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SENATE BILL NO. 450

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws
on February 1, 2006)

(Patron Prior to Substitute—Senator Lambert)

A *BILL to amend and reenact § 36-106 of the Code of Virginia, relating to lead hazard control and disclosure of lead risks or the identification of a child as being lead poisoned.*

Be it enacted by the General Assembly of Virginia:

1. That § 36-106 of the Code of Virginia is 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 *otherwise* remedied *through hazard control*, 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.

If the violation concerns a residential unit, and if the violation remains uncorrected at the time of assessment of the civil penalty, the court shall order the violator to abate, or *otherwise* remedy *through hazard control*, 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 *otherwise* remedy *through hazard control*,

60 the violation within six months of the date of the assessment of the civil penalty.

61 C. Any owner or any other person, firm or corporation violating any Code provisions relating to the
62 removal or the covering of lead-base paint which lead hazard controls that poses a hazard to the health
63 of pregnant women and children under the age of six years who occupy the premises shall, upon
64 conviction, be guilty of a misdemeanor and shall be subject to a fine of not more than \$2,500. If the
65 court convicts pursuant to this subsection and sets a time by which such hazard must be abated
66 controlled, each day the hazard remains unabated uncontrolled after the time set for the abatement lead
67 hazard control has expired shall constitute a separate violation of the Uniform Statewide Building Code.

68 -Upon a reasonable showing to the court by a landlord as defined in § 55-248.4, that such landlord is
69 financially unable to abate the lead-base paint hazard, the court shall order any rental agreement related
70 to the affected premises terminated effective thirty days from the entry of the court order. For the
71 purposes of the preceding sentence, termination of the rental agreement shall not be deemed
72 noncompliance by the landlord pursuant to § 55-248.21.

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

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

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