

VIRGINIA ACTS OF ASSEMBLY -- 1995 SESSION

CHAPTER 494

An Act to amend and reenact §§ 15.1-499.1 and 36-106 of the Code of Virginia, relating to the Uniform Statewide Building Code.

[S 690]

Approved March 23, 1995

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.

Notwithstanding the provisions of § 15.1-491 (e), ~~the governing body of any county, city or town locality~~ may adopt an ordinance which establishes a uniform schedule of civil penalties for violations of specified provisions of the zoning ordinance ~~and penalties for violations of the Uniform Statewide Building Code. Such~~ The 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~~ 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, ~~in no event shall~~ specified violations arising from the same operative set of facts *shall not* 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 *shall not* 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~~ 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. ~~In the case of violations of the Uniform Statewide Building Code, 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 ~~any such county, city or town~~ 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.

No provision herein shall be construed to allow the imposition of civil penalties (i) for activities related to land development or (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. 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. 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 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 committed within ten years of an offense under this chapter shall be punished by a fine of not less than \$1,500 nor more than \$2,500. Notwithstanding the foregoing, those provisions requiring a minimum fine shall apply only to convictions for building code violations which cause a building or structure to be unsafe or unfit for human habitation.

B. If a locality has adopted an ordinance establishing a uniform schedule of civil penalties as permitted by ~~§ 15.1-499.1~~, any person who violates any provision of the Building Code and who fails to abate or remedy the violation promptly after receipt of notice of violation from the local enforcement officer, shall, upon a finding of an appropriate general district court, be assessed a civil penalty in accordance with the schedule. A civil action for such violation may be brought by the locality wherein the land upon which the structure is located lies. In any trial for a scheduled violation, 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. 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.

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 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 the assessment of the civil penalty.

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

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