WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1984

ENROLLED
Committee Substitute for
SENATE BILL NO. 128

(By Mr. __________)

PASSED March 10, 1984
In Effect ninety days from Passage
AN ACT to amend and reenact section twelve, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the state fire marshal, any full-time deputy fire marshal, any full-time assistant fire marshal and certain persons deputized by the state fire marshal for the purpose of making inspections, to issue citations for violations of fire and life safety regulations; limiting the deputization of members of volunteer fire departments to the chief and his designated assistant; semi-annual reports of citations issued by certain persons; revocation of authority to issue citations; requiring completion of a law-enforcement training course and evidence of liability coverage before authorization of certain persons to issue a citation; and providing criminal penalties for violations.

Be it enacted by the Legislature of West Virginia:

That section twelve, 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.

§29-3-12. 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 assistant 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: Provided, That in the case of a volunteer fire department, only the chief thereof or his single designated assistant may be so deputized.

(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.

(l) 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.

(n) Issuance of citations for fire and life safety
violations.—The state fire marshal, any full-time deputy
fire marshal and any full-time assistant fire marshal are
hereby authorized, and any person deputized pursuant to
subsection (j) of this section who is approved by the chief of
his department and who is properly qualified, may be
authorized by the state fire marshal, to issue citations, in
their respective jurisdictions, for fire and life safety
violations of the state fire code and as provided for by the
rules and regulations promulgated by the state fire
commission in accordance with article three, chapter
twenty-nine-a of this code: Provided, That a summary
report of all citations issued pursuant to this section by
persons deputized under subsection (j) of this section shall
be forwarded semiannually to the state fire marshal in such
form and containing such information as he may by
regulation require, including the violation for which the
citation was issued, the date of issuance, the name of the
person issuing the citation and the person to whom the
citation was issued. The state fire marshal may at any time
revoke the authorization of a person deputized pursuant to
subsection (j) of this section to issue citation, if in the
opinion of the state fire marshal, the exercise of such
authority by such person is inappropriate.
Violations for which citations may be issued include, but
are not limited to:
(1) Overcrowding places of public assembly;
(2) Locked or blocked exits in public areas;
(3) Failure to abate a fire hazard;
(4) Blocking of fire lanes or fire department
connections; and
(5) Tampering with, or rendering inoperable except
during necessary maintenance or repairs, on-premise
firefighting equipment, fire detection equipment and fire
alarm systems.
No person deputized pursuant to subsection (j) of this
section may be authorized to issue a citation unless that
person has satisfactorily completed a law-enforcement
officer training course designed specifically for fire
marshals. The course shall be approved by the law-
enforcement training subcommittee of the governor's
committee on criminal justice and highway safety and the
state fire commission. In addition, no person deputized
pursuant to subsection (j) of this section may be authorized
to issue a citation until evidence of liability coverage of such
person has been provided, in the case of a paid municipal
fire department by the municipality wherein the fire
department is located, or in the case of a volunteer fire
department, by the county commission of the county
wherein the fire department is located or by the
municipality served by such volunteer fire department, and
that evidence of liability coverage has been filed with the
state fire marshal.
(o) Penalties for violations.—Any person who violates
any fire and life safety regulation of the state fire code shall
be guilty of a misdemeanor, and, upon conviction thereof,
shall be fined not more than one hundred dollars or
imprisoned in the county jail not more than ninety days, or
both fined and imprisoned.
Each and every day during which any illegal erection,
construction, reconstruction, alteration, maintenance or
use continues after knowledge or official notice that same is
illegal, shall be deemed a separate offense.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

[Signature]

Chairman House Committee

[Signature]

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

[Signature]

Clerk of the House of Delegates

[Signature]

President of the Senate

[Signature]

Speaker House of Delegates

[Signature]

The within................................this the..................day of......, 19..,

.........................................Governor

[Signature]