

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S

3

SENATE BILL 164*

Judiciary II Committee Substitute Adopted 5/3/93

House Committee Substitute Favorable 6/24/93

Short Title: Bldg. Code/Local Civil Penalties.

(Public)

Sponsors:

Referred to:

February 16, 1993

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT LOCAL GOVERNMENTS HAVE THE AUTHORITY TO IMPOSE CIVIL PENALTIES FOR VIOLATIONS OF THE FIRE PREVENTION CODE OF THE STATE BUILDING CODE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-138(h) reads as rewritten:

"(h) Violations. - Any person who shall be adjudged to have violated this Article or the North Carolina State Building Code, except for violations of occupancy limits established by either, shall be guilty of a misdemeanor and shall upon conviction be liable to a fine, not to exceed fifty dollars (\$50.00), for each offense. Each 30 days that such violation continues shall constitute a separate and distinct offense. Violation of occupancy limits established pursuant to the North Carolina State Building Code shall be a misdemeanor subject to a one hundred dollar (\$100.00) fine for a first offense, a two hundred fifty dollar (\$250.00) fine for a second offense, and a five hundred dollar (\$500.00) fine and up to 30 days imprisonment for a third and any subsequent offenses. Any violation incurred more than one year after another conviction for violation of the occupancy limits shall be treated as a first offense for purposes of establishing and imposing penalties. In case any building or structure is erected, constructed or reconstructed, or its purpose altered, so that it becomes in violation of the North Carolina State Building Code or if the occupancy limits established pursuant to the North Carolina State Building Code are exceeded, either the local enforcement officer or the State Commissioner of Insurance or other State official with responsibility under G.S. 143-139 may, in addition to other remedies,

1 ~~institute any appropriate action or proceedings including the civil remedies set out in G.S.~~
2 ~~160A-175 and G.S. 153A-123, (i) to prevent such unlawful erection, construction or~~
3 ~~reconstruction or alteration of purpose, or overcrowding, (ii) to restrain, correct, or abate such~~
4 ~~violation, or (iii) to prevent the occupancy or use of said building, structure or land until such~~
5 ~~violation is corrected."~~

6 Sec. 2. G.S. 143-139 reads as rewritten:

7 **"§ 143-139. Enforcement of Building Code.**

8 (a) Procedural Requirements. – Subject to the provisions set forth herein, the
9 Building Code Council shall adopt such procedural requirements in the North Carolina
10 State Building Code as shall appear reasonably necessary for adequate enforcement of
11 the Code while safeguarding the rights of persons subject to the Code.

12 (b) General Building Regulations. – The Insurance Commissioner shall have
13 general supervision, through the Division of Engineering of the Department of
14 Insurance, of the administration and enforcement of all sections of the North Carolina
15 State Building Code pertaining to plumbing, electrical systems, general building
16 restrictions and regulations, heating and air conditioning, fire protection, and the
17 construction of buildings generally, except those sections of the Code, the enforcement
18 of which is specifically allocated to other agencies by subsections (c) and (d) below.
19 The Insurance Commissioner, by means of the Division of Engineering, shall exercise
20 his duties in the enforcement of the North Carolina State Building Code (including local
21 building codes which have superseded the State Building Code in a particular political
22 subdivision pursuant to G.S. 143-138(e)) in cooperation with local officials and local
23 inspectors duly appointed by the governing body of any municipality or board of county
24 commissioners pursuant to Part 5 of Article 19 of Chapter 160A of the General Statutes
25 or Part 4 of Article 18 of Chapter 153A of the General Statutes, or any other applicable
26 statutory authority.

27 (b1) Remedies. – In case any building or structure is maintained, erected,
28 constructed, or reconstructed or its purpose altered, so that it becomes in violation of
29 this Article or of the North Carolina State Building Code, either the local enforcement
30 officer or the State Commissioner of Insurance or other State official with responsibility
31 under this section may, in addition to other remedies, institute any appropriate action or
32 proceeding to: (i) prevent the unlawful maintenance, erection, construction, or
33 reconstruction or alteration of purpose, or overcrowding, (ii) restrain, correct, or abate
34 the violation, or (iii) prevent the occupancy or use of the building, structure, or land
35 until the violation is corrected. In addition to the civil remedies set out in G.S. 160A-
36 175 and G.S. 153A-123, a county, city, or other political subdivision authorized to
37 enforce the North Carolina State Building Code within its jurisdiction may, for the
38 purposes stated in (i) through (iii) of this subsection, levy a civil penalty for violation of
39 the fire prevention code of the North Carolina State Building Code, which penalty may
40 be recovered in a civil action in the nature of debt if the offender does not pay the
41 penalty within a prescribed period of time after the offender has been cited for the
42 violation. If the Commissioner or other State official institutes an action or proceeding
43 under this section, a county, city, or other political subdivision may not institute a civil
44 action under this section based upon the same violation. Appeals from the imposition of

1 any remedy set forth herein, including the imposition of a civil penalty by a county, city,
2 or other political subdivision, shall be as provided in G.S. 160A-434.

3 (c) Boilers. – The Bureau of Boiler Inspection of the Department of Labor shall
4 have general supervision of the administration and enforcement of those sections of the
5 North Carolina State Building Code which pertain to boilers of the types enumerated in
6 Article 7 of Chapter 95 of the General Statutes.

7 (d) Elevators. – The Department of Labor shall have general supervision of the
8 administration and enforcement of those sections of the North Carolina State Building
9 Code which pertain to elevators, moving stairways, and amusement devices such as
10 merry-go-rounds, roller coasters, Ferris wheels, etc."

11 Sec. 3. G.S. 143-138(e) reads as rewritten:

12 "(e) Effect upon Local Codes. – The North Carolina State Building Code shall
13 apply throughout the State, from the time of its adoption. However, any political
14 subdivision of the State may adopt a building code or building rules and regulations
15 governing construction or a fire prevention code within its jurisdiction. The territorial
16 jurisdiction of any municipality or county for this purpose, unless otherwise specified
17 by the General Assembly, shall be as follows: Municipal jurisdiction shall include all
18 areas within the corporate limits of the municipality and extraterritorial jurisdiction
19 areas established as provided in G.S. 160A-360 or a local act; county jurisdiction shall
20 include all other areas of the county. No such code or regulations, other than those
21 permitted by G.S. 160A-436, shall be effective until they have been officially approved
22 by the Building Code Council as providing adequate minimum standards to preserve
23 and protect health and safety, in accordance with the provisions of subsection (c) above.
24 While it remains effective, such approval shall be taken as conclusive evidence that a
25 local code or local regulations supersede the State Building Code in its particular
26 political subdivision. Whenever the Building Code Council adopts an amendment to
27 the State Building Code, it shall consider any previously approved local regulations
28 dealing with the same general matters, and it shall have authority to withdraw its
29 approval of any such local code or regulations unless the local governing body makes
30 such appropriate amendments to that local code or regulations as it may direct. In the
31 absence of approval by the Building Code Council, or in the event that approval is
32 withdrawn, local codes and regulations shall have no force and effect. Provided any
33 local regulations approved by the local governing body which are found by the Council
34 to be more stringent than the adopted statewide fire prevention code and which are
35 found to regulate only activities and conditions in buildings, structures, and premises
36 that pose dangers of fire, explosion or related hazards, and are not matters in conflict
37 with the State Building Code, shall be approved. Local governments may enforce the
38 fire prevention code of the State Building Code using civil remedies authorized under
39 G.S. 143-139, 153A-123, and 160A-175. If the Commissioner of Insurance or other
40 State official with responsibility for enforcement of the Code institutes a civil action
41 pursuant to G.S. 143-139, a local government may not institute a civil action under G.S.
42 143-139, 153A-123, or 160A-175 based upon the same violation. Appeals from the
43 assessment or imposition of such civil remedies shall be as provided in G.S. 160A-434."

1 Sec. 4. G.S. 160A-175 is amended by adding the following new subsection
2 to read:

3 "(c1) An ordinance may provide for the recovery of a civil penalty by the city for
4 violation of the fire prevention code of the State Building Code as authorized under G.S.
5 143-139."

6 Sec. 5. G.S. 153A-123 is amended by adding the following new subsection
7 to read:

8 "(c1) An ordinance may provide for the recovery of a civil penalty by the county
9 for violation of the fire prevention code of the State Building Code as authorized under
10 G.S. 143-139."

11 Sec. 6. This act is effective upon ratification and applies to violations
12 committed on or after that date.