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**HOUSE BILL NO. 493**

Offered January 13, 2010

Prefiled January 12, 2010

*A BILL to amend and reenact § 36-106 of the Code of Virginia, relating to the Uniform Statewide Building Code; penalty for violation.*

\_\_\_\_\_  
Patron—Lingamfelter

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Referred to Committee on General Laws

**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. Violations of any provision of the Building Code, adopted and promulgated pursuant to § 36-103, that results in a dwelling not being a safe, decent and sanitary dwelling, as defined in § 25.1-400, in a locality where the local governing body has taken official action to enforce such provisions, 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 expiration of the court-ordered abatement period 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 confinement in jail for not more than five days and a fine of not less than \$1,000 nor more than \$2,500, either or both. Provided, however, that the provision for confinement in jail shall not be applicable to any person, firm, or corporation, when such violation involves a multiple-family dwelling unit. Any person convicted of a second offense committed within a period of five to 10 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 10 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 10 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 10 years of an offense under this chapter shall be suspended.

C. 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~~200 for the initial summons and not

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59 more than \$150,500 for each additional summons. Each day during which the violation is found to have  
60 existed shall constitute a separate offense. However, specified violations arising from the same operative  
61 set of facts shall not be charged more frequently than once in any ten-day period, and a series of  
62 specified violations arising from the same operative set of facts shall not result in civil penalties which  
63 exceed a total of \$3,000,5,000. Designation of a particular Code violation for a civil penalty pursuant to  
64 this section shall be in lieu of criminal sanctions, and except for any violation resulting in injury to  
65 persons, such designation shall preclude the prosecution of a violation as a misdemeanor.

66 Any person summoned or issued a ticket for a scheduled violation may make an appearance in  
67 person or in writing by mail to the department of finance or the treasurer of the locality prior to the date  
68 fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability, and pay the  
69 civil penalty established for the offense charged. Such persons shall be informed of their right to stand  
70 trial and that a signature to an admission of liability will have the same force and effect as a judgment  
71 of court. As a condition of waiver of trial, admission of liability, and payment of a civil penalty, the  
72 violator and a representative of the locality shall agree in writing to terms of abatement or remediation  
73 of the violation within six months after the date of payment of the civil penalty.

74 If a person charged with a scheduled violation does not elect to enter a waiver of trial and admit  
75 liability, the violation shall be tried in the general district court in the same manner and with the same  
76 right of appeal as provided for by law. In any trial for a scheduled violation authorized by this section,  
77 it shall be the burden of the locality to show the liability of the violator by a preponderance of the  
78 evidence. An admission of liability or finding of liability shall not be a criminal conviction for any  
79 purpose.

80 If the violation concerns a residential unit, and if the violation remains uncorrected at the time of  
81 assessment of the civil penalty, the court shall order the violator to abate, or otherwise remedy through  
82 hazard control, the violation in order to comply with the Code. Except as otherwise provided by the  
83 court for good cause shown, any such violator shall abate, or otherwise remedy through hazard control,  
84 the violation within six months of the date of the assessment of the civil penalty.

85 D. Any owner or any other person, firm or corporation violating any Code provisions relating to lead  
86 hazard controls that poses a hazard to the health of pregnant women and children under the age of six  
87 years who occupy the premises shall, upon conviction, be guilty of a misdemeanor and shall be subject  
88 to a fine of not more than \$2,500. If the court convicts pursuant to this subsection and sets a time by  
89 which such hazard must be controlled, each day the hazard remains uncontrolled after the time set for  
90 the lead hazard control has expired shall constitute a separate violation of the Uniform Statewide  
91 Building Code.

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

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

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