

The Committee on the Judiciary moves to amend the bill on page one, following the enacting section, by striking out the remainder of the bill and inserting lieu thereof, the following language:

1 **"ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.**

2 **§29-3-16a. Smoke detectors in one- and two-family dwellings;**
3 **carbon monoxide detectors in residential units;**
4 **penalty.**

5 (a) An operational smoke detector shall be installed in the
6 immediate vicinity of each sleeping area within all one and two
7 family dwellings, including any "manufactured home" as that term is
8 defined in subsection (j), section two, article nine, chapter
9 twenty-one of this code. The smoke detector shall be capable of
10 sensing visible or invisible particles of combustion and shall meet
11 the specifications and be installed as provided in the current
12 edition of the National Fire Protection Association Standard 72,
13 "Standard for the Installation, Maintenance and Use of Household
14 Fire Warning Equipment" and in the manufacturer's specifications.
15 When activated, the smoke detector shall provide an alarm suitable
16 to warn the occupants of the danger of fire.

17 (b) The owner of each dwelling described in subsection (a) of
18 this section shall provide, install and replace the operational
19 smoke detectors required by this section. So as to assure that the
20 smoke detector continues to be operational, in each dwelling

1 described in subsection (a) of this section which is not occupied
2 by the owner thereof, the tenant in any dwelling shall perform
3 routine maintenance on the smoke detectors within the dwelling.

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

10 (d) An automatic fire sprinkler system installed in accordance
11 with the current edition of the National Fire Protection
12 Association Standard 13D, "Standard for the Installation of
13 Sprinkler Systems in Residential Occupancies" may be provided in
14 lieu of smoke detectors.

15 (e) ~~After investigating~~ If during the investigation of a fire
16 in any dwelling described in subsection (a) of this section, the
17 local investigating authority shall issue to the owner a smoke
18 detector installation order in the absence of the required smoke
19 detectors it is determined that a smoke detector or carbon monoxide
20 detector installed in the dwelling was not operational prior to the
21 fire, the West Virginia Fire Marshall, West Virginia State Police,
22 County Sheriff, or the Municipal Police, may issue a citation
23 pursuant to subsection (k).

24 (f) An operational single station carbon monoxide detector

1 with a suitable alarm or a combination smoke detector and carbon
2 monoxide detector, which shall be alternating current (AC) powered,
3 either plugged directly in to an electrical outlet that is not
4 controlled by a switch or hardwired into an alternating current
5 (AC) electrical source, with battery back up, and be installed,
6 maintained, tested, repaired or replaced, if necessary, in
7 accordance with the manufacturer's direction:

8 (1) In any newly constructed residential unit which has a
9 fuel-burning heating or cooking source including, but not limited
10 to, an oil or gas furnace or stove;

11 (2) In any residential unit which is connected to a newly
12 constructed building, including, but not limited to, a garage,
13 storage shed or barn, which has a fuel-burning heating or cooking
14 source, including, but not limited to, an oil or gas furnace or
15 stove;

16 (3) Effective September 1, 2012, in either a common area where
17 the general public has access or all rooms in which a person will
18 be sleeping that are adjoining to and being directly below and
19 above all areas or rooms that contain permanently installed
20 fuel-burning appliances and equipment that emit carbon monoxide as
21 a byproduct of combustion located within all apartment buildings,
22 boarding houses, dormitories, long-term care facilities, adult or
23 child care facilities, assisted living facilities, one- and two-
24 family dwellings intended to be rented or leased, hotels and

1 motels.

2 (g) Effective January 1, 2013, all single station carbon
3 monoxide detectors with a suitable alarm or a combination smoke
4 detector and carbon monoxide detectors shall be hardwired into an
5 alternating current (AC) electrical source, with battery backup,
6 when installed in all newly constructed apartment buildings,
7 boarding houses, dormitories, hospitals, long-term care facilities,
8 adult or child care facilities, assisted living facilities, one-
9 and two-family dwellings intended to be rented or leased, hotels
10 and motels.

11 (h) In any long-term care facility that is staffed on a
12 twenty-four hour, seven day a week basis, the single station carbon
13 monoxide detector with a suitable alarm or a combination smoke
14 detector and carbon monoxide detector shall only be required to be
15 installed in an area of the facility that permits the detector to
16 be audible to the staff on duty.

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

22 (j) When repair or maintenance work is undertaken on a
23 fuel-burning heating or cooking source or a venting system in an
24 existing residential unit, the person making the repair or

1 performing the maintenance shall inform the owner, lessor or the
2 occupant or occupants of the unit being served by the fuel-burning
3 heating or cooking source or venting system of the dangers of
4 carbon monoxide poisoning and recommend the installation of a
5 carbon monoxide detector.

6 (k) Any person who knowingly and willfully violates any
7 provision of this section, is guilty of a misdemeanor and, upon
8 conviction thereof, for a first offense, shall be fined \$250. For
9 a second offense, the person is guilty of a misdemeanor and, upon
10 conviction thereof, shall be fined \$750. For a third and
11 subsequent offenses, the person is guilty of a misdemeanor and,
12 upon conviction thereof, shall be fined \$2,000. The applicable time
13 period to charge a person for a second or subsequent offense shall
14 be a period of ten years. No person may be convicted of a second or
15 subsequent offense under this section unless the conviction for the
16 previous offense has become final.

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

21 For the purposes of subsection (k), in addition to the
22 ordinary definition and meaning of the word, the term "person"
23 includes an owner, partner, president, other officer, or manager of
24 a sole proprietorship, firm, partnership, company, corporation or

1 association who is responsible for and required by, specific
2 assignment, duty or legal duty, either expressed or inherent in the
3 laws of this state, to be informed of and to know the facts and
4 laws affecting the business organization, and who is responsible
5 for and required by specific assignment, duty or legal duty, either
6 expressed or inherent in the laws of this state, to make internal
7 policy and decisions to ensure compliance with the general laws and
8 provisions of this section.

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

11 (n) Nothing in this section shall be construed to limit the
12 rights of any political subdivision in this state to enact laws
13 imposing upon owners of any dwelling or other building described in
14 subsection (a) or (f) of this section a greater duty with regard to
15 the installation, repair and replacement of the smoke detectors or
16 carbon monoxide detectors than is required by this section.

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