

By: Eissler

H.B. No. 30

A BILL TO BE ENTITLED

AN ACT

relating to carbon monoxide detectors in certain residential dwellings; providing civil penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 9, Health and Safety Code, is amended by adding Chapter 766 to read as follows:

CHAPTER 766. CARBON MONOXIDE DETECTORS IN CERTAIN RESIDENTIAL DWELLINGS

Sec. 766.001. DEFINITIONS. In this chapter:

(1) "Carbon monoxide detector" means a device that:

(A) detects and sounds an alarm to indicate the presence of a harmful level of carbon monoxide gas; and

(B) complies with Underwriters Laboratories, Inc., Standard 2034.

(2) "Commission" means the Health and Human Services Commission.

(3) "Dwelling" means a house, manufactured home, condominium unit, duplex unit, apartment unit, or other structure or portion of a structure that is constructed as a residence for an individual.

Sec. 766.002. CARBON MONOXIDE DETECTORS REQUIRED. (a) Each dwelling the construction of which commences on or after January 1, 2006, must be equipped with carbon monoxide detectors in accordance with commission rules.

1       (b) Each dwelling that is not described by Subsection (a)  
2 must be equipped with carbon monoxide detectors in accordance with  
3 commission rules before the owner of the dwelling may sell or  
4 otherwise transfer ownership of the dwelling to another person.

5       Sec. 766.003. RULES. (a) The commission shall adopt rules  
6 requiring:

7           (1) each dwelling the construction of which commences  
8 on or after January 1, 2006, to be equipped with carbon monoxide  
9 detectors; and

10          (2) each dwelling the ownership of which is sold or  
11 transferred on or after January 1, 2006, to be equipped with carbon  
12 monoxide detectors.

13       (b) The rules adopted under Subsection (a) must prescribe  
14 requirements relating to the placement, installation, maintenance,  
15 and number of carbon monoxide detectors required in a dwelling.

16       Sec. 766.004. POLITICAL SUBDIVISION COMPLIANCE. A  
17 political subdivision of this state:

18           (1) shall require all dwellings in the political  
19 subdivision to be equipped with carbon monoxide detectors in a  
20 manner that complies with the rules adopted under Section 766.003;  
21 and

22           (2) may require all dwellings in the political  
23 subdivision to be equipped with carbon monoxide detectors in a  
24 manner that is more stringent than a manner that complies with the  
25 rules adopted under Section 766.003.

26       SECTION 2. Chapter 92, Property Code, is amended by adding  
27 Subchapter J to read as follows:

1           SUBCHAPTER J. CARBON MONOXIDE DETECTORS

2           Sec. 92.401. DEFINITIONS. In this subchapter:

3           (1) "Carbon monoxide detector" means a device that:

4                   (A) detects and sounds an alarm to indicate the  
5 presence of a harmful level of carbon monoxide gas; and

6                   (B) complies with Underwriters Laboratories,  
7 Inc., Standard 2034.

8           (2) " Dwelling unit" means a home, mobile home, duplex  
9 unit, apartment unit, condominium unit, or any dwelling unit in a  
10 multiunit residential structure. It also means a "dwelling" as  
11 defined by Section 92.001.

12           Sec. 92.402. APPLICATION OF OTHER LAW; MUNICIPAL  
13 REGULATION. (a) The duties of a landlord and the remedies of a  
14 tenant under this subchapter are in lieu of common law, other  
15 statutory law, including Chapter 766, Health and Safety Code, and  
16 local ordinances regarding a residential landlord's duty to  
17 install, inspect, or repair a carbon monoxide detector in a  
18 dwelling unit.

19           (b) Notwithstanding Subsection (a), this subchapter does  
20 not:

21                   (1) affect a local ordinance adopted before September  
22 1, 2005, that requires landlords to install carbon monoxide  
23 detectors in new or remodeled dwelling units before September 1,  
24 2005, if the ordinance conforms with or is amended to conform with  
25 this subchapter;

26                   (2) limit or prevent adoption or enforcement of a  
27 local ordinance relating to fire safety as a part of a building,

1 fire, or housing code, including any requirements relating to the  
2 installation of carbon monoxide detectors or the type of carbon  
3 monoxide detectors;

4 (3) otherwise limit or prevent the adoption of a local  
5 ordinance that conforms with this subchapter but that contains  
6 additional enforcement provisions, except as provided by  
7 Subsection (c); or

8 (4) affect a local ordinance that requires regular  
9 inspections by local officials of carbon monoxide detectors in  
10 dwelling units and that requires carbon monoxide detectors to be  
11 operational at the time of inspection.

12 (c) If a carbon monoxide detector powered by battery has  
13 been installed in a dwelling unit the construction of which  
14 commences on or before September 1, 2009, in compliance with this  
15 subchapter and local ordinances, a local ordinance may not require  
16 that a carbon monoxide detector powered by alternating current be  
17 installed in the unit unless:

18 (1) the interior of the unit is repaired, remodeled,  
19 or rebuilt at a projected cost of more than \$2,500 and the repair,  
20 remodeling, or rebuilding requires a municipal building permit;

21 (2) an addition to the unit is made at a projected cost  
22 of more than \$2,500;

23 (3) a carbon monoxide detector powered by alternating  
24 current was installed in the unit at any time before September 1,  
25 2009; or

26 (4) a carbon monoxide detector powered by alternating  
27 current was required by city ordinance at the time of initial

1 construction of the unit.

2 Sec. 92.403. EXEMPTIONS. This subchapter does not apply  
3 to:

4 (1) a dwelling unit that is occupied by its owner and  
5 no part of which is leased to a tenant;

6 (2) a dwelling unit in a building five or more stories  
7 in height in which carbon monoxide detectors are required or  
8 regulated by local ordinance; or

9 (3) a nursing or convalescent home licensed by the  
10 Department of Aging and Disability Services and certified to meet  
11 the Life Safety Code under federal law and regulations.

12 Sec. 92.404. INSTALLATION AND LOCATION IN DWELLING UNITS  
13 CONSTRUCTED ON OR AFTER JANUARY 1, 2006. (a) In this section,  
14 "bedroom" means a room designed with the intent that it be used for  
15 sleeping purposes.

16 (b) Before the first tenant takes possession of a dwelling  
17 unit the construction of which commences on or after January 1,  
18 2006, the landlord shall install at least one carbon monoxide  
19 detector in accordance with Section 92.406 so that the carbon  
20 monoxide detector is located outside, but in the vicinity of, each  
21 separate bedroom in the dwelling unit, except:

22 (1) if the dwelling unit is designed to use a single  
23 room for dining, living, and sleeping, the carbon monoxide detector  
24 must be located inside the room;

25 (2) if the bedrooms are served by the same corridor, at  
26 least one carbon monoxide detector must be installed in the  
27 corridor in the immediate vicinity of the bedrooms; and

1           (3) if at least one bedroom is located on a level above  
2 the living and cooking area, the carbon monoxide detector for the  
3 bedrooms must be placed in the center of the ceiling directly above  
4 the top of the stairway.

5           Sec. 92.405. INSTALLATION IN DWELLING UNITS CONSTRUCTED  
6 BEFORE JANUARY 1, 2006. (a) If construction of a dwelling unit  
7 commences before January 1, 2006, the landlord, on or before  
8 September 1, 2006, shall install at least one carbon monoxide  
9 detector in the unit in accordance with Sections 92.404 and 92.406.

10           (b) Before September 1, 2006, a tenant may install a  
11 battery-operated carbon monoxide detector in the tenant's dwelling  
12 unit without the landlord's prior consent if the installation is  
13 made in accordance with Sections 92.404 and 92.406. On termination  
14 of the tenant's lease, including after a renewal or extension, the  
15 tenant may remove the carbon monoxide detector. The tenant is  
16 liable to the landlord for any unnecessary damages to the dwelling  
17 unit caused by the removal.

18           Sec. 92.406. INSTALLATION PROCEDURE. (a) Subject to  
19 Subsections (b) and (c), a carbon monoxide detector must be  
20 installed in accordance with the manufacturer's recommended  
21 procedures.

22           (b) A carbon monoxide detector must be installed on a  
23 ceiling or wall but may not be installed within 15 feet of a heating  
24 or cooking appliance. If on a ceiling, the detector must be not  
25 closer than six inches to a wall. If on a wall, the detector must be  
26 not closer than six inches and not farther than 12 inches from the  
27 ceiling.

1       (c) A carbon monoxide detector may be located other than as  
2 required by Subsection (b) if a local ordinance or a local or state  
3 fire marshal requires or approves the location of the detector.

4       Sec. 92.407. LANDLORD'S DUTY TO INSPECT AND REPAIR. (a) A  
5 landlord shall inspect and repair a carbon monoxide detector  
6 according to this section.

7       (b) The landlord shall determine that a carbon monoxide  
8 detector is in good working order at the beginning of the tenant's  
9 possession by testing the carbon monoxide detector following test  
10 procedures recommended by the manufacturer of the particular model.

11       (c) During the term of a lease or during a renewal or  
12 extension, the landlord has a duty to inspect and repair a carbon  
13 monoxide detector only if the tenant:

14               (1) gives the landlord notice of a malfunction; or

15               (2) requests the landlord to inspect or repair the  
16 carbon monoxide detector.

17       (d) The duty to inspect and repair does not exist with  
18 respect to damage or a malfunction caused by the tenant, the  
19 tenant's family, or the tenant's guests or invitees during the term  
20 of the lease or a renewal or extension, except that the landlord has  
21 a duty to repair or replace a carbon monoxide detector if the tenant  
22 pays in advance the reasonable repair or replacement cost,  
23 including labor, materials, taxes, and overhead.

24       (e) The landlord shall comply with the tenant's request for  
25 inspection or repair within a reasonable time, considering the  
26 availability of material, labor, and utilities.

27       (f) The landlord has met the duty to inspect and repair if

1 the carbon monoxide detector is in good working order after the  
2 landlord tests the carbon monoxide detector by following the test  
3 procedures recommended by the manufacturer of the particular model.

4 (g) The landlord does not have a duty to provide batteries  
5 for a battery-operated carbon monoxide detector after a tenant  
6 takes possession if the carbon monoxide detector was in good  
7 working order at the time the tenant took possession. A carbon  
8 monoxide detector that is in good working order at the beginning of  
9 a tenant's possession is presumed to be in good working order until  
10 the tenant requests repair of the carbon monoxide detector as  
11 provided by this subchapter.

12 Sec. 92.408. LANDLORD'S FAILURE TO INSTALL, INSPECT, OR  
13 REPAIR. (a) Subject to Section 92.410, a landlord is liable as  
14 provided by Section 92.409 if:

15 (1) the landlord does not install a carbon monoxide  
16 detector at the time of initial occupancy by the tenant as required  
17 by Section 92.404 or a municipal ordinance permitted by this  
18 subchapter; or

19 (2) the landlord does not install, inspect, or repair  
20 the carbon monoxide detector on or before the seventh day after the  
21 date the tenant gives the landlord written notice requesting the  
22 landlord to install, inspect, or repair a carbon monoxide detector  
23 in accordance with this subchapter.

24 (b) If the tenant gives notice under Subsection (a)(2) and  
25 the tenant's lease is in writing, the lease may require the tenant  
26 to make the initial request for installation, inspection, or repair  
27 in writing.



1       Sec. 92.409. TENANT REMEDIES. A tenant of a landlord who  
2 is liable under Section 92.408 may obtain or exercise one or more of  
3 the following remedies:

4           (1) a court order directing the landlord to comply  
5 with the tenant's request if the tenant is in possession of the  
6 dwelling unit;

7           (2) a judgment against the landlord for damages  
8 suffered by the tenant because of the landlord's violation;

9           (3) a judgment against the landlord for a civil  
10 penalty of one month's rent plus \$100 if the landlord violates  
11 Section 92.408(a)(2);

12           (4) a judgment against the landlord for court costs;

13           (5) a judgment against the landlord for attorney's  
14 fees in an action under Subdivision (1), (2), or (3); and

15           (6) unilateral termination of the lease without a  
16 court proceeding if the landlord violates Section 92.408(a)(2).

17       Sec. 92.410. LANDLORD'S DEFENSES. A landlord is not liable  
18 as provided by Section 92.409 if:

19           (1) on the date the tenant gives the notice required by  
20 Section 92.408 the tenant has not paid all rent due from the tenant;  
21 or

22           (2) on the date the tenant terminates the lease or  
23 files suit the tenant has not fully paid costs requested by the  
24 landlord and authorized by Section 92.407.

25       Sec. 92.411. TENANT'S DISABLING OF CARBON MONOXIDE  
26 DETECTOR; LANDLORD REMEDIES. (a) A tenant is liable as provided  
27 by this section if the tenant:

1           (1) removes a battery from a carbon monoxide detector  
2 without immediately replacing it with a working battery; or

3           (2) knowingly disconnects or intentionally damages a  
4 carbon monoxide detector, causing the detector to malfunction.

5           (b) Except as provided by Subsection (c), a landlord of a  
6 tenant who is liable under Subsection (a) may obtain a judgment  
7 against the tenant for damages incurred by the landlord because of  
8 the tenant's conduct described by Subsection (a).

9           (c) A tenant is not liable for damages incurred by the  
10 landlord if the damage is caused by the landlord's failure to repair  
11 the carbon monoxide detector within a reasonable time after the  
12 tenant requests that it be repaired, considering the availability  
13 of material, labor, and utilities.

14           (d) A landlord of a tenant who is liable under Subsection  
15 (a) may obtain or exercise one or more of the remedies in Subsection  
16 (f) if:

17           (1) a lease between the landlord and tenant contains a  
18 notice, in underlined or boldface type, that states in substance  
19 that the tenant must not disconnect or intentionally damage a  
20 carbon monoxide detector or remove the battery without immediately  
21 replacing it with a working battery and that the tenant may be  
22 subject to damages, civil penalties, and attorney's fees under  
23 Section 92.411 of the Property Code for not complying with the  
24 notice; and

25           (2) the landlord has given notice to the tenant that  
26 the landlord intends to exercise the landlord's remedies under this  
27 subchapter if the tenant does not reconnect, repair, or replace the

1 carbon monoxide detector or replace the removed battery within  
2 seven days after being notified by the landlord to do so.

3 (e) The notice in Subsection (d)(2) must be in a separate  
4 document furnished to the tenant after the landlord has discovered  
5 that the tenant has disconnected or damaged the carbon monoxide  
6 detector or removed a battery from it.

7 (f) If a tenant is liable under Subsection (a) and the  
8 tenant does not comply with the landlord's notice under Subsections  
9 (d) and (e), the landlord is entitled to the following remedies  
10 against the tenant:

11 (1) a court order directing the tenant to comply with  
12 the landlord's notice;

13 (2) a judgment against the tenant for a civil penalty  
14 of one month's rent plus \$100;

15 (3) a judgment against the tenant for court costs; and

16 (4) a judgment against the tenant for reasonable  
17 attorney's fees.

18 Sec. 92.412. GUEST OR INVITEE REMEDIES. (a) A tenant's  
19 guest or invitee who incurs damage because of a landlord's failure  
20 to install, inspect, or repair a carbon monoxide detector as  
21 required by this subchapter may recover a judgment against the  
22 landlord for the damage.

23 (b) A tenant's guest or invitee who incurs damage because  
24 the tenant removed a battery without immediately replacing it with  
25 a working battery or because the tenant knowingly disconnected or  
26 intentionally damaged the carbon monoxide detector, causing it to  
27 malfunction, may recover a judgment against the tenant for the

1 damage.

2 Sec. 92.413. AGENT FOR DELIVERY OF NOTICE. A managing or  
3 leasing agent, whether residing or maintaining an office on-site or  
4 off-site, is the agent of the landlord for purposes of notice and  
5 other communications required or permitted by this subchapter.

6 SECTION 3. The Health and Human Services Commission shall  
7 adopt rules under Section 766.003, Health and Safety Code, as added  
8 by this Act, not later than December 1, 2005.

9 SECTION 4. Subchapter J, Chapter 92, Property Code, as  
10 added by this Act, applies only to a cause of action that accrues on  
11 or after the effective date of this Act. A cause of action that  
12 accrues before the effective date of this Act is governed by the law  
13 governing the cause of action immediately before the effective date  
14 of this Act, and that law is continued in effect for that purpose.

15 SECTION 5. This Act takes effect September 1, 2005.