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SENATE BILL NO. 450

Offered January 11, 2006

Prefiled January 11, 2006

A BILL to amend and reenact § 36-106 of the Code of Virginia, relating to abatement of lead hazards and disclosure of lead risks or the identification of a child as having an elevated blood-lead level and as being lead poisoned; retaliation; civil penalty.

Patron—Lambert

Referred to Committee on General Laws

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

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

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

B. Any locality may adopt an ordinance which establishes a uniform schedule of civil penalties for violations of specified provisions of the Code which are not abated or remedied promptly after receipt of notice of violation from the local enforcement officer.

This schedule of civil penalties shall be uniform for each type of specified violation, and the penalty for any one violation shall be a civil penalty of not more than \$100 for the initial summons and not more than \$150 for each additional summons. Each day during which the violation is found to have existed shall constitute a separate offense. However, specified violations arising from the same operative set of facts shall not be charged more frequently than once in any ten-day period, and a series of specified violations arising from the same operative set of facts shall not result in civil penalties which exceed a total of \$3,000. Designation of a particular Code violation for a civil penalty pursuant to this section shall be in lieu of criminal sanctions, and except for any violation resulting in injury to persons, such designation shall preclude the prosecution of a violation as a misdemeanor.

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

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

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SB450

59 If the violation concerns a residential unit, and if the violation remains uncorrected at the time of
60 assessment of the civil penalty, the court shall order the violator to abate or remedy the violation in
61 order to comply with the Code. Except as otherwise provided by the court for good cause shown, any
62 such violator shall abate or remedy the violation within six months of the date of the assessment of the
63 civil penalty.

64 C. Any owner or any other person, firm or corporation violating any Code provisions relating to the
65 removal or the covering of lead-base paint which poses a hazard to the health of pregnant women and
66 children under the age of six years who occupy the premises shall, upon conviction, be guilty of a
67 misdemeanor and shall be subject to a fine of not more than \$2,500. If the court convicts pursuant to
68 this subsection and sets a time by which such hazard must be abated, each day the hazard remains
69 unabated after the time set for the abatement has expired shall constitute a separate violation of the
70 Uniform Statewide Building Code. ~~Upon a reasonable showing to the court by a landlord as defined in~~
71 ~~§ 55-248.4, that such landlord is financially unable to abate the lead-base paint hazard, the court shall~~
72 ~~order any rental agreement related to the affected premises terminated effective thirty days from the~~
73 ~~entry of the court order. For the purposes of the preceding sentence, termination of the rental agreement~~
74 ~~shall not be deemed noncompliance by the landlord pursuant to § 55-248.21. Further, upon receiving~~
75 ~~evidence that a child under the age of six years who occupies the premises has been identified as~~
76 ~~having an elevated blood-lead level and as being lead poisoned, the Court shall order abatement of the~~
77 ~~unit by the landlord and shall set a time for the abatement to be completed.~~

78 *Termination of the rental agreement or an invalid unilateral change in the terms of the rental*
79 *agreement by the landlord after disclosure of lead hazards or the identification of a child residing in the*
80 *unit as having an elevated blood lead level and as being lead poisoned shall constitute retaliation and*
81 *shall be deemed material noncompliance by the landlord pursuant to § 55-248.21.*

82 D. Any prosecution under this section shall be commenced within two years as provided in § 19.2-8.