

VIRGINIA ACTS OF ASSEMBLY -- 1995 SESSION

CHAPTER 832

An Act to amend and reenact §§ 3.1-796.94 and 10.1-569 of the Code of Virginia, relating to civil penalties; issuance of summonses.

[S 873]

Approved May 5, 1995

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.1-796.94 and 10.1-569 of the Code of Virginia are amended and reenacted as follows:

§ 3.1-796.94. Governing body of county, city, or town may adopt certain ordinances.

A. The governing bodies of counties, cities, and towns of the Commonwealth are hereby authorized to adopt, in their discretion, ordinances which parallel §§ 3.1-796.84 through 3.1-796.93, 3.1-796.95 through 3.1-796.104, 3.1-796.115 through 3.1-796.119, 3.1-796.121, 3.1-796.126:1 through 3.1-796.126:7, and 3.1-796.127 through 3.1-796.129 of this chapter.

Any funds collected pursuant to the enforcement of ordinances adopted pursuant to the provisions of this section may be used for the purpose of defraying the costs of local animal control, including efforts to promote sterilization of cats and dogs.

Nothing in this section shall be construed so as to prevent or restrict any local governing body from adopting local animal control ordinances which are more stringent than §§ 3.1-796.84 through 3.1-796.93, 3.1-796.95 through 3.1-796.104, 3.1-796.115 through 3.1-796.119, 3.1-796.121, 3.1-796.126:1 through 3.1-796.126:7, and 3.1-796.127 through 3.1-796.129 of this chapter.

B. The governing bodies of counties, cities or towns of the Commonwealth are hereby authorized to adopt, in their discretion, ordinances establishing uniform schedules of civil penalties for violations of specific provisions of ordinances adopted pursuant to this section. Designation of a particular violation for a civil penalty shall be in lieu of criminal sanctions and preclude prosecution of such violation as a criminal misdemeanor. The schedule for civil penalties shall be uniform for each type of specified violation and the penalty for any one violation shall not be more than \$150. Imposition of civil penalties shall not preclude an action for injunctive, declaratory or other equitable relief. Moneys raised pursuant to this subsection shall be placed in the locality's general fund.

An animal warden, deputy warden, humane investigator or animal control officer may issue a summons for a violation. 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 county, city or town issuing the summons or ticket 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.

§ 10.1-569. Penalties, injunctions and other legal actions.

A. Violators of §§ 10.1-563, 10.1-564 or § 10.1-566 shall be guilty of a Class 1 misdemeanor.

B. If a locality has adopted an ordinance establishing a uniform schedule of civil penalties as permitted by subsection J of § 10.1-562, any person who violates any regulation or order of the Board, any condition of a permit, any provision of its program, or any provision of this article shall, upon a finding of an appropriate general district court, be assessed a civil penalty in accordance with the schedule. *The erosion and sediment control administrator, his deputy or a certified inspector for the locality wherein the land lies may issue a summons for collection of the civil penalty* ~~A civil action for such violation and the action~~ *may be brought prosecuted* by the locality wherein the land 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 or finding of liability shall not be a criminal conviction for any purpose. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

C. The appropriate permit-issuing authority, the program authority, or the Board may apply to the circuit court in any jurisdiction wherein the land lies to enjoin a violation or a threatened violation under §§ 10.1-563, 10.1-564 or § 10.1-566 without the necessity of showing that an adequate remedy at law does not exist.

D. In addition to any criminal or civil penalties provided under this chapter, any person who violates any provision of this chapter may be liable to the program authority, or the Board, as appropriate, in a civil action for damages.

E. Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. A civil action for such violation or failure may be brought by the locality wherein the

land lies. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

F. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the Board, or any condition of a permit or any provision of this article, the Board, the Director or plan approving or permit-issuing authority may provide, in an order issued by the Board or plan-approving or permit-issuing authority against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection E of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection B or E.

G. Upon request of a program authority, or the permit-issuing authority, the attorney for the Commonwealth shall take legal action to enforce the provisions of this article. Upon request of the Board, the Attorney General shall take appropriate legal action on behalf of the Board to enforce the provisions of this article.

H. Compliance with the provisions of this article shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion or sedimentation that all requirements of law have been met and the complaining party must show negligence in order to recover any damages.