

House Bill 714

By: Representatives Bruce of the 45th, Burkhalter of the 36th, Mosby of the 59th, Post 3, Campbell of the 39th and Heckstall of the 48th, Post 3

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Chapter 74 of Title 36 of the Official Code of Georgia Annotated, the "Local
2 Government Code Enforcement Boards Act," so as to define a certain term; to provide
3 requirements for an order to comply issued by a local code enforcement board; to provide
4 for the specificity of fines; to repeal certain provision relative to an administrative fine; to
5 repeal certain provisions relative to an environmental court; to specify the venue and form
6 of appeals; to provide for the delivery of notice; to make editorial revisions; to repeal
7 conflicting laws; and for other purposes.

8 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

9 **SECTION 1.**

10 Chapter 74 of Title 36 of the Official Code of Georgia Annotated, the "Local Government
11 Code Enforcement Boards Act," is amended by striking paragraph (6) of Code Section
12 36-74-4, relating to definitions, and inserting in lieu thereof the following:

13 "(6) 'Repeat violation' means any violation of county or municipal codes or ordinances
14 by an owner or co-owner whom the enforcement board has previously found to be in
15 violation of a code or ordinance within one year prior to such violation.

16 "(7) 'Violation involving the health or safety of a third party' means a violation that
17 creates a legitimate concern for the health and safety of a third party third-party occupant
18 of a dwelling place or that creates an immediate and substantial danger to the
19 environment or members of the community at large, especially minor children."

20 **SECTION 2.**

21 Said chapter is further amended by striking in its entirety subsection (d) of Code Section
22 36-74-7, relating to the calling of hearings and hearing proceedings, and inserting in lieu
23 thereof the following:

24 "(d) At the conclusion of the hearing, the enforcement board shall issue findings of fact,
25 based on evidence of record and conclusions of law, and shall issue an order affording the

proper relief to comply or an order to pay an administrative fine consistent with powers granted in this chapter. The findings and conclusions and any order imposed shall be by motion approved by a majority of those members present and voting, except that at least four members of a seven-member enforcement board, or three members of a five-member enforcement board, or two members of a three-member enforcement board, must vote in order for the action to be official. The order may include a notice that it must be complied with by a specified date and that a fine may be imposed if the order is not complied with by said date. A certified copy of such order may be recorded in the public records of the county and shall constitute notice to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property, and the findings therein shall be binding upon the violator and, if the violation concerns real property, any subsequent purchasers, successors in interest, or assigns. If an order is recorded in the public records pursuant to this subsection and the order is complied with by the date specified in the order, the enforcement board shall issue an order acknowledging compliance that shall be recorded in the public records. A hearing is not required to issue such an order acknowledging compliance.

(e) An order to comply shall include notice that it must be complied with by a specified date and that an administrative fine may be imposed if the order is not complied with by such date.

(f) An order to pay a fine shall specify the amount of the fine as determined and voted upon by the enforcement board, as well as the date and time the fine is due. A certified copy of such order may be recorded in the public records of the county and shall constitute notice to any subsequent purchaser, successor in interest, or assign if the violation concerns real property, and the findings therein shall be binding upon the violator and, if the violation concerns real property, any subsequent purchaser, successor in interest, or assign. If an order is recorded in the public records pursuant to this subsection and the fine is paid by the date and time specified in the order, the enforcement board shall issue an order acknowledging that the fine has been paid in full and such order shall be recorded in the public records. A hearing is not required to issue such an order acknowledging the payment of a fine.

(g) The enforcement board may issue an order to pay a fine against the violator if the cited violation was not corrected within the time specified on the code inspector's notice or if an order to comply was not satisfied within the time specified in the order, even if said violation was corrected and brought into compliance prior to the hearing at which the fine is imposed."

SECTION 3.

Said chapter is further amended by striking in its entirety Code Section 36-74-9, relating to administrative fines and public records, and inserting in lieu thereof the following:

"36-74-9.

(a) ~~An enforcement board, upon notification by the code inspector that an order of the enforcement board has not been complied with by the set time may order the violator to pay an administrative fine in an amount specified in this Code section.~~

(b)(1) An administrative fine imposed pursuant to this Code section for a violation involving the health or safety of a third party shall not exceed \$1000.00 \$1,000.00 per day.

(2) An administrative fine imposed pursuant to this Code section for a violation that is not a violation involving the health or safety of a third party shall not exceed a total of \$1,000.00.

(3) In determining the amount of the fine, if any, the enforcement board shall consider the following factors:

(A) The gravity of the violation;

(B) Any actions taken by the violator to correct the violation; and

(C) Any previous violations committed by the violator.

(4) An enforcement board may reduce a fine imposed pursuant to this Code section.

(c)(b) A certified copy of an order imposing an administrative fine may be recorded in the public records of any county and thereafter shall constitute a lien against the land on which the violation exists and upon any real or personal property owned by the violator. Upon petition to the superior court, such order may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. After three months from the filing of any such lien which remains unpaid, the enforcement board may request the local governing body attorney to foreclose on the lien.

(d) ~~If an environmental court is in existence with jurisdiction over ordinances subject to the jurisdiction of the enforcement board, the violator may object to the fine imposed and submit to the jurisdiction of the environmental court. The case shall be transferred to the environmental court and handled de novo as an ordinance violation."~~

SECTION 4.

Said chapter is further amended by striking in its entirety Code Section 36-74-11, relating to appeals to the superior court, and inserting in lieu thereof the following:

1 "36-74-11.

2 An aggrieved party, including the local governing body, may appeal a final administrative
3 order of an enforcement board to the superior court of the county in which the subject
4 property is located. Such an appeal shall be ~~a hearing de novo in the form of a writ of~~
5 certiorari governed by Chapter 4 of Title 5 and shall be heard on the record. An appeal
6 shall be filed within 30 days of the execution of the order to be appealed."

7 **SECTION 5.**

8 Said chapter is further amended by striking in its entirety subsection (a) of Code Section
9 36-74-12, relating to the requirement and form of notice, and inserting in lieu thereof the
10 following:

11 "(a) All notices required by this chapter shall be provided to the alleged violator by
12 certified mail or statutory overnight delivery, return receipt requested; by hand delivery by
13 the sheriff or other law enforcement officer, code inspector, or other person designated by
14 the local governing body; ~~or~~ by leaving the notice at the violator's usual place of residence
15 with any person residing therein who is ~~above~~ over 15 years of age and informing such
16 person of the contents of the notice; or by leaving the notice at the violator's usual place
17 of business with a manager or other upper-level employee who is over 15 years of age and
18 informing such person of the contents of the notice."

19 **SECTION 6.**

20 All laws and parts of laws in conflict with this Act are repealed.