

LD6280722

## SENATE BILL NO. 873

Senate Amendments in [ ] — February 3, 1995

A *BILL to amend and reenact §§ 3.1-796.94, 10.1-569, 15.1-499.1 and 36.1-106 of the Code of Virginia, relating to civil penalties; issuance of summonses.*

Patrons—Norment; Delegate: Grayson

Referred to the Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 3.1-796.94, 10.1-569, 15.1-499.1 and 36.1-106 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.

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60 E. Without limiting the remedies which may be obtained in this section, any person violating or  
61 failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to  
62 this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for  
63 each violation. A civil action for such violation or failure may be brought by the locality wherein the  
64 land lies. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein  
65 the land lies, except that where the violator is the locality itself, or its agent, the court shall direct the  
66 penalty to be paid into the state treasury.

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

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

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

81 § 15.1-499.1. Civil penalties for violations of zoning ordinance or provisions of the Uniform  
82 Statewide Building Code.

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

89 This schedule of civil penalties shall be uniform for each type of specified violation, and the penalty  
90 for any one violation shall be a fine of not more than \$100 for the initial summons and not more than  
91 \$150 for each additional summons. Each day during which the violation is found to have existed shall  
92 constitute a separate offense. However, in no event shall specified violations arising from the same  
93 operative set of facts be charged more frequently than once in any ten-day period, and in no event shall  
94 a series of specified violations arising from the same operative set of facts result in civil penalties which  
95 exceed a total of \$3,000. Designation of a particular zoning ordinance violation or a Uniform Statewide  
96 Building Code violation for a civil penalty pursuant to this section shall be in lieu of criminal sanctions,  
97 and except for any violation resulting in injury to any person or persons, such designation shall preclude  
98 the prosecution of a violation as a criminal misdemeanor.

99 *The zoning administrator or his deputy may issue a summons for a scheduled violation.* Any person  
100 summoned or issued a ticket for a scheduled violation may make an appearance in person or in writing  
101 by mail to the department of finance or the treasurer of any such county, city or town prior to the date  
102 fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability, and pay the  
103 civil penalty established for the offense charged. Such persons shall be informed of their right to stand  
104 trial and that a signature to an admission of liability will have the same force and effect as a judgment  
105 of court. In the case of violations of the Uniform Statewide Building Code, as a condition of waiver of  
106 trial, admission of liability, and payment of a civil penalty, the violator shall agree in writing to abate or  
107 remedy the violation within six months after the date of payment of the civil penalty.

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

114 No provision herein shall be construed to allow the imposition of civil penalties (i) for activities  
115 related to land development or (ii) for violation of any provision of a local zoning ordinance relating to  
116 the posting of signs on public property or public rights-of-way.

117 § 36-106. Violation a misdemeanor; civil penalty.

118 A. It shall be unlawful for any owner or any other person, firm or corporation, on or after the  
119 effective date of any Code provisions, to violate any such provisions. Any such violation shall be  
120 deemed a misdemeanor and any owner or any other person, firm or corporation convicted of such a  
121 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. A summons may be issued by the building officer or his deputy. The building officer or his deputy may issue a summons for collection of the civil penalty and the action may be prosecuted 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. 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-base 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-base 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.