HB325

156966-1

By Representative DeMarco

RFD: Judiciary

First Read: 21-JAN-14
SYNOPSIS: Under existing law, there is a general three-year statute of limitations for felonies. Under the Alabama Supreme Court's decision in Ex parte Rosborough, 909 So. 2d 772 (Ala. 2004), the offense of theft by deception is complete and the applicable statute of limitations begins to run when the defendant obtains money from the victim through the use of deception. Under this decision, in certain cases, the statute of limitations may expire before the victim is aware of the theft.

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

This bill would also provide that the statute of limitations for prosecutions of theft by deception and certain securities violations do not commence or begin to accrue until discovery of the
facts constituting the deception, after which the prosecution must be commenced within five years.

A BILL
TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§8-6-18.

"(a) A person who willfully violates Section 8-6-3 or Section 8-6-4, upon conviction, shall be guilty of a Class C felony. A person that willfully violates subsection (a), (b), or (c) of Section 8-6-17, upon conviction, shall be guilty of a Class B felony. No prosecution may be commenced under this article more than five years after the alleged violation. The limitations period for any prosecution under this section does not commence or begin to accrue until the discovery of the facts constituting the deception, after which the prosecution shall be commenced within five years."
"(b) A person who willfully violates any provision of this chapter, other than those noted in subsection (a), or a rule adopted or order issued under this chapter, upon conviction, shall be guilty of a Class A misdemeanor.

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

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

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

"§13A-8-2."
"(a) A person commits the crime of theft of property if he or she:

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

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

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

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

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

"§15-3-1.

"The Except as otherwise provided by law, the prosecution of all felonies, except those specified in Sections 15-3-3 and 15-3-5 Section 15-3-3, Section 15-3-5, or any other felony that has a specified limitations period, must
shall be commenced within three **five** years after the
commission of the offense."

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