WEST VIRGINIA LEGISLATURE
Regular Session, 2002

ENROLLED

SENATE BILL NO. 488

(By Senator Wooton, et al)

PASSED March 9, 2002

In Effect 90 days from Passage
AN ACT to amend and reenact sections twelve, twelve-b and sixteen-a, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to fire prevention and control; clarifying the powers and duties of state firemarshal, deputies or assistants and certain other persons deputized by state fire marshal; providing for confiscation of contraband; authorizing state fire marshal, deputies or assistants and certain other persons deputized by state fire marshal to assist other law-enforcement agencies when requested; clarifying inspection powers of state fire marshal; providing for entry upon property or into structures; authorizing state fire marshal to investigate explosions or attempts to cause explosions; authorizing certain persons deputized by state fire marshal to arrest and to apply for and execute arrest and search warrants; expanding state fire marshal's authority to
issue permits, documents and licenses; authorizing state fire marshal to require persons who apply for permits to use explosives to be fingerprinted and to consent to state and national criminal records checks; requiring certain persons deputized by state fire marshal to submit citations to state fire marshal on a monthly basis; increasing criminal penalties for violation of the fire and life safety code; establishing one-year permit for explosives; authorizing state fire marshal to set fees by legislative rule; and correcting and updating reference to the national fire protection standards.

Be it enacted by the Legislature of West Virginia:

That sections twelve, twelve-b and sixteen-a, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all 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 and any other person authorized to enforce the provisions of this article under the supervision and direction of the state fire marshal has the authority to 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 or articles 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; and

(6) Any other thing necessary to carry into effect the provisions of this article including, but not limited to, confiscating any materials, chemicals, items, or personal property owned, possessed or used in direct violation of the state fire code.

(b) Assistance upon request. – Upon request, the state fire marshal shall assist any chief of any recognized fire company or department. Upon the request of any federal law-enforcement officer, state police officer, conservation officer or any county or municipal law-enforcement officer, the state fire marshal, any deputy state fire marshal or assistant state fire marshal employed pursuant to section eleven of this article and any person deputized pursuant to subsection (j) of this section may assist in the lawful execution of the requesting officer's official duties: Provided, That the state fire marshal or other person authorized to act under this subsection shall at all times work under the direct supervision of the requesting officer.

(c) Enforcement of rules. – The state fire marshal shall enforce the rules promulgated by the state fire commission as authorized by this article.

(d) Inspections generally. – The state fire marshal shall inspect all structures and facilities, other than one- and two-family dwelling houses, subject to the state fire code and this article, including, but not limited to, state, county and municipally owned institutions, all public and private schools, health care facilities, theaters, churches and other places of public assembly to determine whether the structures or facilities are in compliance with the state fire code.

(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 or she may consider necessary under
the provisions of this article. The state fire marshal and
any deputy state fire marshal or assistant state fire
marshal approved by the state fire marshal may enter
upon any property, or enter any building, structure or
premises, including dwelling houses during construction
and prior to occupancy, for the purpose of ascertaining
compliance with the conditions set forth in any permit or
license issued by the office of the state fire marshal
pursuant to subdivision (1), subsection a, section twelve-b
of this article or of article three-b of this chapter.

(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 has 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 explosions or attempt to
cause fires or explosions may have occurred, or which at
the time may be burning. Notwithstanding the above
provisions of this subsection, prior to entering any build-
ing or premises for the purposes of such investigation, the
state fire marshal shall obtain a proper search warrant:
Provided, That a search warrant is not 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 or her judgment
such proceedings are necessary, may take the statements
or testimony under oath of all persons who may be cogni-
zant 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 may 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 and any person deputized pursuant to subsection (j) of this section may be authorized and empowered by the state fire marshal:

(1) To arrest any person anywhere within the confines of the state of West Virginia, or have him or her 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 said chapter. 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 said chapter. 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 said chapter. 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 subpoe-
nas 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 or her such papers as he or she 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
or her. False swearing in any matter or proceeding
aforesaid shall be considered perjury and shall be punish-
able 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 or her department and
who is properly qualified to act as his or her assistant for
the purpose of making inspections with the consent of the
property owner or the person in control of the 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 or her, to enforce and make effective the
provisions of this article and any and all rules promul-
gated 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 or her 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 incorpo-
rated municipality in this state, make to them a written
report of the examination made by him or her regarding
any fire happening within their respective jurisdictions.

(l) **Report of losses by insurance companies.** – It is 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 information regarding the amount of insurance, the value of the property insured and the amount of claim as adjusted. 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 report in writing to the owner or insurer the result of the examination regarding the property.

(m) Issuance of permits and licenses. – The state fire marshal is authorized to issue permits, documents and licenses in accordance with the provisions of this article or of article three-b of this chapter. The state fire marshal may require any person who applies for a permit to use explosives, other than an applicant for a license to be a pyrotechnic operator under section twenty-four of this article, to be fingerprinted and to authorize the state fire marshal to conduct a criminal records check through the criminal identification bureau of the West Virginia state police and a national criminal history check through the federal bureau of investigation. The results of any criminal records or criminal history check shall be sent to the state fire marshal.

(n) Issuance of citations for fire and life safety violations. – The state fire marshal, any deputy fire marshal and any assistant fire marshal employed pursuant to section eleven of this article are hereby authorized, and any person deputized pursuant to subsection (j) of this section may be authorized by the state fire marshal to issue citations, in his or her jurisdiction, 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 monthly to
the state fire marshal in such form and containing infor-
mation as he or she may by rule 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 authority by the 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 connec-
tions; and

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

(o) Required training; liability coverage. – 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 train-
ing 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 the volunteer fire department and that evidence of liability coverage has been filed with the state fire marshal.

(p) Penalties for violations. — Any person who violates any fire and life safety rule of the state fire code is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars or imprisoned in the county or regional jail not more than ninety days, or both fined and imprisoned.

Each and every day during which any violation of the provisions of this article continues after knowledge or official notice that same is illegal is a separate offense.

§29-3-12b. Fees.

(a) The state fire marshal may establish fees in accordance with the following:

1 (1) For blasting. — Any person storing, selling or using explosives shall first obtain a permit from the state fire marshal. The permit shall be valid for one year. The state fire marshal may charge a fee for the permit.

2 (2) For inspections of schools or day care facilities. — The state fire marshal may charge a fee of up to twenty-five dollars per annual inspection for inspection of schools or day care facilities: Provided, That only one such fee may be charged per year for any building in which a school and a day care facility are co-located: Provided, however, That any school or day care facility may not be charged for an inspection more than one time per twelve-month period.

3 (3) For inspections of hospitals or nursing homes. — The state fire marshal may charge an inspection fee of up to one hundred dollars per annual inspection of hospitals or nursing homes:
Provided, That any hospital or nursing home may not be charged for an inspection more than one time per twelve-month period.

(4) For inspections of personal care homes or board and care facilities. — The state fire marshal may charge an inspection fee of up to fifty dollars per annual inspection for inspections of personal care homes or board and care facilities: Provided, That any personal care home or board and care facility may not be charged for an inspection more than one time per twelve-month period.

(5) For inspections of residential occupancies. — The state fire marshal may charge an inspection fee of up to one hundred dollars for each inspection of a residential occupancy. For purposes of this subdivision, “residential occupancies” are those buildings in which sleeping accommodations are provided for normal residential purposes.

(6) For inspections of mercantile occupancies. — The state fire marshal may charge an inspection fee of up to one hundred dollars for inspections of mercantile occupancies: Provided, That if the inspection is in response to a complaint made by a member of the public, the state fire marshal shall obtain from the complainant an advance inspection fee of twenty-five dollars. This fee shall be returned to the complainant if, after the state fire marshal has made the inspection, he or she finds that the complaint was accurate and justified, and he or she shall thereafter collect an inspection fee of up to one hundred dollars from the mercantile occupancy. If, after the inspection has been performed, it appears to the state fire marshal that the complaint was not accurate or justified, the state fire marshal shall keep the twenty-five dollar advance inspection fee obtained from the complainant and may not collect any fees from the mercantile occupant. For purposes of this section, “mercantile occupancy” includes stores, markets and other rooms, buildings or structures for the display and sale of merchandise.
(7) For business occupancies. – The state fire marshal may charge an inspection fee of up to one hundred dollars for inspections of business occupancies: Provided, That the provisions in subdivision (6) of this section shall apply regarding complaints by members of the public. For purposes of this section, “business occupancies” are those buildings used for the transaction of business, other than mercantile occupancies, for the keeping of accounts and records and similar purposes.

(8) For inspections of assembly occupancies. – The state fire marshal may charge an inspection fee not more than one time per twelve-month period for the inspection of assembly occupancies. The inspection fees shall be assessed as follows: For Class C assembly facilities, an inspection fee not to exceed fifty dollars; for Class B assembly facilities, an inspection fee not to exceed seventy-five dollars; and for Class A facilities, an inspection fee not to exceed one hundred dollars.

For purposes of this subdivision, an “assembly occupancy” includes, but is not limited to, all buildings or portions of buildings used for gathering together fifty or more persons for such purposes as deliberation, worship, entertainment, eating, drinking, amusement or awaiting transportation. For purposes of this section, a “Class C assembly facility” is one that accommodates fifty to three hundred persons; a “Class B facility” is one which accommodates more than three hundred persons but less than one thousand persons; and a “Class A facility” is one which accommodates more than one thousand persons.

(b) The state fire marshal may collect fees for the fire safety review of plans and specifications for new and existing construction. Fees shall be paid by the party or parties receiving the review.

(1) Structural barriers and fire safety plans review. – The fee is one dollar for each one thousand dollars of construction cost up to the first one million dollars. Thereafter, the
fee is forty cents for each one thousand dollars of con-
struction cost.

(2) Sprinkler system review. —The fee charged for the
review of an individual sprinkler system is as follows:
Number of heads: One to two hundred — eighty-five
dollars; two hundred one to three hundred — one hundred
dollars; three hundred one to seven hundred fifty — one
hundred twenty dollars; over seven hundred fifty — one
hundred twenty dollars plus ten cents per head over seven
hundred fifty.

(3) Fire alarm systems review. —The fee charged for the
review of a fire alarm system is fifty dollars for each ten
thousand square feet of space with a fifty dollar minimum
charge.

(4) Range hood extinguishment system review. —The fee
is twenty-five dollars per individual system reviewed.

(5) Carpet specifications. —The fee for carpet review and
approval is twenty dollars per installation.

(c) All fees authorized and collected pursuant to this
article and article three-b of this chapter shall be paid to
the state fire marshal and thereafter deposited into a
special account to be appropriated by the Legislature for
the operation of the state fire commission in administering
this article and article three-b of this chapter. Beginning
on the first day of July, one thousand nine hundred
ninety-two, and every fiscal year thereafter, at the end of
each fiscal year there shall be transferred from the special
account, to the general revenue fund of the state, ten
percent of all money collected by the fire marshal during
the year: Provided, That any balance remaining in the
special account at the end of any fiscal year, after the
transfer of the ten percent, shall be reappropriated to the
next fiscal year: Provided, however, That in addition to
said ten percent, amounts collected which are found from
time to time to exceed the funds needed for purposes for
which the fees are collected may be transferred to other accounts or redesignated for other purposes by appropriation of the Legislature.

(d) If the owner or occupant of any occupancy arranges a time and place for an inspection with the state fire marshal and is not ready for the occupancy to be inspected at the appointed time and place, the owner or occupant thereof shall be charged the inspection fee provided in this section unless at least forty-eight hours prior to the scheduled inspection the owner or occupant requests the state fire marshal to reschedule the inspection. In the event a second inspection is required by the state fire marshal as a result of the owner or occupant failing to be ready for the inspection when the state fire marshal arrives, the state fire marshal shall charge the owner or occupant of the occupancy the inspection fees set forth above for each inspection trip required.

(e) The fees provided for in this section shall remain in effect until such time as the Legislature has approved rules promulgated by the state fire marshal, in accordance with the provisions of article three, chapter twenty-nine-a of this code, establishing a schedule of fees for services.

§29-3-16a. Smoke detectors in one- and two-family dwellings; carbon monoxide detectors in residential units; penalty.

(a) On or before the first day of July, one thousand nine hundred ninety-one, an operational smoke detector shall be installed in the immediate vicinity of each sleeping area within all one- and two-family dwellings, including any "manufactured home" as that term is defined in subsection (j), section two, article nine, chapter twenty-one of this code. The smoke detector shall be capable of sensing visible or invisible particles of combustion and shall meet the specifications and be installed as provided in the national fire protection association standard 72, "Standard for the Installation, Maintenance and Use of House-
hold Fire Warning Equipment”, 1996 edition, and in the manufacturer's specifications. When activated, the smoke detector shall provide an alarm suitable to warn the occupants of the danger of fire.

(b) The owner of each dwelling described in subsection (a) of this section shall provide, install and replace the operational smoke detectors required by this section. So as to assure that the smoke detector continues to be operational, in each dwelling described in subsection (a) of this section which is not occupied by the owner thereof, the tenant in any dwelling shall perform routine maintenance on the smoke detectors within the dwelling.

(c) Where a dwelling is not occupied by the owner and is occupied by an individual who is deaf or hearing impaired, the owner shall, upon written request by or on behalf of the individual, provide and install a smoke detector with a light signal sufficient to warn the deaf or hearing-impaired individual of the danger of fire.

(d) An automatic fire sprinkler system installed in accordance with the national fire protection association standard 13D, "Standard for the Installation of Sprinkler Systems in Residential Occupancies", 1989 edition, may be provided in lieu of smoke detectors.

(e) After investigating a fire in any dwelling described in subsection (a) of this section, the local investigating authority shall issue to the owner a smoke detector installation order in the absence of the required smoke detectors.

(f) After the first day of July, one thousand nine hundred ninety-eight, an operational carbon monoxide detector with a suitable alarm shall be installed in accordance with the manufacturer's direction:

(1) In any newly constructed residential unit which has a fuel-burning heating or cooking source including, but not limited to, an oil or gas furnace or stove; and
(2) In any residential unit which is connected to a newly constructed building, including, but not limited to, a garage, storage shed or bar, which has a fuel-burning heating or cooking source, including, but not limited to, an oil or gas furnace or stove.

(g) Any person installing a carbon monoxide detector in a residential unit shall inform the owner, lessor or the occupant or occupants of the residential unit of the dangers of carbon monoxide poisoning and instructions on the operation of the carbon monoxide detector installed.

(h) When repair or maintenance work is undertaken on a fuel-burning heating or cooking source or a venting system in an existing residential unit, the person making the repair or performing the maintenance shall inform the owner, lessor or the occupant or occupants of the unit being served by the fuel-burning heating or cooking source or venting system of the dangers of carbon monoxide poisoning and recommend the installation of a carbon monoxide detector.

(i) Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars nor more than one hundred dollars.

(j) A violation of this section may not be considered by virtue of the violation to constitute evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages.

(k) A violation of this section may not constitute a defense in any civil action or proceeding involving any insurance policy.

(l) Nothing in this section shall be construed to limit the rights of any political subdivision in this state to enact laws imposing upon owners of any dwelling or other building described in subsection (a) or (f) of this section a greater duty with regard to the installation, repair and replacement of the smoke detectors or carbon monoxide detectors than is required by this section.
Enr. S. B. No. 488]

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

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

[Signature]
Speaker House of Delegates

The within is approved, this the 29th Day of March, 2002.

[Signature]
Governor
PRESENTED TO THE
GOVERNOR
Date 3/25/12
Time 11:20 AM