WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1998

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ENROLLED

HOUSE BILL No. 4042

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

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Passed February 11, 1998

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 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 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,
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. — The state fire marshal, any full-time deputy fire marshal or any full-time assistant fire marshal employed by the state fire marshal pursuant to section eleven of this article is hereby authorized and empowered:

(1) To arrest any person anywhere within the confines of the state of West Virginia, or have him arrested, for any violation of the arson-related offenses of article three, chapter sixty-one of this code or of the explosives-related offenses of article three-e of 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, of the arson-related offenses of article three, chapter sixty-one of this code, or of the explosives-related offenses of article three-e of 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, of the arson-related offenses of article three,
chapter sixty-one of this code, or of the explosives-related
offenses of article three-e of 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
martial 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.

(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 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 citations, 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.

Randy Schaffer
Chairman Senate Committee

Mike Fantano
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Barbara Frank
Clerk of the Senate

Harry D. Boyer
Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

Speaker of the House of Delegates

The within has approved this the _day of _January__, 1998.

Earl Ray Tomblin
Governor
PRESENTED TO THE
GOVERNOR
Date 2/18/98
Time 1:45