1975, are amended to read as follows:

17 "§8-6-18.

18 "(a) A person who willfully violates Section 8-6-3
19 or Section 8-6-4, upon conviction, shall be guilty of a Class
20 C felony. A person that willfully violates subsection (a),
21 (b), or (c) of Section 8-6-17, upon conviction, shall be
22 guilty of a Class B felony. ~~No prosecution may be commenced~~
23 ~~under this article more than five years after the alleged~~
24 ~~violation.~~ The limitations period for any prosecution under
25 this section does not commence or begin to accrue until the
26 discovery of the facts constituting the deception, after which
27 the prosecution shall be commenced within five years.

1 "(b) A person who willfully violates any provision
2 of this chapter, other than those noted in subsection (a), or
3 a rule adopted or order issued under this chapter, upon
4 conviction, shall be guilty of a Class A misdemeanor.

5 "(c) The enforcement of the provisions of this
6 article shall be vested in the commission. It shall be the
7 duty of the commission to see that its provisions are at all
8 times obeyed and to take such measures and to make such
9 investigations as will prevent or detect the violation of any
10 provision thereof. The commission shall at once lay before the
11 district attorney of the proper county any evidence which
12 shall come to its knowledge of criminality under this article.
13 In the event of the neglect or refusal of the district
14 attorney to institute and prosecute such violation, the
15 commission shall be authorized to proceed therein with all the
16 rights, privileges, and powers conferred by law upon district
17 or court attorneys including the power to appear before grand
18 juries and to interrogate witnesses before such grand juries.

19 "(d) Nothing in this article limits the power of the
20 state to punish any person for any conduct which constitutes a
21 crime by statute or at common law.

22 "(e) In any proceeding under this article, scienter
23 need not be alleged and proved in prosecutions involving the
24 sale of unregistered securities or in the failure to register
25 as a dealer, agent, investment adviser, or investment adviser
26 representative under this article.

27 "§13A-8-2.

1 "a) A person commits the crime of theft of property
2 if he or she:

3 "(1) Knowingly obtains or exerts unauthorized
4 control over the property of another, with intent to deprive
5 the owner of his or her property;

6 "(2) Knowingly obtains by deception control over the
7 property of another, with intent to deprive the owner of his
8 or her property;

9 "(3) Knowingly obtains or exerts control over
10 property in the custody of a law enforcement agency which was
11 explicitly represented to the person by an agent of the law
12 enforcement agency as being stolen; or

13 "(4) Knowingly obtains or exerts unauthorized
14 control over any donated item left on the property of a
15 charitable organization or in a drop box or trailer, or within
16 30 feet of a drop box or trailer, belonging to a charitable
17 organization.

18 "(b) The limitations period for any prosecution
19 under subdivision (2) of subsection (a) does not commence or
20 begin to accrue until the discovery of the facts constituting
21 the deception, after which the prosecution shall be commenced
22 within five years.

23 "§15-3-1.

24 "The Except as otherwise provided by law, the
25 prosecution of all felonies, except those specified in
26 Sections 15-3-3 and 15-3-5 Section 15-3-3, Section 15-3-5, or
27 any other felony that has a specified limitations period, must

1 shall be commenced within ~~three~~ five years after the
2 commission of the offense."

3 Section 2. This act shall become effective on the
4 first day of the third month following its passage and
5 approval by the Governor, or its otherwise becoming law.