

CHAPTER 124

GOVERNMENT - COUNTY

SENATE BILL 98-055

BY SENATORS Dennis and Schroeder;
also REPRESENTATIVES Lawrence and Spradley.

AN ACT

CONCERNING THE ENFORCEMENT AUTHORITY OF COUNTY GOVERNMENTS FOR VIOLATIONS OF COUNTY LAWS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Part 1 of article 28 of title 30, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

30-28-124.5. County court actions for civil penalties and costs for zoning violations. (1) IT IS UNLAWFUL TO ERECT, CONSTRUCT, RECONSTRUCT, ALTER, OR USE ANY BUILDING, STRUCTURE, OR LAND IN VIOLATION OF ANY REGULATION IN, OR OF ANY PROVISIONS OF, ANY ZONING RESOLUTION OR ANY AMENDMENT THEREOF, ENACTED OR ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS UNDER THE AUTHORITY OF THIS PART 1. IN ADDITION TO ANY PENALTIES IMPOSED PURSUANT TO SECTION 30-28-124, ANY PERSON, FIRM, OR CORPORATION VIOLATING ANY SUCH REGULATION, PROVISION, OR AMENDMENT THEREOF OR ANY PROVISION OF THIS PART 1 MAY BE SUBJECT TO THE IMPOSITION, BY ORDER OF THE COUNTY COURT, OF A CIVIL PENALTY IN AN AMOUNT OF NOT LESS THAN TWO HUNDRED FIFTY DOLLARS NOR MORE THAN FIVE HUNDRED DOLLARS. IT IS WITHIN THE DISCRETION OF THE COUNTY ATTORNEY TO DETERMINE WHETHER TO PURSUE THE CIVIL PENALTIES SET FORTH IN THIS SECTION, THE REMEDIES SET FORTH IN SECTION 30-28-124, OR BOTH. EACH DAY AFTER THE ISSUANCE OF THE ORDER OF THE COUNTY COURT DURING WHICH SUCH UNLAWFUL ACTIVITY CONTINUES SHALL BE DEEMED A SEPARATE VIOLATION AND SHALL, IN ACCORDANCE WITH THE SUBSEQUENT PROVISIONS OF THIS SECTION, BE THE SUBJECT OF A CONTINUING PENALTY IN AN AMOUNT NOT TO EXCEED FIFTY DOLLARS FOR EACH SUCH DAY. IN NO EVENT SHALL CIVIL PENALTIES IMPOSED PURSUANT TO

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

THIS SECTION CONSTITUTE A LIEN AGAINST THE REAL PROPERTY.

(2) (a) IN THE EVENT ANY BUILDING OR STRUCTURE IS ERECTED, CONSTRUCTED, RECONSTRUCTED, ALTERED, OR USED OR ANY LAND IS USED IN VIOLATION OF ANY REGULATION OR PROVISION OF ANY ZONING RESOLUTION, OR AMENDMENT THERETO, ENACTED OR ADOPTED BY ANY BOARD OF COUNTY COMMISSIONERS UNDER THE AUTHORITY GRANTED BY THIS PART 1, THE COUNTY ATTORNEY OF THE COUNTY IN WHICH SUCH BUILDING, STRUCTURE, OR LAND IS SITUATED, IN ADDITION TO OTHER REMEDIES PROVIDED BY LAW, MAY COMMENCE A CIVIL ACTION IN COUNTY COURT FOR THE COUNTY IN WHICH SUCH BUILDING, STRUCTURE, OR LAND IS SITUATED, SEEKING THE IMPOSITION OF A CIVIL PENALTY IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.

(b) A COUNTY ZONING OFFICIAL DESIGNATED BY RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS SHALL, UPON PERSONAL INFORMATION AND BELIEF THAT A VIOLATION OF ANY REGULATION OR PROVISION OF ANY ZONING RESOLUTION ENACTED UNDER THE AUTHORITY OF THIS PART 1 HAS OCCURRED, GIVE WRITTEN NOTICE TO THE VIOLATOR TO CORRECT SUCH VIOLATION WITHIN THIRTY DAYS AFTER THE DATE OF SUCH NOTICE. IF THE VIOLATOR FAILS TO CORRECT THE VIOLATION WITHIN SUCH THIRTY-DAY PERIOD OR WITHIN ANY EXTENSION PERIOD GRANTED BY THE ZONING OFFICIAL, THE ZONING OFFICIAL MAY REQUEST THAT THE SHERIFF OF THE COUNTY OR THE COUNTY ATTORNEY ISSUE A SUMMONS AND COMPLAINT TO THE VIOLATOR, STATING THE NATURE OF THE VIOLATION WITH SUFFICIENT PARTICULARITY TO GIVE NOTICE OF SUCH CHARGE TO THE VIOLATOR.

(c) ONE COPY OF THE SUMMONS AND COMPLAINT ISSUED PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (2) SHALL BE SERVED UPON THE VIOLATOR IN THE MANNER PROVIDED BY LAW FOR THE SERVICE OF A COUNTY COURT CIVIL SUMMONS AND COMPLAINT IN ACCORDANCE WITH THE COLORADO RULES OF COUNTY COURT CIVIL PROCEDURE. THE SUMMONS AND COMPLAINT SHALL ALSO BE FILED WITH THE CLERK OF THE COUNTY COURT AND THEREAFTER THE ACTION SHALL PROCEED IN ACCORDANCE WITH THE COLORADO RULES OF COUNTY COURT CIVIL PROCEDURE.

(d) IF THE COUNTY COURT FINDS, BY A PREPONDERANCE OF THE EVIDENCE, THAT A VIOLATION OF ANY REGULATION OR PROVISION OF A ZONING RESOLUTION, OR AMENDMENT THERETO, AS ENACTED AND ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS, HAS OCCURRED, THE COURT SHALL ORDER THE VIOLATOR TO PAY A CIVIL PENALTY IN AN AMOUNT ALLOWED PURSUANT TO SUBSECTION (1) OF THIS SECTION. SUCH PENALTY SHALL BE PAYABLE IMMEDIATELY BY THE VIOLATOR TO THE COUNTY TREASURER. IN THE EVENT THAT THE ALLEGED VIOLATION HAS BEEN CURED OR OTHERWISE REMOVED AT LEAST FIVE DAYS PRIOR TO THE APPEARANCE DATE IN THE SUMMONS, THEN THE COUNTY ATTORNEY SHALL SO INFORM THE COURT AND REQUEST THAT THE ACTION BE DISMISSED WITHOUT FINE OR APPEARANCE OF THE DEFENDANT.

(3) UPON THE FILING WITH THE COURT OF A RECEIPT ISSUED BY THE COUNTY TREASURER SHOWING PAYMENT IN FULL OF A CIVIL PENALTY ASSESSED PURSUANT TO THIS SECTION AND UPON THE FILING OF AN AFFIDAVIT OF THE COUNTY ZONING OFFICIAL THAT THE VIOLATION HAS BEEN CURED, REMOVED, OR CORRECTED, THE COURT SHALL DISMISS THE ACTION AND ISSUE A SATISFACTION IN FULL OF THE JUDGMENT SO ENTERED.

(4) IF A RECEIPT SHOWING FULL PAYMENT OF THE CIVIL PENALTY OR THE AFFIDAVIT REQUIRED BY SUBSECTION (3) OF THIS SECTION IS NOT FILED, THE ACTION SHALL CONTINUE AND THE COURT SHALL RETAIN JURISDICTION TO IMPOSE AN ADDITIONAL PENALTY AGAINST THE VIOLATOR IN THE AMOUNT SPECIFIED IN SUBSECTION (1) OF THIS SECTION. SUCH ADDITIONAL PENALTY SHALL BE IMPOSED BY THE COURT UPON MOTION FILED BY THE COUNTY AND PROOF THAT THE VIOLATION HAS NOT BEEN CURED, REMOVED, OR CORRECTED. THEREAFTER, THE ACTION SHALL CONTINUE UNTIL THE FILING WITH THE COURT OF A RECEIPT ISSUED BY THE COUNTY TREASURER SHOWING PAYMENT IN FULL OF THE CIVIL PENALTY AND ANY ADDITIONAL PENALTIES SO ASSESSED AND THE FILING OF AN AFFIDAVIT OF THE COUNTY ZONING OFFICIAL THAT THE VIOLATION HAS BEEN CURED, REMOVED, OR CORRECTED.

SECTION 2. Part 2 of article 28 of title 30, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

30-28-210. County court actions for civil penalties and costs for building violations. (1) IT IS UNLAWFUL TO ERECT, CONSTRUCT, RECONSTRUCT, ALTER, MAINTAIN, OR USE ANY BUILDING, STRUCTURE, OR LAND IN VIOLATION OF THIS PART 2 OR ANY PROVISIONS OF THE AREA BUILDING CODE. IN ADDITION TO ANY PENALTIES IMPOSED PURSUANT TO SECTION 30-28-209, ANY PERSON, FIRM, OR CORPORATION VIOLATING ANY SUCH PROVISION OF THIS PART 2 OR ANY PROVISION OF THE AREA BUILDING CODE MAY BE SUBJECT TO THE IMPOSITION, BY ORDER OF THE COUNTY COURT, OF A CIVIL PENALTY IN AN AMOUNT OF NOT LESS THAN TWO HUNDRED FIFTY DOLLARS NOR MORE THAN FIVE HUNDRED DOLLARS. IT IS WITHIN THE DISCRETION OF THE COUNTY ATTORNEY TO DETERMINE WHETHER TO PURSUE THE CIVIL PENALTIES SET FORTH IN THIS SECTION, THE REMEDIES SET FORTH IN SECTION 30-28-209, OR BOTH. EACH DAY AFTER THE ISSUANCE OF THE ORDER OF THE COUNTY COURT DURING WHICH SUCH UNLAWFUL ACTIVITY CONTINUES SHALL BE DEEMED A SEPARATE VIOLATION AND SHALL IN ACCORDANCE WITH THE SUBSEQUENT PROVISIONS OF THIS SECTION, BE THE SUBJECT OF A CONTINUING PENALTY IN AN AMOUNT NOT TO EXCEED FIFTY DOLLARS FOR EACH SUCH DAY. IN NO EVENT SHALL CIVIL PENALTIES IMPOSED PURSUANT TO THIS SECTION CONSTITUTE A LIEN AGAINST THE REAL PROPERTY.

(2) (a) IN THE EVENT ANY BUILDING OR STRUCTURE IS ERECTED, CONSTRUCTED, RECONSTRUCTED, ALTERED, MAINTAINED, OR USED IN VIOLATION OF THIS PART 2 OR OF ANY PROVISION OF THE AREA BUILDING CODE, THE COUNTY ATTORNEY OF THE COUNTY IN WHICH SUCH BUILDING OR STRUCTURE IS SITUATED, IN ADDITION TO OTHER REMEDIES PROVIDED BY LAW, MAY COMMENCE A CIVIL ACTION IN COUNTY COURT FOR THE COUNTY IN WHICH SUCH BUILDING OR STRUCTURE IS SITUATED, SEEKING THE IMPOSITION OF A CIVIL PENALTY IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.

(b) A BUILDING INSPECTOR DESIGNATED BY RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS SHALL, UPON PERSONAL INFORMATION AND BELIEF THAT A VIOLATION OF THIS PART 2 OR OF ANY PROVISION OF THE AREA BUILDING CODE HAS OCCURRED, GIVE WRITTEN NOTICE TO THE VIOLATOR TO CORRECT SUCH VIOLATION WITHIN THIRTY DAYS AFTER THE DATE OF SUCH NOTICE. IF THE VIOLATOR FAILS TO CORRECT THE VIOLATION WITHIN SUCH THIRTY-DAY PERIOD OR WITHIN ANY EXTENSION PERIOD GRANTED BY THE BUILDING INSPECTOR, THE BUILDING INSPECTOR MAY REQUEST THAT THE SHERIFF OF THE COUNTY OR THE COUNTY ATTORNEY ISSUE A SUMMONS AND COMPLAINT TO THE VIOLATOR, STATING THE NATURE OF THE

VIOLATION WITH SUFFICIENT PARTICULARITY TO GIVE NOTICE OF SUCH CHARGE TO THE VIOLATOR.

(c) ONE COPY OF THE SUMMONS AND COMPLAINT ISSUED PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (2) SHALL BE SERVED UPON THE VIOLATOR IN THE MANNER PROVIDED BY LAW FOR THE SERVICE OF A COUNTY COURT CIVIL SUMMONS AND COMPLAINT IN ACCORDANCE WITH THE COLORADO RULES OF COUNTY COURT CIVIL PROCEDURE. THE SUMMONS AND COMPLAINT SHALL ALSO BE FILED WITH THE CLERK OF THE COUNTY COURT AND THEREAFTER THE ACTION SHALL PROCEED IN ACCORDANCE WITH THE COLORADO RULES OF COUNTY COURT CIVIL PROCEDURE.

(d) IF THE COUNTY COURT FINDS, BY A PREPONDERANCE OF THE EVIDENCE, THAT A VIOLATION OF THIS PART 2 OR OF ANY PROVISION OF THE AREA BUILDING CODE HAS OCCURRED, THE COURT SHALL ORDER THE VIOLATOR TO PAY A CIVIL PENALTY IN AN AMOUNT ALLOWED PURSUANT TO SUBSECTION (1) OF THIS SECTION. SUCH PENALTY SHALL BE PAYABLE IMMEDIATELY BY THE VIOLATOR TO THE COUNTY TREASURER. IN THE EVENT THAT THE ALLEGED VIOLATION HAS BEEN CURED OR OTHERWISE REMOVED AT LEAST FIVE DAYS PRIOR TO THE APPEARANCE DATE IN THE SUMMONS, THEN THE COUNTY ATTORNEY SHALL SO INFORM THE COURT AND REQUEST THAT THE ACTION BE DISMISSED WITHOUT FINE OR APPEARANCE OF THE DEFENDANT.

(3) UPON THE FILING WITH THE COURT OF A RECEIPT ISSUED BY THE COUNTY TREASURER SHOWING PAYMENT IN FULL OF A CIVIL PENALTY ASSESSED PURSUANT TO THIS SECTION AND UPON THE FILING OF AN AFFIDAVIT OF THE COUNTY BUILDING INSPECTOR THAT THE VIOLATION HAS BEEN CURED, REMOVED, OR CORRECTED, THE COURT SHALL DISMISS THE ACTION AND ISSUE A SATISFACTION IN FULL OF THE JUDGMENT SO ENTERED.

(4) IF A RECEIPT SHOWING FULL PAYMENT OF THE CIVIL PENALTY OR THE AFFIDAVIT REQUIRED BY SUBSECTION (3) OF THIS SECTION IS NOT FILED, THE ACTION SHALL CONTINUE AND THE COURT SHALL RETAIN JURISDICTION TO IMPOSE AN ADDITIONAL PENALTY AGAINST THE VIOLATOR IN THE AMOUNT SPECIFIED IN SUBSECTION (1) OF THIS SECTION. SUCH ADDITIONAL PENALTY SHALL BE IMPOSED BY THE COURT UPON MOTION FILED BY THE COUNTY AND PROOF THAT THE VIOLATION HAS NOT BEEN CURED, REMOVED, OR CORRECTED. THEREAFTER, THE ACTION SHALL CONTINUE UNTIL THE FILING WITH THE COURT OF A RECEIPT ISSUED BY THE COUNTY TREASURER SHOWING PAYMENT IN FULL OF THE CIVIL PENALTY AND ANY ADDITIONAL PENALTIES SO ASSESSED AND THE FILING OF AN AFFIDAVIT OF THE COUNTY BUILDING INSPECTOR THAT THE VIOLATION HAS BEEN CURED, REMOVED, OR CORRECTED.

SECTION 3. Effective date - applicability. This act shall take effect July 1, 1998, and shall apply to violations occurring on or after said date.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 17, 1998