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1997 Regular Session
7lr1664

CF 7lr0579

By: Senators Frosh, Sfikas, Van Hollen, Pinsky, Madden, and Roesser

Introduced and read first time: January 17, 1997

Assigned to: Economic and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 Election Law and Ethics Law Violations - Enforcement Procedures and Penalties

3 FOR the purpose of establishing a civil citation procedure for the adjudication of certain
4 violations of the State election law; providing for a civil penalty for certain violations
5 of the Fair Election Practices Act of the Election Code and specifying a maximum
6 fine for such civil violations; increasing the criminal fine for certain election law
7 violations; authorizing the State Prosecutor to prosecute certain election law
8 violations; providing for original jurisdiction of the District Court of the State for
9 persons contesting a citation for a civil infraction of certain fair election practice
10 laws; providing for the disposition of certain fines; altering the statute of limitations
11 period for a prosecution for violations of certain fair election practices laws and
12 certain lobbying disclosure laws; repealing a certain statute of limitation provision;
13 making certain stylistic changes; and generally relating to the statute of limitations
14 period for certain election law and ethics law violations, the establishment of a
15 system of civil penalties for certain violations of the Fair Practices Act of the State
16 Election Code, and certain enforcement procedures and penalties for violations of
17 the State ethics law and election law.

18 BY repealing and reenacting, with amendments,
19 Article - Courts and Judicial Proceedings
20 Section 4-401(10) and 5-106
21 Annotated Code of Maryland
22 (1995 Replacement Volume and 1996 Supplement)

23 BY repealing and reenacting, with amendments,
24 Article 33 - Election Code
25 Section 26-13(c), 26-16(c), and 26-20
26 Annotated Code of Maryland
27 (1993 Replacement Volume and 1996 Supplement)

28 BY adding to
29 Article 33 - Election Code
30 Section 26-20A
31 Annotated Code of Maryland
32 (1993 Replacement Volume and 1996 Supplement)

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1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article - Courts and Judicial Proceedings**

4 4-401.

5 Except as provided in § 4-402 of this subtitle, and subject to the venue provisions of
6 Title 6 of this article, the District Court has exclusive original civil jurisdiction in:

7 (10) A proceeding for adjudication of:

8 (i) A municipal infraction as defined in Article 23A, § 3(b)(1) of the
9 Code;

10 (ii) A Commission infraction as defined in Article 28, § 5-113 of the
11 Code;

12 (iii) A WSSC infraction as defined in Article 29, § 18-104.1 of the
13 Code, concerning rules and regulations governing publicly owned watershed property;

14 (iv) A WSSC infraction as defined in Article 29, § 18-104.2 of the
15 Code, concerning WSSC regulations governing:

16 1. Erosion and sediment control for utility construction; and

17 2. Plumbing, gasfitting, and sewer cleaning;

18 (v) A zoning violation for which a civil penalty has been provided
19 pursuant to Article 66B, § 7.01 or Article 28, § 8-120(c) of the Code;

20 (vi) A violation of an ordinance enacted:

21 1. By a charter county for which a civil penalty is provided
22 under Article 25A, § 5(A) of the Code; or

23 2. By the Mayor and City Council of Baltimore for which a civil
24 penalty is provided by ordinance;

25 (vii) A citation for a Code violation issued under Article 27, § 403 of the
26 Code;

27 (VIII) A CIVIL INFRACTION RELATING TO A VIOLATION OF THE FAIR
28 ELECTION PRACTICES ACT OF THE ELECTION LAWS AS PROVIDED UNDER ARTICLE
29 33, §§ 26-20(A) AND (B) AND 26-20A OF THE CODE;

30 [(viii)] (IX) A violation of an ordinance or regulation enacted by a
31 county without home rule, under authority granted under Article 25 of the Code, or any
32 provision of the Code of Public Local Laws for that county, for which a civil penalty is
33 provided; or

34 [(ix)] (X) A civil infraction that is authorized by law to be prosecuted
35 by a sanitary commission;

1 5-106.

2 (a) Except as provided by this section, a prosecution for a misdemeanor shall be
3 instituted within [one] 1 year after the offense was committed.

4 (b) Notwithstanding Article 27, § 690(e) OR ANY OTHER PROVISION of the
5 Code, if a statute provides that a misdemeanor is punishable by imprisonment in the
6 penitentiary, the State may institute a prosecution for the offense at any time.

7 (c) A prosecution under the vehicle code shall be instituted within [two] 2 years
8 after the offense was committed if the charge is:

9 (1) Unlawfully using a driver's license; or

10 (2) Fraudulently using a false or fictitious name when applying for a driver's
11 license.

12 (d) A prosecution for Sabbath breaking or drunkenness shall be instituted within
13 30 days after the offense was committed.

14 (e) In Allegany County, a prosecution for selling alcoholic beverages to a person
15 under the legal age for drinking such alcoholic beverages or for selling alcoholic
16 beverages after hours shall be instituted within 30 days after the offense was committed.

17 (f) A prosecution for the commission of or the attempt to commit a misdemeanor
18 constituting: (1) EXCEPT AS PROVIDED IN SUBSECTION (H) OF THIS SECTION, a
19 criminal offense under the State election laws; or (2) a criminal offense under the State
20 conflict of interest laws; or (3) criminal malfeasance, misfeasance, or nonfeasance in
21 office committed by an officer of the State, or of an agency of the State, or of a political
22 subdivision of the State, or of a bicounty or multicounty agency in the State shall be
23 instituted within [two] 2 years after the offense was committed.

24 (g) A prosecution for conspiracy to commit any of the offenses enumerated in
25 subsection (f) of this section shall be instituted within [two] 2 years after the offense was
26 committed.

27 (H) A PROSECUTION FOR AN OFFENSE ARISING UNDER ARTICLE 33, SUBTITLE
28 26 OF THE CODE SHALL BE INSTITUTED WITHIN 3 YEARS AFTER THE OFFENSE WAS
29 COMMITTED.

30 (I) A PROSECUTION FOR AN OFFENSE ARISING UNDER TITLE 15, SUBTITLE 7
31 OF THE STATE GOVERNMENT ARTICLE SHALL BE INSTITUTED WITHIN 3 YEARS
32 AFTER THE OFFENSE WAS COMMITTED.

33 [(h)] (J) A prosecution for a welfare offense under Article 27, § 230A of the
34 Code shall be instituted within [three] 3 years after the offense was committed.

35 [(i)] (K) A prosecution for the offense of Medicaid fraud under Article 27, §
36 230B of this Code shall be instituted within 3 years after the offense was committed.

37 [(j)] (L) A prosecution for an offense arising under the Tax - General Article
38 with respect to the financial institution franchise, income, or motor fuel tax shall be
39 instituted within 3 years after the date on which the offense was committed.

1 [(k)] (M) A prosecution for the offense of failure to secure workers' compensation
 2 insurance in accordance with Title 9, Subtitle 4 of the Labor and Employment Article
 3 shall be instituted within 1 year after the State Workers' Compensation Commission
 4 finds, by order, that the employer was uninsured or, pursuant to the authority contained
 5 in § 9-1003 of the Labor and Employment Article, within 1 year after the Uninsured
 6 Employers' Fund makes payment under § 9-1003 of the Labor and Employment Article,
 7 as directed by the Commission.

8 [(l)] (N) A prosecution for an offense of the controlled hazardous substance law
 9 under § 7-265(b) of the Environment Article, shall be instituted within 2 years after
 10 commission of the offense.

11 [(m)] (O) Except as provided in subsection (g) of this section, the statute of
 12 limitations for the prosecution of the crime of conspiracy is the statute of limitations for
 13 the prosecution of the substantive crime that is the subject of the conspiracy.

14 [(n)] (P) A prosecution for an offense under Article 27, § 388 or § 388A of the
 15 Code shall be instituted within 3 years after the offense was committed.

16 [(o)] (Q) A prosecution for an offense of discrimination on the basis of sex in
 17 paying wages under §§ 3-301 through 3-308 of the Labor and Employment Article shall
 18 be instituted within 3 years after the performance of the act on which the prosecution is
 19 based.

20 [(p)] (R) A prosecution for an offense of unlawfully charging or receiving
 21 compensation in connection with an adoption under § 5-327 of the Family Law Article
 22 shall be instituted within 3 years after the offense was committed.

23 [(q)] (S) A prosecution for an offense under § 14-601 of the Health Occupations
 24 Article of practicing, attempting to practice, or offering to practice medicine without a
 25 license shall be instituted within 3 years after the offense was committed.

26 [(r)] (T) A prosecution for an offense under the Maryland Charitable
 27 Solicitations Act (Title 6 of the Business Regulation Article) shall be instituted within 3
 28 years after the offense was committed.

29 [(s)] (U) A prosecution for an offense under ARTICLE 27, § 449(d) or (e) of [this
 30 subtitle] THE CODE, relating to straw sales of regulated firearms to prohibited persons or
 31 minors and to illegal sales, rentals, transfers, possession, or receipt of regulated firearms,
 32 shall be instituted within 3 years after the offense was committed.

33 **Article 33 - Election Code**

34 26-13.

35 (c) Each board shall promptly notify the State Administrative Board of Election
 36 Laws of any report or statement required by § 26-11 to be filed which is more than 30
 37 days overdue. Whenever it learns that a required report or statement is more than 30 days
 38 overdue, the State Administrative Board of Election Laws shall issue a notice to the
 39 candidate and treasurer, if the report is the statement of a candidate, or to the chairman
 40 and treasurer if the report is that of a committee, to show cause why the appropriate
 41 State's Attorney should not be requested to prosecute them as provided in § 26-20 for

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1 violation of the provisions of this subtitle, unless the failure to file is remedied and late
2 filing fees paid within 30 days of service of the notice. Any candidate, chairman, or
3 treasurer who fails to file the report or statement and pay the late filing fee due within 30
4 days after service of the show cause notice is guilty of a misdemeanor and subject to the
5 penalties prescribed in § 26-20 of this article. [Any such prosecution must be commenced
6 within three years of the date on which the report or statement was originally due.]

7 26-16.

8 (c) (1) It shall be the duty of the State's Attorney of Baltimore City and of the
9 State's Attorney of each county of this State to prosecute, by the regular course of
10 criminal procedure, any person whom [he may believe] THE STATE'S ATTORNEY
11 BELIEVES to be guilty of having wilfully violated any of the provisions of this section
12 within the city or county for which said State's Attorney may be acting as such.

13 (2) THE STATE PROSECUTOR MAY PROSECUTE, BY THE REGULAR
14 COURSE OF CRIMINAL PROCEDURE, IN ANY JURISDICTION OF THE STATE, ANY
15 PERSON WHOM THE STATE PROSECUTOR BELIEVES TO BE GUILTY OF HAVING
16 WILLFULLY VIOLATED ANY OF THE PROVISIONS OF THIS SECTION.

17 26-20.

18 (A) (1) [Any]EXCEPT AS PROVIDED IN § 26-15 OF THIS SUBTITLE, ANY
19 person who KNOWINGLY AND WILLFULLY violates any of the provisions of this subtitle
20 is guilty of a misdemeanor, and upon conviction shall be fined [not more than one
21 thousand dollars (\$1,000.00)] AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
22 or [be] imprisoned for not more than [one] 1 year, or both, in the discretion of the
23 court.

24 (2) THE AMOUNT OF A FINE IMPOSED UNDER THIS SUBSECTION MAY
25 NOT EXCEED THE GREATER OF \$10,000 OR 300 PERCENT OF THE CONTRIBUTION,
26 EXPENDITURE, OR TRANSFER INVOLVED IN THE VIOLATION.

27 (B) (1) ANY PERSON WHO, WITHOUT KNOWLEDGE OF THE ILLEGALITY OF
28 THE ACT, VIOLATES ANY PROVISION OF THIS SUBTITLE SHALL PAY A CIVIL FINE.

29 (2) THE AMOUNT OF A FINE IMPOSED UNDER THIS SUBSECTION MAY
30 NOT EXCEED THE GREATER OF \$1,000 OR AN AMOUNT EQUAL TO 200 PERCENT OF
31 THE CONTRIBUTION, EXPENDITURE, OR TRANSFER INVOLVED IN THE VIOLATION.

32 (C) If a different penalty is specifically prescribed for violation of any section in
33 this subtitle and expressly set forth therein, the specific penalty applies and the penalty
34 set forth in this section does not apply.

35 26-20A.

36 (A) (1) WHEN THE STATE PROSECUTOR OR THE STATE'S ATTORNEY FOR A
37 COUNTY, OR BOTH, DETERMINE THAT A PERSON HAS UNINTENTIONALLY, AND
38 WITHOUT CRIMINAL INTENT, VIOLATED A PROVISION OF THIS SUBTITLE, THE STATE
39 PROSECUTOR OR THE STATE'S ATTORNEY, OR BOTH, SHALL CAUSE TO BE ISSUED A
40 CIVIL CITATION TO EACH PERSON WHO COMMITTED THE OFFENSE. THE CITATION
41 SHALL CONTAIN:

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1 (I) THE NAME AND ADDRESS OF THE PERSON CHARGED;

2 (II) THE NATURE OF THE VIOLATION AND THE TIME, PLACE, AND
3 MANNER IN WHICH IT OCCURRED;

4 (III) THE MAXIMUM FINE FOR THE VIOLATION THAT OCCURRED;

5 (IV) THE MANNER, LOCATION, AND TIME IN WHICH THE FINE MAY
6 BE PAID; AND

7 (V) A STATEMENT THAT THE PERSON RECEIVING THE CITATION
8 HAS A RIGHT TO A TRIAL IN THE DISTRICT COURT OF MARYLAND.

9 (2) THE ORIGINAL OF A CITATION SHALL BE FILED IN THE DISTRICT
10 COURT HAVING PROPER VENUE.

11 (B) THE CITATION SHALL BE SERVED UPON THE PERSON NAMED IN THE
12 CITATION BY MAIL OR BY PERSONAL SERVICE BY A SHERIFF OR A COMPETENT
13 PRIVATE PERSON 18 YEARS OLD OR OLDER.

14 (C) THE SHERIFF OR PERSON WHO SERVES THE CITATION SHALL MAKE A
15 PROMPT RETURN OF SERVICE TO THE COURT THAT SHOWS THE DATE, TIME, AND
16 PLACE OF SERVICE.

17 (D) (1) ON RECEIPT OF THE RETURN OF SERVICE, THE DISTRICT COURT
18 SHALL SCHEDULE THE CASE FOR TRIAL AND NOTIFY THE PERSON NAMED IN THE
19 CITATION OF THE TRIAL DATE.

20 (2) THE TRIAL IN THE DISTRICT COURT SHALL BE PROSECUTED IN THE
21 SAME MANNER AND TO THE SAME EXTENT AS SET FORTH FOR MUNICIPAL
22 INFRACTIONS UNDER ARTICLE 23A, § 3(B)(8) THROUGH (15) OF THE CODE.

23 (3) ALL FINES AND LATE FEES COLLECTED BY THE DISTRICT COURT
24 SHALL BE REMITTED TO THE STATE ADMINISTRATIVE BOARD OF ELECTION LAWS.

25 (4) AN ADJUDICATION OF A VIOLATION UNDER THIS SUBSECTION:

26 (I) IS NOT A CRIMINAL CONVICTION; AND

27 (II) DOES NOT IMPOSE ANY OF THE CIVIL DISABILITIES
28 ORDINARILY IMPOSED BY A CRIMINAL CONVICTION.

29 (E) IF A PERSON IS FOUND TO HAVE COMMITTED THE VIOLATION SET FORTH
30 IN THE CITATION, THE PERSON SHALL BE LIABLE FOR THE COSTS OF THE
31 PROCEEDINGS IN THE DISTRICT COURT.

32 (F) (1) IF A PERSON WHO HAS BEEN SERVED WITH A CITATION FAILS TO
33 APPEAR FOR TRIAL, THE COURT, AT THE REQUEST OF THE PROSECUTOR, MAY
34 EITHER DISMISS THE CITATION OR GRANT A CIVIL JUDGMENT AGAINST THE
35 PERSON NAMED IN THE CITATION IN FAVOR OF THE STATE ADMINISTRATIVE
36 BOARD OF ELECTION LAWS IN ACCORDANCE WITH THE MARYLAND RULES OF
37 PROCEDURE.

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1 (2) THE AMOUNT OF A JUDGMENT UNDER THIS SUBSECTION MAY NOT
2 EXCEED THE TOTAL OF THE MAXIMUM FINE SET FORTH IN § 26-20 OF THIS SUBTITLE
3 AND ANY LATE FEES OWED TO THE STATE ADMINISTRATIVE BOARD OF ELECTION
4 LAWS.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 1997.