

No. 128

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OFFICE OF THE GOVERNOR

WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1984

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**ENROLLED**  
*Committee Substitute for*  
SENATE BILL NO. 128

(By Mr. Spallanz)

—•—

PASSED March 10, 1984  
In Effect sixty days from Passage



**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**Senate Bill No. 128**  
(MR. HOLLIDAY, *original sponsor*)

[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. *scw*

*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.**

- 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,  
5 combustible 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 fires.
  - 9 (4) The means and adequacy of exit, in case of fire, from  
10 buildings and all other places in which persons work, live or  
11 congregate from time to time for any purpose, except  
12 buildings used wholly as dwelling houses for no more than  
13 two families.
  - 14 (5) The suppression of arson.
- 15 (b) *Assistance upon request.*—Upon request, the state  
16 fire marshal shall immediately assist any chief of any  
17 recognized fire company or department.
- 18 (c) *Enforcement of regulations.*—The state fire marshal  
19 shall enforce the regulations promulgated by the state fire  
20 commission as authorized by section three of this article.
- 21 (d) *Inspections generally.*—The state fire marshal shall  
22 inspect all state, county and municipally owned  
23 institutions, all public and private schools, theaters,  
24 churches and other places of public assembly as to fire exits  
25 and reasonable safety standards and report his findings and  
26 recommendations to the proper administrative heads.
- 27 (e) *Right of entry.*—The state fire marshal may at all  
28 reasonable hours enter any building or premises, other than  
29 dwelling houses, for the purpose of making an inspection,  
30 which he may deem necessary to be made under the  
31 provisions of this article.
- 32 (f) *Investigations.*—The state fire marshal may at any  
33 time investigate as to the origin or circumstances of any fire  
34 or explosion or attempt to cause fire or explosion occurring  
35 in the state. The state fire marshal shall have the authority  
36 at all times of the day or night, in performance of the duties  
37 imposed by the provisions of this article, to investigate  
38 where any fires or attempt to cause fires shall have  
39 occurred, or which at the time may be burning.

40 Notwithstanding the above provisions of this subsection,  
41 prior to entering any building or premises for the purposes  
42 of such investigation, the state fire marshal shall obtain a  
43 proper search warrant: *Provided*, That the same shall not be  
44 necessary where there is permissive waiver or the state fire  
45 marshal is an invitee of the individual having legal custody  
46 and control of the property, building or premises to be  
47 searched.

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

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

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

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

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

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

102 (j) *Deputizing members of fire departments in this*  
103 *state.*—The state fire marshal may deputize a member of  
104 any fire department, duly organized and operating in this  
105 state, who is approved by the chief of his department and  
106 who is properly qualified, to act as his assistant for the  
107 purpose of making inspections with the consent of the  
108 property owner or the person in control of such property  
109 and such investigations as may be directed by the state fire  
110 marshal, and the carrying out of such orders as may be  
111 prescribed by him, to enforce and make effective the  
112 provisions of this article and any and all regulations  
113 promulgated by the state fire commission under authority  
114 of this article: *Provided*, That in the case of a volunteer fire  
115 department, only the chief thereof or his single designated  
116 assistant may be so deputized.

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

123 (l) *Report of losses by insurance companies.*—It shall be

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

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

143 (n) *Issuance of citations for fire and life safety*  
144 *violations.*—The state fire marshal, any full-time deputy  
145 fire marshal and any full-time assistant fire marshal are  
146 hereby authorized, and any person deputized pursuant to  
147 subsection (j) of this section who is approved by the chief of  
148 his department and who is properly qualified, may be  
149 authorized by the state fire marshal, to issue citations, in  
150 their respective jurisdictions, for fire and life safety  
151 violations of the state fire code and as provided for by the  
152 rules and regulations promulgated by the state fire  
153 commission in accordance with article three, chapter  
154 twenty-nine-a of this code: *Provided*, That a summary  
155 report of all citations issued pursuant to this section by  
156 persons deputized under subsection (j) of this section shall  
157 be forwarded semiannually to the state fire marshal in such  
158 form and containing such information as he may by  
159 regulation require, including the violation for which the  
160 citation was issued, the date of issuance, the name of the  
161 person issuing the citation and the person to whom the  
162 citation was issued. The state fire marshal may at any time  
163 revoke the authorization of a person deputized pursuant to  
164 subsection (j) of this section to issue citation, if in the

165 opinion of the state fire marshal, the exercise of such  
166 authority by such person is inappropriate.

167 Violations for which citations may be issued include, but  
168 are not limited to:

169 (1) Overcrowding places of public assembly;

170 (2) Locked or blocked exits in public areas;

171 (3) Failure to abate a fire hazard;

172 (4) Blocking of fire lanes or fire department  
173 connections; and

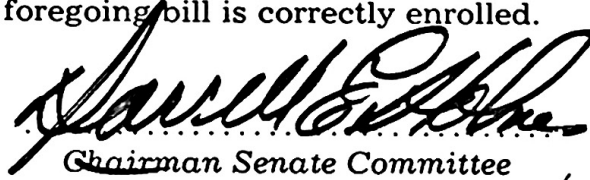
174 (5) Tampering with, or rendering inoperable except  
175 during necessary maintenance or repairs, on-premise  
176 firefighting equipment, fire detection equipment and fire  
177 alarm systems.

178 No person deputized pursuant to subsection (j) of this  
179 section may be authorized to issue a citation unless that  
180 person has satisfactorily completed a law-enforcement  
181 officer training course designed specifically for fire  
182 marshals. The course shall be approved by the law-  
183 enforcement training subcommittee of the governor's  
184 committee on criminal justice and highway safety and the  
185 state fire commission. In addition, no person deputized  
186 pursuant to subsection (j) of this section may be authorized  
187 to issue a citation until evidence of liability coverage of such  
188 person has been provided, in the case of a paid municipal  
189 fire department by the municipality wherein the fire  
190 department is located, or in the case of a volunteer fire  
191 department, by the county commission of the county  
192 wherein the fire department is located or by the  
193 municipality served by such volunteer fire department, and  
194 that evidence of liability coverage has been filed with the  
195 state fire marshal.

196 (o) *Penalties for violations.*—Any person who violates  
197 any fire and life safety regulation of the state fire code shall  
198 be guilty of a misdemeanor, and, upon conviction thereof,  
199 shall be fined not more than one hundred dollars or  
200 imprisoned in the county jail not more than ninety days, or  
201 both fined and imprisoned.

202 Each and every day during which any illegal erection,  
203 construction, reconstruction, alteration, maintenance or  
204 use continues after knowledge or official notice that same is  
205 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

  
.....  
Chairman House Committee

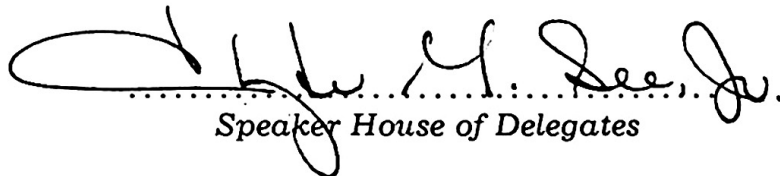
Originated in the Senate.

In effect ninety days from passage.


  
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Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within .... *is approved* ..... this the *28* .....  
day of .... *March* ....., 19*34*.

.....  .....  
Governor

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SECY. OF STATE