

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1978



ENROLLED

Committee Substitute for

SENATE BILL NO. 365

(By Mr. *Havis* original sponsor.)



PASSED *March 11* 1978

In Effect *ninety days from* Passage



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COMMITTEE SUBSTITUTE FOR

Senate Bill No. 365

(MR. DAVIS, *original sponsor*)

[Passed March 11, 1978; in effect ninety days from passage.]

AN ACT to amend and reenact section eleven, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twelve-a, all relating to the appointment of a state fire marshal and term of office, removal, salary, qualifications and responsibilities thereof; inspections and right of entry of the state fire marshal; investigations, arrests, warrants and penalties; providing for the deputizing of members of fire departments in this state; and providing for responsibilities of insurance companies in fire loss investigations.

Be it enacted by the Legislature of West Virginia:

That sections eleven and twelve, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article three be further amended by adding thereto a new section, designated section twelve-a, all to read as follows:

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§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 of
6 duty or other conduct unbecoming his office as provided
7 in article six, chapter twenty-nine of this code.

8 (b) The state fire marshal, within policy established
9 by the state fire commission, shall have all responsibility
10 for the implementation of fire safety programs in this
11 state designated to minimize fire hazards and disaster and
12 loss of life and property from these causes. These re-
13 sponsibilities include, but are not limited to, the establish-
14 ment and enforcement of fire safety practices throughout
15 the state, preventive inspection and correction activities,
16 coordination of fire safety programs with volunteer and
17 paid fire departments and critical analysis and evaluation
18 of West Virginia's fire loss statistics for determination of
19 problems and solutions.

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

29 Further, any individual who is employed to conduct
30 criminal investigations or who may become actively in-
31 volved in matters of a criminal nature shall first be re-
32 quired to pass a civil service examination testing his or
33 her competency and proficiency in the law of arrest, search
34 and seizure and other criminal procedures relating to the
35 powers granted to the state fire marshal pursuant to the
36 provisions of this article.

37 (d) The state fire marshal and other personnel of the
38 state fire marshal's office shall be provided with appro-
39 priate office space, furniture, equipment, supplies, sta-
40 tionery and printing in the same manner as provided for
41 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
8 of 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
24 shall inspect all state, county and municipally owned
25 institutions, all public and private schools, theaters,
26 churches and other places of public assembly as to fire
27 exits and reasonable safety standards and report his
28 findings and recommendations to the proper adminis-
29 trative heads.

30 (e) *Right of entry.*—The state fire marshal may at all
31 reasonable hours enter any building or premises, other
32 than dwelling houses, for the purpose of making an in-
33 spection, which he may deem necessary to be made under
34 the provisions 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. Notwithstanding the above provisions of this
44 subsection, prior to entering any building or premises for
45 the purposes of such investigation, the state fire marshal
46 shall obtain a proper search warrant: *Provided*, That the
47 same shall not be necessary where there is permissive
48 waiver or the state fire marshal is an invitee of the
49 individual having legal custody and control of the prop-
50 erty, building or premises to be searched.

51 (g) *Testimony*.—The state fire marshal, in making an
52 inspection or investigation, when in his judgment such
53 proceedings are necessary, may take the statements or
54 testimony under oath of all persons who may be cognizant
55 of any facts or have any knowledge about the matter
56 to be examined and inquired into, and may have the
57 statements or testimony reduced to writing; and shall
58 transmit a copy of such statements or testimony so taken
59 to the prosecuting attorney for the county wherein the
60 fire or explosion or attempt to cause a fire or explosion
61 occurred. Notwithstanding the above, no person shall be
62 compelled to testify or give any such statement under
63 this subsection.

64 (h) *Arrests; warrants; penalty*.—When in their judg-
65 ment such examination as described in subsection (g)
66 of this section discloses that the fire or explosion or
67 attempt to cause a fire or explosion was of incendiary
68 origin, the state fire marshal, any full-time deputy fire
69 marshal, or any full-time assistant fire marshal are hereby
70 authorized and empowered:

71 (1) To arrest the supposed incendiary anywhere within
72 the confines of the state of West Virginia, or have him
73 arrested, for any violation of the provisions of this article
74 or of the arson related offenses of article three, chapter
75 sixty-one, of this code: *Provided*, That any and all per-
76 sons so arrested shall be forthwith brought before the
77 magistrate or circuit court.

78 (2) To make complaint in writing before any court
79 or officer having jurisdiction and obtain, serve and ex-
80 ecute an arrest warrant when knowing or having rea-
81 son to believe that anyone has committed an offense
82 under any provision of this article or of the arson related
83 offenses of article three, chapter sixty-one, of this code.

84 Proper return shall be made on all arrest warrants be-
85 fore the tribunal having jurisdiction over such violation.

86 (3) To make complaint in writing before any court
87 or officer having jurisdiction and obtain, serve and ex-
88 ecute a warrant for the search of any premises that may
89 possess evidence or unlawful contraband relating to vio-
90 lations of this article or of the arson related offenses
91 of article three, chapter sixty-one, of this code. Proper
92 return shall be made on all search warrants before the
93 tribunal having jurisdiction over such violation.

94 (i) *Witnesses and oaths.*—The state fire marshal is em-
95 powered and authorized to issue subpoenas and subpoenas
96 duces tecum, to compel the attendance of persons before
97 him to testify in relation to any matter which is, by
98 the provision of this article, a subject of inquiry and
99 investigation by the state fire marshal and cause to be
100 produced before him such papers as he may require in
101 making such examination. The state fire marshal is
102 hereby authorized to administer oaths and affirmations
103 to persons appearing as witnesses before him. False
104 swearing in any matter or proceeding aforesaid shall be
105 deemed perjury and shall be punishable as such.

106 (j) *Deputizing members of fire departments in this*
107 *state.*—The state fire marshal may deputize a member
108 of any fire department, duly organized and operating
109 in this state, who is approved by the chief of his depart-
110 ment and who is properly qualified, to act as his assistants
111 for the purpose of making inspections with the consent
112 of the property owner or the person in control of such
113 property and such investigations as may be directed by
114 the state fire marshal, and the carrying out of such orders
115 as may be prescribed by him, to enforce and make effec-
116 tive the provisions of this article and any and all regula-
117 tions promulgated by the state fire commission under
118 authority of this article.

119 (k) *Written report of examinations.*—The state fire
120 marshal shall, at the request of the county commission
121 of any county or the municipal authorities of any in-
122 corporated municipality in this state, make to them a
123 written report of the examination made by him regarding
124 any fire happening within their respective jurisdictions.

125 (1) *Report of losses by insurance companies.*—It shall
126 be the duty of each fire insurance company or associa-
127 tion doing business in this state, within ten days after
128 the adjustment of any loss sustained by it that exceeds
129 fifteen hundred dollars, to report to the state fire marshal,
130 upon forms furnished by him, such information regard-
131 ing the amount of insurance, the value of the property
132 insured and the amount of claim as adjusted, as in the
133 judgment of the state fire marshal it is necessary for
134 him to know. This report is in addition to any such
135 information required by the state insurance commissioner.
136 Upon the request of the owner or insurer of any property
137 destroyed or injured by fire or explosion, or in which
138 an attempt to cause a fire or explosion may have occurred,
139 the state fire marshal shall make a written report to the
140 person requesting the same of the result of the examina-
141 tion made by him regarding the property.

142 (m) *Issuance of permits and licenses.*—The state fire
143 marshal is authorized to issue permits and licenses as
144 required in this article.

§29-3-12a. Responsibilities of insurance companies in fire loss investigation.

1 (a) The fire marshal, any assistant fire marshal, or
2 any investigator under the authority of the fire marshal
3 may request any insurance company investigating a fire
4 loss of real or personal property to release any informa-
5 tion in its possession relative to that loss. The company
6 shall release the information and cooperate with any
7 official authorized to request such information pursuant
8 to this section. The information shall include, but is not
9 limited to:

- 10 (1) Any policy in force;
- 11 (2) Any application for a policy;
- 12 (3) Premium payment records;
- 13 (4) History of previous claims;
- 14 (5) Material relating to the investigation of the loss,
15 including statements of any person, proof of loss, and any
16 other relevant evidence.

17 (b) Any insurance company shall notify the fire
18 marshal, if it has reason to believe, based on its investiga-

19 tion of a fire loss to real or personal property, that the
20 fire was caused by other than accidental means. The
21 company shall furnish the fire marshal with pertinent
22 information acquired during its investigation and cooper-
23 ate with the courts and administrative agencies of the
24 state, and any official mentioned, or referred to, in sub-
25 section (a) of this section.

26 (c) In the absence of fraud, no insurance company or
27 person who furnishes information on its behalf, shall be
28 liable for any oral or written statement or any other
29 action necessary to supply information required pursuant
30 to this section.

31 (d) Any information furnished pursuant to this section
32 shall be held in confidence until such time as its release
33 may be required pursuant to a criminal proceeding.

34 (e) Any official mentioned, or referred to, in subsec-
35 tion (a) of this section may be required to testify as to
36 any information in his possession regarding the fire loss
37 of real or personal property in any civil action in which
38 any person seeks recovery under a policy against an
39 insurance company for the fire loss.

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

James L. Davis
Chairman Senate Committee

Blair C. Chestnut
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

J. H. Dillon, Jr.
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

W. T. Brathwaite, Jr.
President of the Senate

Donald L. Kopp
Speaker House of Delegates

The within is approved this the 30
day of March, 1978.

John D. Rhyll
Governor



APPROVED AND SIGNED BY THE GOVERNOR

RECEIVED

MAR 23 3 50 PM '78

OFFICE OF THE GOVERNOR

Date Mar. 30, 1978

Time 3:55 p.m.

RECEIVED

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REC'D. OF STATE