

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

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)

[INTRODUCED FEBRUARY 6, 2019; REFERRED

TO THE COMMITTEE ON FIRE DEPARTMENTS AND

EMERGENCY MEDICAL SERVICES THEN THE JUDICIARY.]

1 A BILL to amend and reenact §29-3-12 of the Code of West Virginia, 1931, as amended, relating
2 to authorizing any West Virginia State Police Officer, Natural Resources Police Officer, or
3 any county or municipal law-enforcement officer to assist the State Fire Marshal or any of
4 his or her employees in any duties for which the State Fire Marshal has jurisdiction; and
5 to authorizing the State Fire Marshal, any full-time deputy fire marshal, or any full-time
6 assistant fire marshal employed by the State Fire Marshal to carry a firearm in the course
7 of official duties.

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 ~~has the authority to~~ 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 §29-3-12(j) of this code may assist in the lawful execution of the requesting officer's
22 official duties: *Provided*, That the State Fire Marshal, or other person authorized to act under this
23 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) of this code 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 (2) To make complaint in writing before any court or officer having jurisdiction and obtain,
66 serve, and execute an arrest warrant when knowing or having reason to believe that anyone has
67 committed an offense under any provision of this article, of the arson-related offenses of §61-3-1

68 *et seq.* of this code or of the explosives-related offenses of §61-3E-1 *et seq.* of this code. Proper
69 return shall be made on all arrest warrants before the tribunal having jurisdiction over the violation.

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

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

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

88 (j) Deputizing members of fire departments in this state. — The State Fire Marshal may
89 deputize a member of any fire department, duly organized and operating in this state, who is
90 approved by the chief of his or her department and who is properly qualified to act as his or her
91 assistant for the purpose of making inspections with the consent of the property owner or the
92 person in control of the property and the investigations as may be directed by the State Fire
93 Marshal, and the carrying out of orders as may be prescribed by him or her, to enforce and make

94 effective the provisions of this article and any and all rules promulgated by the State Fire
95 Commission under authority of this article: *Provided*, That in the case of a volunteer fire
96 department, only the chief thereof or his or her single designated assistant may be so deputized.

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

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

110 (m) Issuance of permits and licenses. — The State Fire Marshal ~~is authorized to~~ may issue
111 permits, documents, and licenses in accordance with the provisions of this article or §29-3B-1 *et*
112 *seq.* of this code: *Provided*, That unless otherwise provided, the State Fire Marshall shall take
113 final action upon any completed permit applications within 30 days of receipt if the application is
114 uncontested, or within 90 days if the application is contested. The State Fire Marshal may require
115 any person who applies for a permit to use explosives, other than an applicant for a license to be
116 a pyrotechnic operator under §29-3-24 of this code, to be fingerprinted and to authorize the State
117 Fire Marshal to conduct a criminal records check through the criminal identification bureau of the
118 West Virginia State Police and a national criminal history check through the Federal Bureau of

119 Investigation. The results of any criminal records or criminal history check shall be sent to the
120 State Fire Marshal.

121 (n) Issuance of citations for fire and life safety violations. — The State Fire Marshal, any
122 deputy fire marshal, and any assistant fire marshal employed pursuant to §29-3-11 of this code
123 ~~are hereby authorized~~, and any person deputized pursuant to §29-3-12(j) of this code may be
124 authorized by the State Fire Marshal to issue citations, in his or her jurisdiction, for fire and life
125 safety violations of the State Fire Code and as provided for by the rules promulgated by the State
126 Fire Commission in accordance with §29-3-1 *et seq.* of this code: *Provided*, That a summary
127 report of all citations issued pursuant to this section by persons deputized under §29-3-12(j) of
128 this code shall be forwarded monthly to the State Fire Marshal in the form and containing
129 information as he or she may by rule require, including the violation for which the citation was
130 issued, the date of issuance, the name of the person issuing the citation, and the person to whom
131 the citation was issued. The State Fire Marshal may at any time revoke the authorization of a
132 person deputized pursuant to §29-3-12(j) of this code to issue citations, if in the opinion of the
133 State Fire Marshal, the exercise of authority by the person is inappropriate.

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

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

141 (o) Required training; liability coverage. — No person deputized pursuant to §29-3-12(j)
142 of this code may be authorized to issue a citation unless that person has satisfactorily completed
143 a law-enforcement officer training course designed specifically for fire marshals. The course shall
144 be approved by the Law-Enforcement Training Subcommittee of the Governor's Committee on

145 Criminal Justice and Highway Safety and the State Fire Commission. In addition, no person
146 deputized pursuant to §29-3-12(j) of this code may be authorized to issue a citation until evidence
147 of liability coverage of the person has been provided, in the case of a paid municipal fire
148 department, by the municipality wherein the fire department is located, or in the case of a
149 volunteer fire department, by the county commission of the county wherein the fire department is
150 located or by the municipality served by the volunteer fire department and that evidence of liability
151 coverage has been filed with the State Fire Marshal.

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

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

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

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

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

168 (r) The State Fire Marshal, any full-time deputy fire marshal, or any full-time assistant fire
169 marshal employed by the State Fire Marshal pursuant to §29-3-11 of this code may carry a firearm
170 while acting in the course of their official duties, if the person has successfully completed a

171 firearms training and certification program equivalent to that provided to officers attending the
172 entry level law-enforcement certification course provided at the West Virginia State Police
173 Academy. The person shall thereafter successfully complete an annual firearms qualification
174 course equivalent to that required of certified law-enforcement officers as established by
175 legislative rule. The State Fire Marshal may reimburse the person for the cost of the training and
176 requalification.

NOTE: The purpose of this bill is to authorize any West Virginia State Police officer, Natural Resources Police Officer, or any county or municipal law-enforcement officer to assist the State Fire Marshal or any of his or her employees authorized to enforce the provisions of this section in any duties for which the State Fire Marshal has jurisdiction and to codify the authorization of the State Fire Marshal, any full-time deputy fire marshal, or any full-time assistant fire marshal employed by the State Fire Marshal to carry a firearm in the course of official duties.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.