

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**ENROLLED**

## **House Bill 2872**

BY DELEGATES D. KELLY, CAPUTO, MAYNARD, J. KELLY, ANDERSON, HOLLEN,

MILLER, STEELE, HARSHBARGER AND LOVEJOY

(BY REQUEST OF THE DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY)

[Passed March 6, 2019; in effect from ninety days from passage.]



1 AN ACT to amend and reenact §29-3-12 of the Code of West Virginia, 1931, as amended, relating  
2 to authorizing any member of the West Virginia State Police, Natural Resources Police  
3 Officer, or any county or municipal law-enforcement officer to assist the State Fire Marshal  
4 or any of his or her employees in any duties for which the State Fire Marshal has  
5 jurisdiction; granting the State Fire Marshal, any full-time deputy and assistant fire marshal  
6 the power of arrest for obstructing them in their official duties; authorizing the State Fire  
7 Marshal, any full-time deputy fire marshal, or any full-time assistant fire marshal employed  
8 by the State Fire Marshal to carry a firearm in the course of official duties; and establishing  
9 requirements for annual requalification.

*Be it enacted by the Legislature of West Virginia:*

**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 and any other person authorized to  
2 enforce the provisions of this article under the supervision and direction of the State Fire Marshal  
3 may enforce all laws of the state having to do with:

4 (1) Prevention of fire;

5 (2) The storage, sale, and use of any explosive, combustible, or other dangerous article  
6 or articles in solid, flammable liquid, or gas form;

7 (3) The installation and maintenance of equipment of all sorts intended to extinguish,  
8 detect, and control fires;

9 (4) The means and adequacy of exit, in case of fire, from buildings and all other places in  
10 which persons work, live, or congregate, from time to time, for any purpose, except buildings used  
11 wholly as dwelling houses for no more than two families;

12 (5) The suppression of arson; and

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

16 (b) *Assistance upon request.* — Upon request, the State Fire Marshal shall assist any  
17 chief of any recognized fire company or department. Upon the request of any federal law-  
18 enforcement officer, state police officer, Natural Resources police officer, or any county or  
19 municipal law-enforcement officer, the State Fire Marshal, any deputy state fire marshal, or  
20 assistant state fire marshal employed pursuant to §29-3-11 of this code and any person deputized  
21 pursuant to subsection (j) of this section may assist in the lawful execution of the requesting  
22 officer's official duties: *Provided*, That the State Fire Marshal, or other person authorized to act  
23 under this subsection, shall at all times work under the direct supervision of the requesting officer.

24 (c) *Enforcement of rules.* — The State Fire Marshal shall enforce the rules promulgated  
25 by the State Fire Commission as authorized by this article.

26 (d) *Inspections generally.* — The State Fire Marshal shall inspect all structures and  
27 facilities, other than one- and two-family dwelling houses, subject to the State Fire Code and this  
28 article, including, but not limited to, state, county, and municipally owned institutions, all public  
29 and private schools, health care facilities, theaters, churches, and other places of public assembly  
30 to determine whether the structures or facilities are in compliance with the State Fire Code.

31 (e) *Right of entry.* — The State Fire Marshal may, at all reasonable hours, enter any  
32 building or premises, other than dwelling houses, for the purpose of making an inspection which  
33 he or she may consider necessary under the provisions of this article. The State Fire Marshal and  
34 any deputy state fire marshal or assistant state fire marshal approved by the State Fire Marshal  
35 may enter upon any property, or enter any building, structure or premises, including dwelling  
36 houses during construction and prior to occupancy, for the purpose of ascertaining compliance  
37 with the conditions set forth in any permit or license issued by the office of the State Fire Marshal  
38 pursuant to §29-3-12b(A)(1) or §29-3B-1 *et seq.* of this code.

39           (f) *Investigations.* — The State Fire Marshal may, at any time, investigate as to the origin  
40 or circumstances of any fire or explosion or attempt to cause fire or explosion occurring in the  
41 state. The State Fire Marshal has the authority at all times of the day or night, in performance of  
42 the duties imposed by the provisions of this article, to investigate where any fires or explosions or  
43 attempt to cause fires or explosions may have occurred, or which at the time may be burning.  
44 Notwithstanding the above provisions of this subsection, prior to entering any building or premises  
45 for the purposes of the investigation, the State Fire Marshal shall obtain a proper search warrant:  
46 *Provided,* That a search warrant is not necessary where there is permissive waiver or the State  
47 Fire Marshal is an invitee of the individual having legal custody and control of the property, building  
48 or premises to be searched.

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

57           (h) *Arrests; warrants.* — The State Fire Marshal, any full-time deputy fire marshal, or any  
58 full-time assistant fire marshal employed by the State Fire Marshal pursuant to §29-3-11 of this  
59 code is hereby authorized and empowered and any person deputized pursuant to §29-3-11 of  
60 this code may be authorized and empowered by the State Fire Marshal:

61           (1) To arrest any person anywhere within the confines of the State of West Virginia, or  
62 have him or her arrested, for any violation of the arson-related offenses of §61-3-1 *et seq.* of this  
63 code or of the explosives-related offenses of §61-3E-1 *et seq.* of said code: *Provided,* That any  
64 and all persons so arrested shall be forthwith brought before the magistrate or circuit court;

65 *Provided, however,* That the State Fire Marshal, any full-time deputy fire marshal or any full-time  
66 assistant fire marshal is authorized to arrest persons for violations of §61-5-17 of this code.

67 (2) To make complaint in writing before any court or officer having jurisdiction and obtain,  
68 serve, and execute an arrest warrant when knowing or having reason to believe that anyone has  
69 committed an offense under any provision of this article, of the arson-related offenses of §61-3-1  
70 *et seq.* of this code or of the explosives-related offenses of §61-3E-1 *et seq.* of this code. Proper  
71 return shall be made on all arrest warrants before the tribunal having jurisdiction over the violation.

72 (3) To make complaint in writing before any court or officer having jurisdiction and obtain,  
73 serve, and execute a warrant for the search of any premises that may possess evidence or  
74 unlawful contraband relating to violations of this article, of the arson-related offenses of §61-3-1  
75 *et seq.* of this code or of the explosives-related offenses of §61-3E-1 *et seq.* of said code. Proper  
76 return shall be made on all search warrants before the tribunal having jurisdiction over the  
77 violation.

78 (4) Any member of the West Virginia State Police, Natural Resources Police Officer, or  
79 any county or municipal law-enforcement officer may assist, upon request, the State Fire Marshal  
80 or any of his or her employees authorized to enforce the provisions of this section in any duties  
81 for which the State Fire Marshal has jurisdiction.

82 (i) *Witnesses and oaths.* — The State Fire Marshal may issue subpoenas and subpoenas  
83 duces tecum to compel the attendance of persons before him or her to testify in relation to any  
84 matter which is, by the provision of this article, a subject of inquiry and investigation by the State  
85 Fire Marshal and cause to be produced before him or her such papers as he or she may require  
86 in making the examination. The State Fire Marshal may administer oaths and affirmations to  
87 persons appearing as witnesses before him or her. False swearing in any matter or proceeding  
88 is considered perjury and is punishable as perjury.

89 (j) *Deputizing members of fire departments in this state.* — The State Fire Marshal may  
90 deputize a member of any fire department, duly organized and operating in this state, who is

91 approved by the chief of his or her department and who is properly qualified to act as his or her  
92 assistant for the purpose of making inspections with the consent of the property owner or the  
93 person in control of the property and the investigations as may be directed by the State Fire  
94 Marshal, and the carrying out of orders as may be prescribed by him or her, to enforce and make  
95 effective the provisions of this article and any and all rules promulgated by the State Fire  
96 Commission under authority of this article: *Provided*, That in the case of a volunteer fire  
97 department, only the chief thereof or his or her single designated assistant may be so deputized.

98 (k) *Written report of examinations.* — The State Fire Marshal shall, at the request of the  
99 county commission of any county or the municipal authorities of any incorporated municipality in  
100 this state, make to them a written report of the examination made by him or her regarding any fire  
101 happening within their respective jurisdictions.

102 (l) *Report of losses by insurance companies.* — Each fire insurance company or  
103 association doing business in this state, within 10 days after the adjustment of any loss sustained  
104 by it that exceeds \$1,500, shall report to the State Fire Marshal information regarding the amount  
105 of insurance, the value of the property insured, and the amount of claim as adjusted. This report  
106 is in addition to any information required by the State Insurance Commissioner. Upon the request  
107 of the owner or insurer of any property destroyed or injured by fire or explosion, or in which an  
108 attempt to cause a fire or explosion may have occurred, the State Fire Marshal shall report in  
109 writing to the owner or insurer the result of the examination regarding the property.

110 (m) *Issuance of permits and licenses.* — The State Fire Marshal may issue permits,  
111 documents, and licenses in accordance with the provisions of this article or §29-3B-1 *et seq.* of  
112 this code: *Provided*, That unless otherwise provided, the State Fire Marshall shall take final action  
113 upon any completed permit applications within 30 days of receipt if the application is uncontested,  
114 or within 90 days if the application is contested. The State Fire Marshal may require any person  
115 who applies for a permit to use explosives, other than an applicant for a license to be a pyrotechnic  
116 operator under §29-3E-6 of this code, to be fingerprinted and to authorize the State Fire Marshal

117 to conduct a criminal records check through the criminal identification bureau of the West Virginia  
118 State Police and a national criminal history check through the Federal Bureau of Investigation.  
119 The results of any criminal records or criminal history check shall be sent to the State Fire Marshal.

120 (n) *Issuance of citations for fire and life safety violations.* — The State Fire Marshal, any  
121 deputy fire marshal, and any assistant fire marshal employed pursuant to §29-3-11 of this code,  
122 and any person deputized pursuant to subsection (j) of this section may be authorized by the  
123 State Fire Marshal to issue citations, in his or her jurisdiction, for fire and life safety violations of  
124 the State Fire Code and as provided for by the rules promulgated by the State Fire Commission  
125 in accordance with §29-3-1 *et seq.* of this code: *Provided,* That a summary report of all citations  
126 issued pursuant to this section by persons deputized under subsection (j) of this section shall be  
127 forwarded monthly to the State Fire Marshal in the form and containing information as he or she  
128 may by rule require, including the violation for which the citation was issued, the date of issuance,  
129 the name of the person issuing the citation, and the person to whom the citation was issued. The  
130 State Fire Marshal may at any time revoke the authorization of a person deputized pursuant to  
131 subsection (j) of this section to issue citations, if in the opinion of the State Fire Marshal, the  
132 exercise of authority by the person is inappropriate.

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

- 134 (1) Overcrowding places of public assembly;  
135 (2) Locked or blocked exits in public areas;  
136 (3) Failure to abate a fire hazard;  
137 (4) Blocking of fire lanes or fire department connections; and  
138 (5) Tampering with, or rendering inoperable except during necessary maintenance or  
139 repairs, on-premise firefighting equipment, fire detection equipment, and fire alarm systems.

140 (o) *Required training; liability coverage.* — No person deputized pursuant to subsection (j)  
141 of this section may be authorized to issue a citation unless that person has satisfactorily  
142 completed a law-enforcement officer training course designed specifically for fire marshals. The

143 course shall be approved by the Law-enforcement Training Subcommittee of the Governor's  
144 Committee on Criminal Justice and Highway Safety and the State Fire Commission. In addition,  
145 no person deputized pursuant to subsection (j) of this section may be authorized to issue a citation  
146 until evidence of liability coverage of the person has been provided, in the case of a paid municipal  
147 fire department, by the municipality wherein the fire department is located, or in the case of a  
148 volunteer fire department, by the county commission of the county wherein the fire department is  
149 located or by the municipality served by the volunteer fire department and that evidence of liability  
150 coverage has been filed with the State Fire Marshal.

151 (p) *Statewide contracts.* — The State Fire Marshal may cooperate with the Department of  
152 Administration, Purchasing Division, to establish one or more statewide contracts for equipment  
153 and supplies utilized by fire companies and departments in accordance with §5A-3-1 *et seq.* of  
154 this code.

155 (1) Any statewide contract established hereunder shall be made available to any fire  
156 company and department in this state, as well as any other state agency or political subdivision  
157 that has a need for the equipment or supplies included in those contracts.

158 (2) The State Fire Marshal may develop uniform standards for equipment and supplies  
159 used by fire companies and departments in accordance with §5A-3-1 *et seq.* of this code.

160 (3) The State Fire Commission shall propose legislative rules for promulgation in  
161 accordance with §29A-3-1 *et seq.* of this code to effectuate the provisions of this subsection.

162 (q) *Penalties for violations.* — Any person who violates any fire and life safety rule of the  
163 State Fire Code is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less  
164 than \$100 nor more than \$1,000, or confined in jail not more than 90 days, or both fined and  
165 confined. Every day during which any violation of the provisions of this article continues after  
166 knowledge or official notice that it is illegal is a separate offense.

167 (r) The State Fire Marshal, any full-time deputy fire marshal, or any full-time assistant fire  
168 marshal employed by the State Fire Marshal pursuant to §29-3-11 of this code may carry a firearm

169 while acting in the course of his or her official duties, if he or she has successfully completed a  
170 firearms training and certification program equivalent to that provided to officers attending the  
171 entry level law-enforcement certification course provided at the West Virginia State Police  
172 Academy. The person shall thereafter successfully complete an annual firearms qualification  
173 course equivalent to that required of certified law-enforcement officers as established by  
174 legislative rule. The State Fire Marshal may reimburse the person for the cost of the training and  
175 requalification.

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

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within ..... this the.....  
day of ....., 2019.

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*Governor*