

SENATE, No. 403

STATE OF NEW JERSEY
219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

SYNOPSIS

Enhances penalties upon corporate violators of housing codes.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning municipal housing code violations and
2 amending R.S.40:49-5 and P.L.1950, c.210.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. R.S.40:49-5 is amended to read as follows:

8 40:49-5. The governing body may prescribe penalties for the
9 violation of ordinances it may have authority to pass, by one or
10 more of the following: imprisonment in the county jail or in any
11 place provided by the municipality for the detention of prisoners,
12 for any term not exceeding 90 days; or by a fine not exceeding
13 \$2,000; or by a period of community service not exceeding 90 days.

14 The governing body may prescribe that for the violation of any
15 particular ordinance at least a minimum penalty shall be imposed
16 which shall consist of a fine which may be fixed at an amount not
17 exceeding \$100.

18 The governing body may prescribe that for the violation of an
19 ordinance pertaining to unlawful solid waste disposal at least a
20 minimum penalty shall be imposed which shall consist of a fine
21 which may be fixed at an amount not exceeding \$2,500 or a
22 maximum penalty by a fine not exceeding \$10,000.

23 The court before which any person is convicted of violating any
24 ordinance of a municipality shall have power to impose any fine,
25 term of imprisonment, or period of community service not less than
26 the minimum and not exceeding the maximum fixed in such
27 ordinance. The court may impose upon a corporation a fine of up to
28 three times the maximum fixed for violation of a housing code
29 ordinance.

30 When a corporation is convicted of a violation of a housing code
31 ordinance or a high managerial agent of a corporation is convicted
32 of a violation of a housing code ordinance committed in conducting
33 the affairs of the corporation, the court may request the Attorney
34 General to institute appropriate proceedings to dissolve the
35 corporation, forfeit its charter, revoke any franchises held by it, or
36 to revoke the certificate authorizing the corporation to conduct
37 business in this State. For the purposes of this section, "high
38 managerial agent" means an officer of a corporation or any other
39 agent of a corporation having duties of such responsibility that the
40 agent's conduct may fairly be assumed to represent the policy of the
41 corporation.

42 Any person who is convicted of violating an ordinance within
43 one year of the date of a previous violation of the same ordinance
44 and who was fined for the previous violation, shall be sentenced by
45 a court to an additional fine as a repeat offender. The additional

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 fine imposed by the court upon a person for a repeated offense shall
2 not be less than the minimum or exceed the maximum fine fixed for
3 a violation of the ordinance, but shall be calculated separately from
4 the fine imposed for the violation of the ordinance.

5 Any municipality which chooses not to impose an additional fine
6 upon a person for a repeated violation of any municipal ordinance
7 may waive the additional fine by ordinance or resolution.

8 Any person convicted of the violation of any ordinance may, in
9 the discretion of the court by which he was convicted, and in
10 default of the payment of any fine imposed therefore, be imprisoned
11 in the county jail or place of detention provided by the municipality,
12 for any term not exceeding 90 days, or be required to perform
13 community service for a period not exceeding 90 days.

14 Any municipality that chooses to impose a fine in an amount
15 greater than \$1,250 upon an owner for violations of housing or
16 zoning codes shall provide a 30-day period in which the owner shall
17 be afforded the opportunity to cure or abate the condition and shall
18 also be afforded an opportunity for a hearing before a court of
19 competent jurisdiction for an independent determination concerning
20 the violation. Subsequent to the expiration of the 30-day period, a
21 fine greater than \$1,250 may be imposed if a court has not
22 determined otherwise or, upon reinspection of the property, it is
23 determined that the abatement has not been substantially completed.
24 (cf: P.L.2005, c.269, s.1)

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26 2. Section 2-4 of P.L.1950, c.210 (C.40:69A-29) is amended to
27 read as follows:

28 2-4. Each municipality governed by an optional form of
29 government pursuant to this act shall, subject to the provisions of
30 this act or other general laws, have full power to:

31 (a) Organize and regulate its internal affairs, and to establish,
32 alter, and abolish offices, positions and employments and to define
33 the functions, powers and duties thereof and fix their terms, tenure
34 and compensation;

35 (b) Adopt and enforce local police ordinances of all kinds and
36 impose one or more of the following penalties: fines not exceeding
37 \$2,000 or imprisonment for any term not exceeding 90 days, or a
38 period of community service not exceeding 90 days for the violation
39 thereof; prescribe that for the violation of particular ordinances at
40 least a minimum penalty shall be imposed which shall consist of a
41 fine which may be fixed at an amount not exceeding \$100;
42 prescribe that for the violation of an ordinance pertaining to
43 unlawful solid waste disposal at least a minimum penalty shall be
44 imposed which shall consist of a fine which may be fixed at an
45 amount not exceeding \$2,500 or a maximum penalty by a fine not
46 exceeding \$10,000; to construct, acquire, operate or maintain any
47 and all public improvements, projects or enterprises for any public
48 purpose, subject to referendum requirements otherwise imposed by

1 law, and to exercise all powers of local government in such manner
2 as its governing body may determine;

3 (c) Sue and be sued, to have a corporate seal, to contract and be
4 contracted with, to buy, sell, lease, hold and dispose of real and
5 personal property, to appropriate and expend moneys, and to adopt,
6 amend and repeal such ordinances and resolutions as may be
7 required for the good government thereof;

8 (d) Exercise powers of condemnation, borrowing and taxation in
9 the manner provided by general law.

10 The court before which any person is convicted of violating any
11 ordinance of a municipality shall have power to impose any fine,
12 term of imprisonment, or period of community service not less than
13 the minimum and not exceeding the maximum fixed in such
14 ordinance. The court may impose upon a corporation a fine of up to
15 three times the maximum fixed for violation of a housing code
16 ordinance.

17 When a corporation is convicted of a violation of a housing code
18 ordinance or a high managerial agent of a corporation is convicted
19 of a violation of a housing code ordinance committed in conducting
20 the affairs of the corporation, the court may request the Attorney
21 General to institute appropriate proceedings to dissolve the
22 corporation, forfeit its charter, revoke any franchises held by it, or
23 to revoke the certificate authorizing the corporation to conduct
24 business in this State. For the purposes of this section, "high
25 managerial agent" means an officer of a corporation or any other
26 agent of a corporation having duties of such responsibility that the
27 agent's conduct may fairly be assumed to represent the policy of the
28 corporation.

29 Any person who is convicted of violating an ordinance within
30 one year of the date of a previous violation of the same ordinance
31 and who was fined for the previous violation, shall be sentenced by
32 a court to an additional fine as a repeat offender. The additional
33 fine imposed by the court upon a person for a repeated offense shall
34 not be less than the minimum or exceed the maximum fine fixed for
35 a violation of the ordinance, but shall be calculated separately from
36 the fine imposed for the violation of the ordinance.

37 Any municipality which chooses not to impose an additional fine
38 upon a person for a repeated violation of any municipal ordinance
39 may waive the additional fine by ordinance or resolution.

40 Any municipality that chooses to impose a fine in an amount
41 greater than \$1,250 upon an owner for violations of housing or
42 zoning codes shall provide a 30-day period in which the owner shall
43 be afforded the opportunity to cure or abate the condition and shall
44 also be afforded an opportunity for a hearing before a court of
45 competent jurisdiction for an independent determination concerning
46 the violation. Subsequent to the expiration of the 30-day period, a
47 fine greater than \$1,250 may be imposed if a court has not
48 determined otherwise or, upon reinspection of the property, it is

1 determined that the abatement has not been substantially completed.
2 (cf: P.L.2005, c.269, s.2)

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4 3. This act shall take effect immediately.

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7 STATEMENT

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9 This bill would empower a court that convicts a corporation of
10 violating a municipal housing code ordinance to impose upon the
11 corporation a fine of up to three times the maximum fixed for
12 violation of the ordinance.

13 The bill also provides that when a corporation or its high
14 managerial agent is convicted of violating a housing code
15 ordinance, the court may request the Attorney General to institute
16 proceedings to dissolve the corporation, forfeit its charter, revoke
17 any franchises held by it, or to revoke the certificate authorizing the
18 corporation to conduct business in this State. The bill defines "high
19 managerial agent" as an officer of a corporation or any other agent
20 of a corporation having duties of such responsibility that the agent's
21 conduct may fairly be assumed to represent the policy of the
22 corporation.

23 Under current law a municipal governing body may provide the
24 following penalties for the violation of its ordinances: imprisonment
25 for any term not exceeding 90 days; a fine not exceeding \$2,000; or
26 a period of community service not exceeding 90 days. While the
27 threat of imprisonment may serve as a sufficient inducement for an
28 individual to comply with provisions of a municipal housing code,
29 this penalty may not be imposed upon a corporation. Allowing a
30 court to impose enhanced penalties upon a corporation will serve as
31 an inducement for compliance with a municipality's housing code.
32 Similarly, allowing a court to seek dissolution of a corporation will
33 serve as an additional inducement for corporations to comply with
34 municipal housing codes.

35 These initiatives are modeled after N.J.S.2C:43-4 which
36 authorizes courts to impose similar penalties when corporations are
37 convicted of offenses under the criminal code.