

LD1656200

HOUSE BILL NO. 667

Offered January 25, 1994

A BILL to amend and reenact §§ 15.1-499.1 and 36-106 of the Code of Virginia, relating to violations of the Uniform Statewide Building Code; enforcement by localities; penalty.

Patrons—DeBoer, Albo, Cooper, Croshaw, Davies, Dickinson, Forbes, Hall, Jackson, Jones, J.C., McClure, Melvin, Miller, Moore, Reid, Robinson, Wagner and Woodrum; Senators: Barry, Calhoun, Goode, Hawkins, Houck, Howell, Maxwell, Miller, K.G., Schewel, Stosch and Trumbo

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.1-499.1 and 36-106 of the Code of Virginia are amended and reenacted as follows:

§ 15.1-499.1. Civil penalties for violations of zoning ordinance or provisions of the Uniform Statewide Building Code.

Notwithstanding the provisions of § 15.1-491 (e), the governing body of any county, city or town may adopt an ordinance which establishes a uniform schedule of civil penalties for violations of specified provisions of the zoning ordinance *and for violations of the Uniform Statewide Building Code*. Such schedule of offenses shall not include any zoning violation resulting in injury to any person or persons, and the existence of a civil penalty shall not preclude action by the zoning administrator under § 15.1-491 (d) or action by the governing body under § 15.1-499.

This schedule of civil penalties shall be uniform for each type of specified violation, and the penalty for any one violation shall be a fine 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, in no event shall specified violations arising from the same operative set of facts be charged more frequently than once in any ten-day period, and in no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of \$3,000. Designation of a particular zoning ordinance violation *or a Uniform Statewide Building 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 any person or persons, such designation shall preclude the prosecution of a violation as a criminal 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 any such county, city or town 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.

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 any such county, city or town 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.

No provision herein shall be construed to allow the imposition of civil penalties (i) ~~for enforcement of the Uniform Statewide Building Code;~~ (ii) for activities related to land development ~~or activities related to the construction or repair of buildings and other structures;~~ or (iii) ~~(ii)~~ for violation of any provision of a local zoning ordinance relating to the posting of signs on public property or public rights-of-way.

§ 36-106. Willful 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 *willfully* violate any such provisions. Any such *willful* 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; additionally, if the violation concerns a residential unit and 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. 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

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60 within a period of five to ten years of a first offense under this chapter shall be punished by a fine of
61 not less than \$500 nor more than \$2,500. Any person convicted of a third or subsequent offense
62 committed within ten years of an offense under this chapter shall be punished by a fine of not less than
63 \$1,500 nor more than \$2,500. Notwithstanding the foregoing, those provisions requiring a minimum fine
64 shall apply only to convictions for building code violations which cause a building or structure to be
65 unsafe or unfit for human habitation.

66 *If a locality has adopted an ordinance establishing a uniform schedule of civil penalties as permitted*
67 *by § 15.1-499.1, any person who violates any provision of the Building Code shall, upon a finding of an*
68 *appropriate general district court, be assessed a civil penalty in accordance with the schedule. A civil*
69 *action for such violation may be brought by the locality wherein the land upon which the structure is*
70 *located lies. In any trial for a scheduled violation, it shall be the burden of the locality to show the*
71 *liability of the violator by a preponderance of the evidence. An admission of liability or finding of*
72 *liability shall not be a criminal conviction for any purpose.*

73 B. Any owner or any other person, firm or corporation violating any Code provisions relating to the
74 removal or the covering of lead-base paint which poses a hazard to the health of pregnant women and
75 children under the age of six years who occupy the premises shall, upon conviction, be guilty of a
76 misdemeanor and shall be subject to a fine of not more than \$2,500. If the court convicts pursuant to
77 this subsection and sets a time by which such hazard must be abated, each day the hazard remains
78 unabated after the time set for the abatement has expired shall constitute a separate violation of the
79 Uniform Statewide Building Code. Upon a reasonable showing to the court by a landlord as defined in
80 § 55-248.4, that such landlord is financially unable to abate the lead-base paint hazard, the court shall
81 order any rental agreement related to the affected premises terminated effective thirty days from the
82 entry of the court order. For the purposes of the preceding sentence, termination of the rental agreement
83 shall not be deemed noncompliance by the landlord pursuant to § 55-248.21.

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