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STATE OF WEST VIRGINIA
GENERAL ASSEMBLY
SIXTY-EIGHTH SESSION

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998

ENROLLED

HOUSE BILL No. 4042

(By Delegates Buchanan, Givens, Dalton,
Kominar, Tillis and Faircloth)

Passed February 11, 1998

In Effect Ninety Days from Passage



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H. B. 4042

(BY DELEGATES BUCHANAN, GIVENS, DALTON,
KOMINAR, TILLIS AND FAIRCLOTH)

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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 the powers and duties of the state fire marshal and the deputy and assistant fire marshals, authorizing arrest and the making of complaint for search or arrest warrant for explosives-related offenses; removing imprecise references to a penalty, to the taking of testimony, and to determination of incendiary origin; and clarifying that those empowered under this section are those employed by the state fire marshal pursuant to section eleven of this article.

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,
10 from buildings and all other places in which persons work,
11 live or congregate from time to time for any purpose,
12 except buildings used wholly as dwelling houses for no
13 more than 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
19 marshal shall enforce the regulations promulgated by the
20 state fire commission as authorized by section three of this
21 article.

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

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

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

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

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

62 (h) *Arrests; warrants*. — The state fire marshal, any
63 full-time deputy fire marshal or any full-time assistant fire
64 marshal employed by the state fire marshal pursuant to
65 section eleven of this article is hereby authorized and
66 empowered:

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

75 (2) To make complaint in writing before any court or
76 officer having jurisdiction and obtain, serve and execute
77 an arrest warrant when knowing or having reason to
78 believe that anyone has committed an offense under any
79 provision of this article, of the arson-related offenses of
80 article three, chapter sixty-one of this code, or of the
81 explosives-related offenses of article three-e of chapter

82 sixty-one of this code. Proper return shall be made on all
83 arrest warrants before the tribunal having jurisdiction over
84 such violation.

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

94 (i) *Witnesses and oaths.* — The state fire marshal is
95 empowered and authorized to issue subpoenas and
96 subpoenas duces tecum to compel the attendance of
97 persons before him to testify in relation to any matter
98 which is, by the provision of this article, a subject of
99 inquiry and investigation by the state fire marshal and
100 cause to be produced before him such papers as he may
101 require in making such examination. The state fire
102 marshal is hereby authorized to administer oaths and
103 affirmations to persons appearing as witnesses before him.
104 False swearing in any matter or proceeding aforesaid shall
105 be 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 of
108 any fire department, duly organized and operating in this
109 state, who is approved by the chief of his department and
110 who is properly qualified, to act as his assistant for the
111 purpose of making inspections with the consent of the
112 property owner or the person in control of such property
113 and such investigations as may be directed by the state fire
114 marshal, and the carrying out of such orders as may be
115 prescribed by him, to enforce and make effective the
116 provisions of this article and any and all regulations
117 promulgated by the state fire commission under authority
118 of this article: *Provided*, That in the case of a volunteer
119 fire department, only the chief thereof or his single
120 designated assistant may be so deputized.

121 (k) *Written report of examinations.* — The state fire

122 marshal shall, at the request of the county commission of
123 any county or the municipal authorities of any
124 incorporated municipality in this state; make to them a
125 written report of the examination made by him regarding
126 any fire happening within their respective jurisdictions.

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

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

147 (n) *Issuance of citations for fire and life safety
148 violations.* — The state fire marshal, any full-time deputy
149 fire marshal, and any full-time assistant fire marshal are
150 hereby authorized, and any person deputized pursuant to
151 subsection (j) of this section who is approved by the chief
152 of his department and who is properly qualified, may be
153 authorized by the state fire marshal, to issue citations, in
154 their respective jurisdictions, for fire and life safety
155 violations of the state fire code and as provided for by the
156 rules promulgated by the state fire commission in
157 accordance with article three, chapter twenty-nine-a of this
158 code: *Provided*, That a summary report of all citations
159 issued pursuant to this section by persons deputized under
160 subsection (j) of this section shall be forwarded
161 semiannually to the state fire marshal in such form and

162 containing such information as he may by regulation
163 require, including the violation for which the citation was
164 issued, the date of issuance, the name of the person issuing
165 the citation and the person to whom the citation was
166 issued. The state fire marshal may at any time revoke the
167 authorization of a person deputized pursuant to subsection
168 (j) of this section to issue citations, if in the opinion of the
169 state fire marshal, the exercise of such authority by such
170 person is inappropriate.

171 Violations for which citations may be issued include,
172 but are not limited to:

- 173 (1) Overcrowding places of public assembly;
- 174 (2) Locked or blocked exits in public areas;
- 175 (3) Failure to abate a fire hazard;
- 176 (4) Blocking of fire lanes or fire department
177 connections; and
- 178 (5) Tampering with, or rendering inoperable except
179 during necessary maintenance or repairs, on-premise
180 firefighting equipment, fire detection equipment and fire
181 alarm systems.

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

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

206 Each and every day during which any illegal erection,
207 construction, reconstruction, alteration, maintenance or use
208 continues after knowledge or official notice that same is
209 illegal, shall be deemed a separate offense.

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

Randy Schoonover
Chairman Senate Committee

Neil Fantasia
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Russell W. Hayes
Clerk of the Senate

Bryant D. Siner
Clerk of the House of Delegates

Carl E. Embrey
President of the Senate

Speaker of the House of Delegates

The within approved this the 19th
day of January, 1998.

John G. Danner
Governor

PRESENTED TO THE

GOVERNOR

Date

2/18/98

Time

1:45

pm