WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1978

ENROLLED
Committee Substitute for
SENATE BILL NO. 365

(By Mr. [Signature] original sponsor)

PASSED March 11, 1978
In Effect [Signature] 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 fire marshal in accordance with the qualifications approved by the state civil service commission as provided in article six, chapter twenty-nine of this code. He can
(b) The state fire marshal, within policy established by the state fire commission, shall have all responsibility for the implementation of fire safety programs in this state designated to minimize fire hazards and disaster and loss of life and property from these causes. These responsibilities include, but are not limited to, the establishment and enforcement of fire safety practices throughout the state, preventive inspection and correction activities, coordination of fire safety programs with volunteer and paid fire departments and critical analysis and evaluation of West Virginia's fire loss statistics for determination of problems and solutions.

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

Further, any individual who is employed to conduct criminal investigations or who may become actively involved in matters of a criminal nature shall first be required to pass a civil service examination testing his or her competency and proficiency in the law of arrest, search and seizure and other criminal procedures relating to the powers granted to the state fire marshal pursuant to the provisions of this article.

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

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

(a) Enforcement of laws.—The state fire marshal shall enforce all laws of the state having to do with:
(1) Prevention of fire.
(2) The storage, sale and use of any explosive, combustible or other dangerous article in solid, flammable liquid or gas form.
(3) The installation and maintenance of equipment of all sorts intended to extinguish, detect and control fires.
(4) The means and adequacy of exit, in case of fire, from buildings and all other places in which persons work, live or congregate from time to time for any purpose, except buildings used wholly as dwelling houses for no more than two families.
(5) The suppression of arson.

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

(c) Enforcement of regulations.—The state fire marshal shall enforce the regulations promulgated by the state fire commission as authorized by section three of this article.

(d) Inspections generally.—The state fire marshal shall inspect all state, county and municipally owned institutions, all public and private schools, theaters, churches and other places of public assembly as to fire exits and reasonable safety standards and report his findings and recommendations to the proper administrative heads.

(e) Right of entry.—The state fire marshal may at all reasonable hours enter any building or premises, other than dwelling houses, for the purpose of making an inspection, which he may deem necessary to be made under the provisions of this article.

(f) Investigations.—The state fire marshal may at any time investigate as to the origin or circumstances of any fire or explosion or attempt to cause fire or explosion occurring in the state. The state fire marshal shall have the authority at all times of the day or night, in performance of the duties imposed by the provisions of this article, to investigate where any fires or attempt to cause fires shall have occurred, or which at the time may be
burning. Notwithstanding the above provisions of this subsection, prior to entering any building or premises for the purposes of such investigation, the state fire marshal shall obtain a proper search warrant: Provided, That the same shall not be necessary where there is permissive waiver or the state fire marshal is an invitee of the individual having legal custody and control of the property, building or premises to be searched.

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

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

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

(2) To make complaint in writing before any court or officer having jurisdiction and obtain, serve and execute an arrest warrant when knowing or having reason to believe that anyone has committed an offense under any provision of this article or of the arson related offenses of article three, chapter sixty-one, of this code.
Proper return shall be made on all arrest warrants before the tribunal having jurisdiction over such violation.

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

(i) Witnesses and oaths.—The state fire marshal is empowered and authorized to issue subpoenas and subpoenas duces tecum, to compel the attendance of persons before him to testify in relation to any matter which is, by the provision of this article, a subject of inquiry and investigation by the state fire marshal and cause to be produced before him such papers as he may require in making such examination. The state fire marshal is hereby authorized to administer oaths and affirmations to persons appearing as witnesses before him. False swearing in any matter or proceeding aforesaid shall be deemed perjury and shall be punishable as such.

(j) Deputizing members of fire departments in this state.—The state fire marshal may deputize a member of any fire department, duly organized and operating in this state, who is approved by the chief of his department and who is properly qualified, to act as his assistants for the purpose of making inspections with the consent of the property owner or the person in control of such property and such investigations as may be directed by the state fire marshal, and the carrying out of such orders as may be prescribed by him, to enforce and make effective the provisions of this article and any and all regulations promulgated by the state fire commission under authority of this article.

(k) Written report of examinations.—The state fire marshal shall, at the request of the county commission of any county or the municipal authorities of any incorporated municipality in this state, make to them a written report of the examination made by him regarding any fire happening within their respective jurisdictions.
(1) Report of losses by insurance companies.—It shall be the duty of each fire insurance company or association doing business in this state, within ten days after the adjustment of any loss sustained by it that exceeds fifteen hundred dollars, to report to the state fire marshal, upon forms furnished by him, such information regarding the amount of insurance, the value of the property insured and the amount of claim as adjusted, as in the judgment of the state fire marshal it is necessary for him to know. This report is in addition to any such information required by the state insurance commissioner. Upon the request of the owner or insurer of any property destroyed or injured by fire or explosion, or in which an attempt to cause a fire or explosion may have occurred, the state fire marshal shall make a written report to the person requesting the same of the result of the examination made by him regarding the property.

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

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

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

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

(b) Any insurance company shall notify the fire marshal, if it has reason to believe, based on its investiga-
tion of a fire loss to real or personal property, that the
fire was caused by other than accidental means. The
company shall furnish the fire marshal with pertinent
information acquired during its investigation and cooper-
ate with the courts and administrative agencies of the
state, and any official mentioned, or referred to, in sub-
section (a) of this section.

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

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

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

Clarence E. Christian
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

J. Dillon Jr.
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

W. T. Beckett Jr.
President of the Senate

Donald L. Kopp
Speaker House of Delegates

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

John D. Clayton
Governor