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OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1976

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ENROLLED

SENATE BILL NO. 146

(By Mr. George J. Davis & J. H. Hines)

—•—
PASSED March 13, 1976

In Effect July 1, 1976 ~~Change~~

146
FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 4/1/76

ENROLLED

Senate Bill No. 146

(By MR. SHARPE, MR. DAVIS and MR. HINKLE)

[Passed March 13, 1976; in effect July 1, 1976.]

AN ACT to amend and reenact article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the creation of a state fire commission; prescribing a method of appointing members; providing for the election of a chairman and vice-chairman; requiring the commission to meet at least six times a year; quorum required; establishing the duties of the commission to promulgate regulations and adopt a state fire code; creating the office of state fire administrator and providing for his appointment, term of office, salary, qualifications, responsibilities and removal; providing for public hearing; annual reports; removing fire marshal's office from the office of the insurance commissioner; establishing the state fire marshal's office under the state fire commission; changing the appointment, term of office, qualifications, responsibilities and removal of the state fire marshal; providing for the powers and duties of the fire marshal; providing that employees are to be members of the state civil service system; establishing a state master plan for fire service; removing requirement that tax on insurance companies be used for maintenance of state fire marshal's office; prohibiting construction of a fire hazard; authorizing fire marshal to order removal of fire hazard and providing that removal is to be done by the fire marshal at expense of owner upon failure to comply with fire marshal's order; providing other remedies to abate fire hazard; providing for the transfer of certain state employees and the perpetuation of rules and regulations; providing penalties and procedures for appeal; and severability.

Be it enacted by the Legislature of West Virginia:

That article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-1. Short title.

- 1 This article shall be known and may be cited as the
- 2 "Fire Prevention and Control Act."

§29-3-2. Legislative findings and declaration of policy.

- 1 The Legislature hereby finds and declares that:
- 2 (a) A significant part of the population of this state
- 3 needs improved fire prevention and control;
- 4 (b) The establishment and maintenance of a coor-
- 5 dination program for fire prevention and control for
- 6 the entire state is necessary to promulgate the safety
- 7 and well-being of the citizens and residents of this
- 8 state;
- 9 (c) Adequate fire prevention and control are not
- 10 likely to become a reality unless certain administrative
- 11 functions and procedures are enacted by law; and
- 12 (d) Fire prevention and control are a public purpose
- 13 and a responsibility of government for which public
- 14 money may be spent.

§29-3-3. State fire commission created; composition; qualifications; appointment; terms of office; removal; vacancies; compensation and expenses.

- 1 (a) There is hereby created a state fire commission,
- 2 which shall consist of eleven members, qualified by
- 3 experience and training to deal with the matters which
- 4 are the responsibilities of the commission. The officers
- 5 of the West Virginia fire chiefs association, the West
- 6 Virginia firemen's association, the West Virginia profes-
- 7 sional fire fighters association, the West Virginia manu-
- 8 facturers association, the West Virginia mutual insurance
- 9 association and the West Virginia association of indepen-
- 10 dent insurers shall submit a list of names of persons rec-
- 11 ommended by each of these associations to the governor for
- 12 consideration in appointing the state fire commission. The

13 West Virginia professional fire fighters association shall
14 recommend the names of six persons from full-time paid
15 fire departments. The West Virginia fire chiefs association
16 and the West Virginia firemen's association shall each rec-
17 ommend the names of three persons from volunteer fire
18 departments. The West Virginia manufacturers associa-
19 tion shall recommend the names of three persons to rep-
20 resent business and industry and the West Virginia asso-
21 ciation of independent insurers shall recommend the
22 name of one person, and the West Virginia mutual insur-
23 ance association shall recommend the name of one person,
24 to represent the fire insurance industry. Appointments to
25 the commission shall be made by the governor, by and
26 with the advice and consent of the Senate, from the lists
27 of qualified persons recommended by the organizations.
28 Four members shall be appointed to represent full-time
29 paid fire departments and four members shall be ap-
30 pointed to represent volunteer fire departments. Two
31 members shall be appointed to represent business and in-
32 dustry and one member shall be appointed to represent
33 the fire insurance industry. The term of office of the
34 members shall be staggered five-year terms. The terms
35 of members first appointed shall expire as designated by
36 the governor at the time of appointment, two at the end
37 of one year, two at the end of two years, three at the end
38 of three years, two at the end of four years and two at
39 the end of five years. Vacancies shall be filled in the
40 same manner as the original appointment but only for the
41 remainder of a term. Any member is subject to removal
42 by the governor at any time for neglect of his duties or
43 other conduct unbecoming his office. The governor shall
44 make the appointments within ninety days after this sec-
45 tion takes effect.

46 (b) The members of the state fire commission shall
47 serve without compensation but shall be reimbursed for
48 their reasonable and necessary expenses actually in-
49 curred in the performance of their duties.

§29-3-4. Chairman; vice-chairman; meetings; quorum.

1 (a) The state fire commission shall select a chairman
2 and vice-chairman from among its members and shall

3 hold regular meetings at least once every two months
4 and special meetings when called by its chairman. In the
5 absence of the chairman, the vice-chairman shall exercise
6 the powers and duties of the chairman.

7 (b) No business shall be transacted by the state fire
8 commission in the absence of a quorum which shall be
9 six members, one of whom must be the chairman or vice-
10 chairman.

§29-3-5. Promulgation of regulations and state fire code.

1 (a) The state fire commission shall have the power to
2 promulgate, amend and repeal regulations for the safe-
3 guarding of life and property from the hazards of fire
4 and explosion pursuant to the provisions of chapter
5 twenty-nine-a of this code. Such regulations, amend-
6 ments or repeals thereof shall be in accordance with stand-
7 ard safe practice as embodied in widely recognized
8 standards of good practice for fire prevention and fire
9 protection and shall have the force and effect of law in
10 the several counties, municipalities and political sub-
11 divisions of the state.

12 (b) Pursuant to the provisions of chapter twenty-
13 nine-a of this code, the state fire commission, by the first
14 day of January, one thousand nine hundred seventy-seven,
15 shall promulgate comprehensive regulations for the safe-
16 guarding of life and property from the hazards of fire and
17 explosion to be known as the state fire code. Regulations
18 embodied in the state fire code shall be in accordance
19 with standard safe practice as embodied in widely recog-
20 nized standards of good practice for fire prevention and
21 fire protection and shall have the force and effect of law
22 in the several counties, municipalities and political sub-
23 divisions of the state.

24 (c) In interpretation and application, the state fire
25 code shall be held to be the minimum requirements for
26 the safeguarding of life and property from the hazards
27 of fire and explosion. Whenever any other state law,
28 county or municipal ordinance or regulation of any
29 agency thereof is more stringent or imposes a higher
30 standard than is required by the state fire code, the pro-
31 visions of such state law, county or municipal ordinance

32 or regulation of any agency thereof shall govern, provided
33 they are not inconsistent with the laws of West Virginia
34 and are not contrary to recognized standards and good
35 engineering practices. In any question, the decision of
36 the state fire commission determines the relative priority
37 of any such state law, county or municipal ordinance or
38 regulation of any agency thereof and determines com-
39 pliance with state fire regulations by officials of the state,
40 counties, municipalities and political subdivisions of the
41 state.

42 (d) A copy of the state fire code and any amendments
43 thereto, upon promulgation by the state fire commission,
44 shall be filed with the county clerk and shall be made
45 available for public information in each county courthouse
46 in the state.

§29-3-6. Public hearings and notice.

1 (a) Prior to the promulgation of a state fire code as
2 provided in section five of this article, the state fire com-
3 mission shall hold at least one public hearing on the
4 proposed regulations contained therein, notice of which
5 shall be the same as the notice for a hearing as provided
6 in the administrative procedure act, chapter twenty-
7 nine-a of this code.

8 (b) After the adoption of a state fire code, prior to
9 the promulgation of any additional regulation, amend-
10 ment to or repeal of a current regulation, the state fire
11 commission shall hold at least one hearing on each new
12 regulation, each amendment to and each repeal of a
13 current regulation to be separately submitted, notice of
14 which shall be the same as the notice for a hearing as
15 provided in the administrative procedure act, chapter
16 twenty-nine-a of this code.

§29-3-7. Commission's powers in conduct of public hearing.

1 For the purposes of any public hearing under this
2 article, the state fire commission is empowered and au-
3 thorized to issue subpoenas and subpoenas duces tecum, to
4 take testimony and to administer oaths to any witness in
5 any proceeding or examination instituted before it or
6 conducted by it with reference to any matter within its

7 jurisdiction. In all hearings or proceedings before the state
8 fire commission the evidence of witnesses and the pro-
9 duction of documentary evidence may be required at any
10 designated place of hearing; and in case of disobedience to
11 a subpoena or other process the state fire commission or
12 any party to the proceedings before the commission may
13 invoke the aid of any circuit court in requiring the evi-
14 dence and testimony of witnesses and the production of
15 papers, books and documents. And such court, in case of
16 refusal to obey the subpoena issued to any person subject
17 to the provisions of this chapter, shall issue an order re-
18 quiring such person to appear before the state fire com-
19 mission and produce all books and papers, if so ordered,
20 and give evidence touching the matter in question.

**§29-3-8. Office of state fire administrator created; appointment;
term of office; removal; compensation.**

1 (a) There is hereby created a state fire administrator
2 who shall be appointed by the governor from a list of
3 names submitted by the state fire commission.

4 (b) The state fire administrator shall serve for a
5 six-year term after which time reappointment shall be
6 discretionary with the governor. In cases where a re-
7 appointment is not made, the governor shall make the
8 appointment from a list of names submitted by the state
9 fire commission. The state fire administrator can be re-
10 moved by the governor, on recommendation by the state
11 fire commission for neglect of duty or other conduct
12 unbecoming his office. Prior to removal he shall be given
13 timely notice by the commission, along with a statement
14 of the charges against him. He shall be provided an op-
15 portunity to appear in person or by counsel for a public
16 hearing thereon.

17 (c) The annual salary of the state fire administrator
18 shall be twenty thousand dollars. He may employ such
19 technical, clerical, stenographic and other personnel and
20 fix their compensation, and may incur such expenses as
21 may be necessary in the performance of the duties of his
22 office within the appropriation therefor. Employees of the
23 state fire administrator's office shall be members of the

24 state civil service system, and all appointments of the
25 office shall be a part of the classified service under the
26 civil service system.

27 (d) The state fire administrator and other personnel of
28 the state fire administrator's office shall be provided with
29 appropriate office space, furniture, equipment, supplies,
30 stationery and printing in the same manner as provided
31 for other state agencies.

**§29-3-9. Powers, duties and authority of state fire commission
and state fire administrator.**

1 (a) The state fire commission is responsible for fire
2 programs within this state, including the state fire ad-
3 ministrator, state fire marshal's office, training, uniform
4 standards and certification, finance and planning and
5 fire prevention.

6 (b) All state and area training and education in fire
7 service shall be coordinated by the state fire commis-
8 sion. The state fire administrator shall insure that these
9 programs are operated throughout the state at a level
10 consistent with needs identified by the commissioner.

11 (c) The state fire commission shall develop minimum
12 training levels for fire fighters, minimum levels of equip-
13 ment needed to protect life and property within fire
14 service areas, minimum performance standards the de-
15 partments must meet in response times, communica-
16 tions, minimum levels of water flow and pressure and
17 other performance measures as deemed necessary to
18 meet the overall goals of improved fire prevention and
19 control.

20 (d) The formation of any new fire department, in-
21 cluding volunteer fire departments, shall require the
22 concurrence of the state fire commission. The state fire
23 commission shall develop a method of certification which
24 can be applied to all fire departments and volunteer fire
25 departments.

26 (e) The state fire commission shall develop a plan for
27 fire prevention and control which shall include but not
28 be limited to the following areas: Manpower needs;
29 location of training centers; location of fire prevention
30 and control units; communications; fire fighting facili-

31 ties; water sources; vehicular needs; public education
32 and information; public participation, standardization in
33 record keeping; evaluation of personnel; reporting of fire
34 hazards, programs on mutual aid; location of public
35 safety agencies; outline of fire prevention programs; and
36 accessibility of fire prevention information.

37 (f) The state fire commission shall establish fire pro-
38 tection areas and at such times as funds are available
39 shall establish field offices for inspection, planning and
40 certification.

**§29-3-10. State fire marshal's office transferred to state fire
commission; powers and duties of state insurance
commissioner with respect to fire marshal termi-
nated.**

1 The state fire marshal and the state fire marshal's
2 office, heretofore existing in this code, are hereby con-
3 tinued in all respects except that all powers and duties
4 exercised by the state insurance commissioner with
5 respect to the state fire marshal and the state fire
6 marshal's office are terminated and all such powers
7 and duties are hereby transferred to and vested in the
8 state fire commission except as provided otherwise in
9 this article. Until the adoption of a state fire code by
10 the state fire commission, the state fire marshal shall
11 operate under the authority of this article and the
12 authority of the rules and regulations heretofore promul-
13 gated by the state fire marshal.

**§29-3-11. Appointment of state fire marshal; term of office;
removal; salary; qualifications; responsibilities;
employees; equipment.**

1 (a) The state fire commission shall appoint a state
2 fire marshal in accordance with the qualifications ap-
3 proved by the state civil service commission as provided
4 in article six, chapter twenty-nine of this code. He can
5 be removed by the commission at any time for neglect
6 of duty or other conduct unbecoming his office as
7 provided in article six, chapter twenty-nine of this
8 code.

9 (b) The state fire marshal, within policy established

10 by the state fire commission, shall have all responsi-
11 bility for the implementation of fire safety programs in
12 this state designated to minimize fire hazards and dis-
13 asters and loss of life and property from these causes.
14 These responsibilities include, but are not limited to,
15 the establishment and enforcement of fire safety prac-
16 tices throughout the state, preventive inspection and
17 correction activities, coordination of fire safety programs
18 with volunteer and paid fire departments and critical
19 analysis and evaluation of West Virginia's fire loss sta-
20 tistics for determination of problems and solutions.

21 (c) The state fire marshal may employ such tech-
22 nical, clerical, stenographic and other personnel and fix
23 their compensation and may incur such expenses as may
24 be necessary in the performance of the duties of his
25 office within the appropriation therefor. Employees of
26 the fire marshal's office shall be members of the state
27 civil service system, and all appointments of the office
28 shall be a part of the classified service under the civil
29 service system.

30 (d) The state fire marshal and other personnel of the
31 state fire marshal's office shall be provided with appro-
32 priate office space, furniture, equipment, supplies, sta-
33 tionery and printing in the same manner as provided for
34 other state agencies.

§29-3-12. Powers and duties of state fire marshal.

1 (a) *Enforcement of laws.* The state fire marshal shall
2 enforce all laws of the state having to do with:

3 (1) Prevention of fire.

4 (2) The storage, sale and use of any explosive, com-
5 bustible or other dangerous article in solid, flammable
6 liquid or gas form.

7 (3) The installation and maintenance of equipment of
8 all sorts intended to extinguish, detect and control
9 fires.

10 (4) The means and adequacy of exit, in case of fire,
11 from buildings and all other places in which persons
12 work, live or congregate from time to time for any pur-

13 pose, except buildings used wholly as dwelling houses
14 for no more than two families.

15 (5) The suppression of arson.

16 (b) *Assistance upon request.* Upon request, the state
17 fire marshal shall immediately assist any chief of any
18 recognized fire company or department.

19 (c) *Enforcement of regulations.* The state fire marshal
20 shall enforce the regulations promulgated by the state
21 fire commission as authorized by section three of this
22 article.

23 (d) *Inspections generally.* The state fire marshal shall
24 inspect all state, county and municipally owned institu-
25 tions, all public and private schools, theaters, churches
26 and other places of public assembly as to fire exits and
27 reasonable safety standards and report his findings and
28 recommendations to the proper administrative heads.

29 (e) *Right of entry.* The state fire marshal may at all
30 reasonable hours enter any building or premises, except
31 those actually occupied for single family dwelling pur-
32 poses, for the purpose of making an inspection, which
33 he may deem necessary to be made under the provisions
34 of this article.

35 (f) *Investigations.* The state fire marshal may at any
36 time investigate as to the origin or circumstances of any
37 fire or explosion or attempt to cause fire or explosion
38 occurring in the state. The state fire marshal shall have
39 the authority at all times of the day or night, in per-
40 formance of the duties imposed by the provisions of this
41 article, to investigate where any fires or attempt to cause
42 fires shall have occurred, or which at the time may be
43 burning.

44 (g) *Testimony and arrests.* The state fire marshal, in
45 making an inspection or investigation, when in his judg-
46 ment such proceedings are necessary, may take the testi-
47 mony under oath of all persons who may be cognizant
48 of any facts, or have any knowledge about the matter to
49 be examined and inquired into, and may have the testi-
50 mony reduced to writing; and, when in his judgment
51 such examination discloses that the fire or explosion or
52 attempt to cause a fire or explosion was of incendiary

53 origin, the state fire marshal may arrest the supposed in-
54 incendiary or have him arrested and charged with the
55 crime: *Provided*, That if the state fire marshal suspects
56 that a person is an incendiary, he shall not interrogate the
57 supposed incendiary before the suspect shall have appear-
58 ed before a magistrate or other judge; and shall transmit
59 a copy of the testimony so taken to the prosecuting attor-
60 ney for the county wherein the fire or explosion or at-
61 tempt to cause a fire or explosion occurred.

62 (h) *Witnesses and oaths*. The state fire marshal is
63 empowered and authorized to issue subpoenas and sub-
64 poenas duces tecum, to compel the attendance of persons
65 before him to testify in relation to any matter which is,
66 by the provision of this article, a subject of inquiry and
67 investigation by the state fire marshal and cause to be
68 produced before him such papers as he may require in
69 making such examination. The state fire marshal is here-
70 by authorized to administer oaths and affirmations to
71 persons appearing as witnesses before him. False swear-
72 ing in any matter or proceeding aforesaid shall be deemed
73 perjury and shall be punishable as such.

74 (i) *Deputizing members of fire departments in this state*.
75 The state fire marshal may depute a member of any fire
76 department, duly organized and operating in this state,
77 who is approved by the chief of his department and who
78 is properly qualified, to act as his assistants for the pur-
79 pose of making such inspections and investigations and
80 carrying out such orders as may be prescribed by him,
81 to enforce and make effective the provisions of this
82 article and any and all regulations promulgated by
83 the state fire commission under authority of this article.

84 (j) *Written report of examinations*. The state fire
85 marshal shall, at the request of the county commission
86 of any county or the municipal authorities of any in-
87 corporated municipality in this state, make to them a
88 written report of the examination made by him regarding
89 any fire happening within their respective jurisdictions.

90 (k) *Report of losses by insurance companies*. It shall
91 be the duty of each fire insurance company or asso-
92 ciation doing business in this state, within ten days
93 after the adjustment of any loss sustained by it that ex-

94 ceeds fifteen hundred dollars, to report to the state fire
95 marshal, upon forms furnished by him, such information
96 regarding the amount of insurance, the value of the
97 property insured and the amount of claim as adjusted,
98 as in the judgment of the state fire marshal it is necessary
99 for him to know. This report is in addition to any such
100 information required by the state insurance commissioner.
101 Upon the request of the owner or insurer of any property
102 destroyed or injured by fire or explosion, or in which an
103 attempt to cause a fire or explosion may have occurred,
104 the state fire marshal shall make a written report to the
105 person requesting the same of the result of the examina-
106 tion made by him regarding the property.

107 (1) *Issuance of permits and licenses.* The state fire
108 marshal is authorized to issue permits and licenses as
109 required in this article.

§29-3-13. Annual reports.

1 The state fire commission shall transmit annually to
2 the governor by October thirty-first of each year, an an-
3 nual report of its activities for the preceding fiscal year.
4 The annual reports shall include documents pertaining to
5 the function and operation of the state fire administrator's
6 office and the state fire marshal's office for the preceding
7 fiscal year.

**§29-3-14. Maintenance of fire hazard; order for repair or
demolition; order to contain notice to comply and
right to appeal.**

1 (a) No person shall erect, construct, reconstruct, alter,
2 maintain or use any building, structure or equipment
3 or use any land in such a way to endanger life or property
4 from the hazards of fire or explosion, or in violation of
5 any regulation, or any provision or any change thereof
6 promulgated by the state fire commission under the au-
7 thority of this article.

8 (b) Whenever the state fire marshal determines that
9 any building or structure has been constructed, altered or
10 repaired in a manner violating any regulation lawfully
11 promulgated by the state fire commission prior to the
12 commencement of such construction, alteration or repairs;

13 or whenever he may determine that any building or
14 structure constitutes a fire hazard by reason of want of
15 repair, age or dilapidated or abandoned condition, or
16 otherwise, and is so situated as to endanger other build-
17 ings and property; or whenever he may find in any build-
18 ing or upon any premises any combustible, flammable or
19 explosive substance or material, or other conditions dan-
20 gerous to the safety of persons occupying the building or
21 premises and adjacent premises or property, he may make
22 reasonable orders in writing, directed to the owner of such
23 building, structure or premises, for the repair or demoli-
24 tion of such building or structure, or the removal of the
25 combustible, flammable or explosive substance or ma-
26 terial, as the case may be, and the remedying of any
27 conditions found to be in violation of a regulation promul-
28 gated as aforesaid or to be dangerous to the safety of
29 persons or property.

30 A true copy of every order of the state fire marshal as
31 provided for in this section shall be filed in the county
32 where the premises are totally or partially located, with
33 the county clerk who shall index and record the order in
34 the general lien book. Upon filing, the order constitutes
35 notice of such proceedings to all persons or parties there-
36 after having dealings involving said property.

37 A statement of the expenses and administrative charges
38 shall also be filed with the county clerk, recorded and
39 indexed in the general lien book and upon filing, shall
40 become a lien against the property. Thereafter a court
41 supervised sale of the property to enforce the collection of
42 the expenses and administrative charges may be prosecu-
43 ted at the request of the state fire marshal, state fire
44 commission or the attorney general.

45 Every order provided for in this section shall contain
46 a notice that compliance therewith shall be required
47 within a period of thirty days from the date of issuance
48 thereof and also that any person desiring to contest the
49 validity of any such order may enter an appeal from such
50 order to the state fire commission and then to the circuit
51 court in the county where the premises are totally or par-
52 tially located as provided in section eighteen of this article.

§29-3-15. Service of repair or demolition order.

1 The written order of the state fire marshal made pursuant to section fourteen of this article shall be served
2 by delivering a true copy thereof to such owner, or, if
3 the owner is absent from the state or his whereabouts
4 be unknown to the state fire marshal, by mailing a true
5 copy thereof by certified mail to the said owner's last
6 known post-office address, or if no such address be known,
7 then by certified mail to said owner in care of general
8 delivery at the post office serving the community in
9 which said premises lie; the delivering or mailing of
10 such order to be accomplished within five days from
11 the date of the issuance of such order. And in the event
12 it is necessary to mail a copy of such order as aforesaid,
13 the officer mailing the same shall also, within five days
14 from the date of issuance of such order, post a true copy
15 thereof in a conspicuous place on the door or other
16 prominent entrance to said premises.

§29-3-16. Work to be done at expense of owner or occupant upon failure to comply with repair or demolition order; action to recover.

1 In the event any owner of any building or premises
2 served with a copy of an order as provided in sections
3 fourteen and fifteen of this article shall fail substantially to comply with such order within thirty days from
4 the date of issuance thereof, or within thirty days after
5 any appeal from such order has been affirmed by the
6 state fire commission or by the court, the state fire
7 marshal may enter into and upon the premises affected
8 by such order and cause the building, structure or premises to be repaired, torn down, materials removed and
9 all dangerous conditions to be remedied, as the case
10 may be, at the expense of the owner and with any administrative charges as established by the commission
11 also being borne by the owner, and if such person shall
12 fail or neglect to repay the state fire marshal the expense
13 and administrative charge thereby incurred by him,
14 within thirty days after written demand shall have been
15 delivered or mailed to the said owner as provided in
16 section fifteen of this article, the state fire marshal is

20 hereby authorized to bring an action in the name of
21 the state to recover such expenses, with interest, and
22 any administrative charge as established by the commis-
23 sion, in any court of competent jurisdiction.

§29-3-17. Additional remedies to abate, etc., fire hazards.

1 In case any building, structure or equipment is or is
2 proposed to be erected, constructed, reconstructed, al-
3 tered, maintained or used, or any land is or is proposed
4 to be used in such a way to endanger life or property
5 from the hazards of fire or explosion or in violation of
6 this article or of any regulation or provision of any regu-
7 lation, or change thereof promulgated by the state fire
8 commission under the authority granted by this article,
9 the state fire commission, the state fire marshal or the
10 attorney general may, in addition to other remedies
11 provided by law, institute injunction, mandamus, abate-
12 ment or any other appropriate action or actions, pro-
13 ceedings to prevent, enjoin, abate, or remove such un-
14 lawful erection, construction, reconstruction, alteration,
15 maintenance or use.

§29-3-18. Appellate procedure generally.

1 (a) Appeals to the state fire commission may be taken
2 by any person aggrieved by an order or decision of the
3 state fire marshal based upon or made in the course of
4 the administration or enforcement of the provisions of
5 this article. Appeals to the state fire commission may
6 be taken by any officer, department, board or agency
7 of the state and political subdivisions thereof adversely
8 affected by an order or decision of the state fire marshal
9 in the course of the administration or enforcement of
10 the provisions of this article.

11 (b) The time within which such appeal must be
12 made, and the effect, form or other procedure relating
13 thereto, including the appointment and function of a
14 hearing examiner, shall be as specified in regulations
15 promulgated by the state fire commission in accordance
16 with provisions of the administrative procedure act,
17 chapter twenty-nine-a of this code.

18 (c) Any party aggrieved by a final decision of the

19 state fire commission is entitled to judicial review as
20 provided in the administrative procedure act, chapter
21 twenty-nine-a of this code. The state fire marshal is
22 hereby determined to be a party aggrieved as to any
23 decision of the state fire commission reversing or alter-
24 ing the prior order of the state fire marshal and the state
25 fire marshal shall be a necessary party to any judicial
26 review involving a state fire marshal order.

**§29-3-19. Establishment of demonstration buildings and equip-
ment for educational instruction in fire prevention
and protection; payment therefor.**

1 The state fire marshal is authorized to establish for
2 educational purposes in public and private schools and
3 state educational institutions demonstration buildings
4 and equipment for fire prevention and protection, and
5 such expenditures therefor shall be made from the funds
6 appropriated therefor to the office of the state fire
7 marshal.

**§29-3-20. Allowance for reporting fires; when allowance not
granted.**

1 There shall be paid to the fire department making the
2 report the sum of ten dollars for each fire reported to,
3 and in compliance with regulations of, the state fire
4 marshal.

5 All chiefs of fire departments who receive a stated
6 salary or are paid a stated sum for each fire fought, and
7 mayors of municipalities who receive a stated salary
8 exceeding twenty dollars per year, shall be precluded
9 from receiving any extra allowance for the reports men-
10 tioned in this section.

§29-3-21. False alarm of fire; penalties.

1 No person shall make, turn in or telephone, or by use
2 of any means or methods of communication aid or abet
3 in the making or turning in of, any alarm of fire which
4 he knows to be false at the time of making or turning
5 in the alarm.

§29-3-22. Tax on insurance companies.

1 Every insurance company doing business in this state,
2 except farmers' mutual fire insurance companies, shall pay

3 to the state insurance commissioner annually on or before
4 the first day of March, in addition to the taxes now re-
5 quired by law to be paid by such companies, one half
6 of one percent of the net direct premium receipts of
7 such companies on insurance against the hazard of
8 fire and on that portion of all other net direct premiums
9 reasonably applicable to insurance against the hazard
10 of fire which are included in other coverages, and received
11 by it for insurance on property or risks in this state
12 during the calendar year next preceding as shown by
13 their annual statement under oath to the insurance de-
14 partment. The money so received by the state insurance
15 commissioner shall be paid by him into the treasury and
16 credited to the state general revenue fund.

17 In the event of a controversy as to the proper deter-
18 mination of the premium base on which this tax is to be
19 computed, a hearing may be had by the state insurance
20 commissioner on the application of any interested person,
21 corporation or association, which hearing shall be held
22 after reasonable notice. Any party aggrieved by a final
23 decision of the state insurance commissioner is entitled to
24 judicial review as provided in the administrative proce-
25 dure act, chapter twenty-nine-a of this code.

§29-3-23. "Fireworks" defined; labels required.

1 The term "fireworks" means and includes any com-
2 bustible or explosive composition, or any substance or
3 combination of substances, or article prepared for the pur-
4 pose of producing a visible or an audible effect by com-
5 bustion, explosion, deflagration or detonation, and shall
6 include blank cartridges, toy pistols, toy cannons, toy
7 canes or toy guns in which explosives are used, the type
8 of unmanned balloons which require fire underneath to
9 propel the same, firecrackers, torpedoes, skyrockets, ro-
10 man candles, daygo bombs, sparklers or other fireworks
11 of like construction and any fireworks containing any
12 explosive or flammable compound, or any tablets or other
13 device containing any explosive substance, except that
14 the term "fireworks" shall not include model rockets and
15 model rocket engines, designed, sold and used for the
16 purpose of propelling recoverable acro models and shall

17 not include toy pistols, toy canes, toy guns or other de-
18 vices in which paper or plastic caps manufactured in ac-
19 cordance with the United States department of trans-
20 portation regulations for packing and shipping of toy
21 paper or plastic caps are used and toy paper or plastic
22 caps manufactured as provided therein, the sale and use
23 of which shall be permitted at all times. Each package
24 containing toy paper or plastic caps offered for retail sale
25 shall be labeled to indicate the maximum explosive con-
26 tent per cap.

**§29-3-24. Unlawful sale, possession or use of fireworks; permit
for public display.**

1 Except as hereinafter provided, no person, firm, co-
2 partnership, or corporation shall offer for sale, expose
3 for sale, sell at retail, keep with intent to sell at retail,
4 or use or explode any fireworks, provided that the state
5 fire marshal may adopt reasonable rules and regulations
6 for the granting of permits for supervised displays of
7 fireworks by municipalities, fair associations, amusement
8 parks, and other organizations or groups of individuals.
9 Such permits may be granted upon application to said
10 state fire marshal and after approval of the local police
11 and fire authorities of the community wherein the display
12 is proposed to be held as provided herein and the filing
13 of a bond by the applicant as provided hereinafter. Every
14 such display shall be handled by a competent operator
15 licensed or certificated as to competency by the state fire
16 marshal and shall be of such composition, character, and
17 so located, discharged or fired as in the opinion of the chief
18 of the fire department, after proper inspection, and of the
19 chief of police shall not be hazardous to property or
20 endanger any person or persons. After such privilege shall
21 have been granted, sales, possessions, use and distribution
22 of fireworks for such display shall be lawful for that
23 purpose only. No permit granted hereunder shall be
24 transferable.

25 The governing body or chief executive authority of the
26 municipality shall require a bond from the licensee in a
27 sum not less than one thousand dollars conditioned on
28 compliance with the provisions of this article and the

29 regulations of the state fire commission, provided no
30 municipality shall be required to file such bond.

31 Before any permit for a pyrotechnic display shall be
32 issued, the person, firm, or corporation making application
33 therefor shall furnish proof of financial responsibility to
34 satisfy claims for damages to property or personal injuries
35 arising out of any act or omission on the part of such
36 person, firm, or corporation or any agent or employee
37 thereof, in such amount, character, and form as the state
38 fire marshal determines to be necessary for the protection
39 of the public.

§29-3-25. Interstate sale and shipment; permitted uses.

1 No permit shall be issued under the provisions of this
2 article to a nonresident person, firm, or corporation for
3 conduct of a pyrotechnic display in this state until
4 such person, firm, or corporation shall have appointed
5 in writing a member of the bar of this state and re-
6 siding therein to be his attorney upon whom all process
7 in any action or proceeding against him may be served.

8 Nothing in this article shall be construed to prohibit
9 any resident wholesaler, dealer, or jobber to sell at
10 wholesale such fireworks as are not herein prohibited
11 or the sale of any kind of fireworks provided the same
12 are to be shipped directly out of state in accordance
13 with regulations of the United States department of
14 transportation covering the transportation of explosives
15 and other dangerous articles by motor, rail, and water,
16 or the use of fireworks by railroads or other transporta-
17 tion agencies for signal purposes or illumination, or the
18 sale or use of blank cartridges for a show or theater,
19 or for signal or ceremonial purposes in athletics or
20 sports, or for use by military organizations, or the use
21 of fireworks for agricultural purposes under conditions
22 approved by the local authority.

§29-3-26. Seizures by fire marshal; enforcement of law.

1 The state fire marshal shall seize, take, remove and
2 destroy, or cause to be seized, taken or removed and
3 destroyed, at the expense of the owner, all stocks of
4 fireworks or combustibles offered or exposed for sale,

5 stored or held in violation of this article. It shall be
6 the duty of the department of public safety, sheriffs,
7 municipal policemen and other law-enforcement officers
8 to assist in the enforcement of this article.

§29-3-27. Penalties.

1 (a) Any person who violates any regulations pro-
2 mulgated by the state fire commission as provided in
3 section five of this article, shall be guilty of a misde-
4 meanor, and, upon conviction thereof, shall be fined not
5 more than one hundred dollars or imprisoned in the
6 county jail not more than ninety days, or both fined and
7 imprisoned.

8 Each and every day during which any illegal erection,
9 construction, reconstruction, alteration, maintenance or
10 use continues after knowledge or official notice that same
11 is illegal shall be deemed a separate offense.

12 (b) Any person who violates the provisions of sec-
13 tion twenty-one of this article shall be guilty of a mis-
14 demeanor, and, upon conviction thereof, shall be fined
15 for a first offense not more than one hundred dollars or
16 imprisoned in the county jail for not more than thirty
17 days, or both fined and imprisoned, and for a second
18 and each subsequent offense fined not less than one
19 hundred dollars nor more than five hundred dollars or
20 imprisoned in the county jail for not less than ninety
21 days nor more than one year, or both fined and impris-
22 oned.

23 (c) Any officer who shall fail to perform any duty
24 required of him by this article or who shall violate any
25 of its provisions shall be guilty of a misdemeanor, and,
26 upon conviction thereof, shall be fined not less than
27 twenty-five dollars nor more than fifty dollars for each
28 failure or violation.

29 (d) Any person who violates any other provision of
30 this article shall be guilty of a misdemeanor, and, upon
31 conviction thereof, shall be fined not more than one hun-
32 dred dollars, or imprisoned in the county jail not more
33 than ninety days, or both fined and imprisoned.

§29-3-28. Transfer of certain state employees; perpetuation of rules, regulations and orders.

1 (a) All employees, agents or officers of any state agency,
2 department or commission, the functions of which are
3 transferred to the state fire commission by the provisions
4 of this article, and whose employment is covered and
5 protected by the provisions of article six, chapter twenty-
6 nine of this code and the rules and regulations promul-
7 gated by the civil service commission, and whose service
8 is classified by such provisions, rules and regulations, shall
9 continue in their employment in all respects and in the
10 same classification, coverage and protection upon the
11 transfer of such functions from the agency, department or
12 commission by which they were employed to the state
13 fire commission.

14 (b) All rules and regulations promulgated and all
15 orders in effect and all proceedings pending on the effec-
16 tive date of this chapter, which were promulgated or ef-
17 fected or brought under any authority transferred to the
18 state fire commission herein created and, as herein provid-
19 ed, shall remain in full effect unless otherwise provided in
20 this article or until amended, revoked, suspended, modi-
21 fied, repealed or superseded, as the case may be.

§29-3-29. Construction.

1 Being in the interest of public safety, the provisions
2 of this article shall be liberally construed.

§29-3-30. Severability.

1 If any section, subsection, subdivision, subparagraph,
2 sentence or clause of this article is adjudged to be un-
3 constitutional or invalid, such invalidation shall not
4 affect the validity of the remaining portions of this
5 article, and, to this end, the provisions of this article
6 are hereby declared to be severable.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

Clarence C. Christy Jr.
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1976.

John Willson Jr.
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

H. B. Robertson Jr.
President of the Senate

Lewis F. K. Mann
Speaker House of Delegates

The within *approved* this the *31st*
March, 1976
day of

Arch A. Shady Jr.
Governor



PRESENTED TO THE
GOVERNOR

Date 3/25/76

Time 2:00 p.m.