

BILL ANALYSIS

Senate Research Center
82R17482 TJS-F

C.S.S.B. 1099
By: Van de Putte
Business & Commerce
4/7/2011
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas was one of the first states to require smoke alarms in rental properties. At that time, the standard was that the alarms should be placed in the vicinity of, but outside of, bedrooms. Since that time, standards in the international model codes used by cities have changed to require smoke alarms to be placed inside bedrooms.

In addition, code language is unclear about inspection requirements for single-use non-refillable residential 1A10BC fire extinguishers. Annual inspections are required for larger pressure-tested refillable fire extinguishers, but some cities have also mandated that single-use 1A10BC extinguishers be inspected even though these extinguishers cannot be tested. The requirement to have 1A10BC extinguishers inspected by a third-party is costly and unnecessary, since they can easily be checked visually.

This bill amends current law to make the placement of smoke alarms in rental properties consistent with model codes by requiring that alarms be placed in bedrooms. Owners of properties first occupied before September 1, 2011, have until January 1, 2013, to install battery-operated devices in existing properties. In addition, the bill provides that devices placed in bedrooms of existing properties do not have to be interconnected with other devices. Cities could place stricter requirements on alarms installed in properties built after the effective date of the bill.

The bill also clarifies that single-use 1A10BC residential fire extinguishers can be inspected by owners when new residents move in to make sure that they are in good working order. This requirement is similar to the requirement that owners must meet for smoke alarms.

C.S.S.B. 1099 amends current law relating to smoke alarms and fire extinguishers in residential rental units.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 92.006(a) and (b), Property Code, as follows:

- (a) Prohibits a landlord's duty to install a smoke alarm, rather than a smoke detector, under Subchapter F from being waived, and prohibits a tenant from waiving a remedy for the landlord's noninstallation or the tenant's limited right of installation and removal. Authorizes the landlord's duty of inspection and repair of smoke alarms, rather than smoke detectors, under Subchapter F to be waived only by written agreement.
- (b) Makes a conforming change.

SECTION 2. Amends the heading to Subchapter F, Chapter 92, Property Code, to read as follows:

SUBCHAPTER F. SMOKE ALARMS AND FIRE EXTINGUISHERS

SECTION 3. Amends Sections 92.251, 92.252, 92.253, 92.254, 92.255, 92.257, 92.2571, 92.258, and 92.259, Property Code, as follows:

Sec. 92.251. New heading: DEFINITIONS. Defines, in this subchapter, "bedroom" and "smoke alarm." Makes nonsubstantive changes.

Sec. 92.252. APPLICATION OF OTHER LAW; MUNICIPAL REGULATION. (a) Provides that the duties of a landlord and the remedies of a tenant under this subchapter are in lieu of common law, other statutory law, and local ordinances regarding a residential landlord's duties to install, inspect, or repair a fire extinguisher or smoke alarm in a dwelling unit, rather than a residential landlord's duties to install, inspect, or repair a smoke detector in a dwelling unit. Makes conforming changes.

(b) Prohibits a local ordinance, if a smoke alarm powered by battery has been installed in a dwelling unit built before September 1, 1987, in compliance with this subchapter and local ordinances, from requiring that a smoke alarm powered by alternating current be installed in the unit unless:

(1) the interior of the unit is repaired, remodeled, or rebuilt at a projected cost of more than \$5,000, rather than a projected cost of more than \$2,500, and:

(A) the repair, remodeling, or rebuilding requires a municipal building permit; and

(B) either:

(i) the repair, remodeling, or rebuilding results in the removal of interior walls or ceiling finishes exposing the structure; or

(ii) the interior of the unit provides access for building wiring through an attic, crawl space, or basement without the removal of interior walls or ceiling finishes;

(2) an addition occurs to the unit at a projected cost of more than \$5,000, rather than a projected cost of more than \$2,500;

(3) a smoke alarm, rather than a smoke detector, powered by alternating current was actually installed in the unit at any time prior to September 1, 1987; or

(4) a smoke alarm, rather than a smoke detector, powered by alternating current was required by lawful city ordinance at the time of initial construction of the unit.

Sec. 92.253. EXEMPTIONS. (a) Provides that this subchapter does not apply to:

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

(2) a dwelling unit in a building five or more stories in height in which smoke alarms, rather than smoke detectors, are required or regulated by local ordinance; or

(3) a nursing or convalescent home licensed by the Department of State Health Services, rather than the Texas Department of Health, and certified to meet the Life Safety Code under federal law and regulations.

(b) Requires a person licensed to install fire alarms or fire detection devices under Chapter 6002 (Fire Detection and Alarm Device Installation), Insurance Code, notwithstanding this subchapter, to comply with that chapter when installing smoke alarms, rather than requiring a person licensed by the State Board of Insurance to install fire alarms or fire detection devices under Article 5.43-2, Insurance Code, notwithstanding this subchapter, to comply with that article when installing smoke detectors.

Sec. 92.254. New heading: SMOKE ALARM. (a) Requires that a smoke alarm be:

(1) designed to detect both the visible and invisible products of combustion;

(2) designed with an alarm audible to a person in the bedrooms it serves; and

(3) tested and listed for use as a smoke alarm by Underwriters Laboratories, Inc., Factory Mutual Research Corporation, or United States Testing Company, Inc.

Deletes existing Subdivision (3) requiring that smoke detectors be powered by battery, alternating current, or other power sources as required by local ordinance; and existing Subdivision (5) requiring that smoke detectors be in good working order; and redesignates existing Subdivision (4) as Subdivision (3). Makes conforming changes.

(a-1) Requires that a smoke alarm, rather than a smoke detector, if requested by a tenant as an accommodation for a person with a hearing-impairment disability or as required by law as a reasonable accommodation for a person with a hearing-impairment disability, in addition to complying with Subsection (a), be capable of alerting a hearing-impaired person in the bedroom it serves.

(b) Authorizes a smoke alarm, except as provided by Section 92.255(b), to be powered by battery, alternating current, or other power source as required by local ordinances.

Sec. 92.255. New heading: INSTALLATION AND LOCATION. (a) Requires a landlord to install at least one smoke alarm in each separate bedroom in a dwelling unit, rather than requiring a landlord, before the first tenant takes possession of a dwelling unit, to install at least one smoke detector outside, but in the vicinity of, each separate bedroom in the dwelling unit. Provides that in addition:

(1) if the dwelling unit is designed to use a single room for dining, living, and sleeping, the smoke alarm must be located inside the room;

(2) if multiple bedrooms are served by the same corridor, at least one smoke alarm must be installed in the corridor in the immediate vicinity of the bedrooms; and

(3) if the dwelling unit has multiple levels, at least one smoke alarm must be located on each level, rather than requiring that the smoke detector for the bedrooms, if at least one bedroom is located on a level above the living and cooking area, be placed in the center of the ceiling directly above the top of the stairway.

(b) Authorizes a smoke alarm installed in accordance with Subsection (a), if a dwelling unit was occupied as a residence before September 1, 2011, or a certificate of occupancy was issued for the dwelling unit before that date, to be powered by battery and is not required to be interconnected with other smoke

alarms. Deletes existing text defining, in this section, "bedroom." Makes conforming and nonsubstantive changes.

Sec. 92.257. INSTALLATION PROCEDURE. (a) Requires that a smoke alarm, rather than a smoke detector, subject to Subsections (b) and (c), be installed according to the manufacturer's recommended procedures.

(b) Requires that a smoke alarm, rather than detector, be installed on a ceiling or wall. Requires that, if on a ceiling, it must be no closer than six inches to a wall, and if on a wall, it must be no closer than six inches and no farther than 12 inches from the ceiling.

(c) Authorizes a smoke alarm to be located other than as required by Subsection (a) or (b), rather than as required by Subsection (b), if a local ordinance or a local state fire marshal approves. Makes a conforming change.

Sec. 92.2571. ALTERNATIVE COMPLIANCE. Provides that a landlord complies with the requirements of this subchapter relating to the provision of smoke alarms, rather than the provision of smoke detectors, in the dwelling unit if the landlord:

(1) has a fire detection device, as defined by Section 6002.002 (Definitions), rather than Article 5.43-2, Insurance Code, that includes a fire alarm device, as defined by Section 6002.002, Insurance Code, installed in a dwelling unit; or

(2) for a dwelling unit that is a one-family or two-family dwelling unit, installs smoke detectors in compliance with Chapter 766 (Fire Safety in Residential Dwellings), Health and Safety Code.

Makes a conforming change.

Sec. 92.258. INSPECTION AND REPAIR. (a) Requires the landlord to inspect and repair a smoke alarm, rather than inspect and repair a smoke detector, according to this section.

(b)-(c) Makes conforming changes.

(d) Requires the landlord to comply with the tenant's request for inspection or repair of a smoke alarm within a reasonable time, considering the availability of material, labor, and utilities.

(e)-(g) Makes conforming changes.

Sec. 92.259. LANDLORD'S FAILURE TO INSTALL, INSPECT, OR REPAIR. (a) Provides that a landlord is liable according to this subchapter if:

(1) the landlord did not install a smoke alarm, rather than installing a smoke detector, at the time of initial occupancy by the tenant as required by this subchapter or a municipal ordinance permitted by this subchapter; or

(2) the landlord does not install, inspect, or repair the smoke alarm, rather than smoke detector, on or before the seventh day after the date the tenant gives the landlord written notice that the tenant may exercise his remedies under this subchapter if the landlord does not comply with the request within seven days.

(b) Authorizes the lease to require, if the tenant gives notice under Subsection (a)(2) and the tenant's lease is in writing, that the tenant make the initial request for installation, inspection, or repair of a smoke alarm in writing.

SECTION 4. Amends the heading to Section 92.2611, Property Code, to read as follows:

Sec. 92.2611. TENANT'S DISABLING OF A SMOKE ALARM.

SECTION 5. Amends Section 92.2611, Property Code, by amending Subsections (a)-(d) and (f) and adding Subsection (d-1), as follows:

(a) Provides that a tenant is liable according to this subchapter if the tenant removes a battery from a smoke alarm, rather than from a smoke detector, without immediately replacing it with a working battery or knowingly disconnects or intentionally damages a smoke alarm, rather than a smoke detector, causing it to malfunction.

(b)-(d) Makes conforming changes.

(d-1) Creates this subsection from existing text. Requires that the notice in Subsection (d)(2) (authorizing a landlord of a tenant who is liable under Subsection (a) to obtain or exercise certain remedies if the landlord has given notice to the tenant that the landlord intends to exercise the landlord's remedies under this subchapter if the tenant does not reconnect, repair, or replace the smoke alarm or replace the removed battery within seven days after being notified by the landlord to do so) be in a separate document furnished to the tenant after the landlord has discovered that the tenant has disconnected or damaged the smoke alarm or removed a battery from it. Makes a conforming change.

(f) Makes conforming changes.

SECTION 6. Amends Subchapter F, Chapter 92, Property Code, by adding Sections 92.263 and 92.264, as follows:

Sec. 92.263. INSPECTION OF RESIDENTIAL FIRE EXTINGUISHER. (a) Requires the landlord or the landlord's agent, if a landlord has installed a 1A10BC residential fire extinguisher as defined by the National Fire Protection Association or other non-rechargeable fire extinguisher in accordance with a local ordinance or other law, to inspect the fire extinguisher at the beginning of a tenant's possession, and within a reasonable time after receiving a written request by a tenant.

(b) Requires that, at minimum, an inspection under this section include checking to ensure the fire extinguisher is present, and checking to ensure the fire extinguisher gauge or pressure indicator indicates the correct pressure as recommended by the manufacturer of the fire extinguisher.

(c) Provides that a fire extinguisher that satisfies the inspection requirements of Subsection (b) at the beginning of a tenant's possession is presumed to be in good working order until the tenant requests an inspection in writing.

Sec. 92.264. DUTY TO REPAIR OR REPLACE. (a) Requires the landlord to repair or replace a fire extinguisher at the landlord's expense if, on inspection, the fire extinguisher is found not to be functioning, or not to have the correct pressure indicated on the gauge or pressure indicator as recommended by the manufacturer of the fire extinguisher, or a tenant has notified the landlord that the tenant has used the fire extinguisher for a legitimate purpose.

(b) Provides that if the tenant or the tenant's invited guest removes, misuses, damages, or otherwise disables a fire extinguisher:

(1) the landlord is not required to repair or replace the fire extinguisher at the landlord's expense; and

(2) the landlord is required to repair or replace the fire extinguisher within a reasonable time if the tenant pays in advance the reasonable repair or replacement cost, including labor, materials, taxes, and overhead.

SECTION 7. Repealer: Section 92.256 (Installation in Units Constructed or Occupied On or Before September 1, 1981), Property Code.

SECTION 8. Requires a landlord, with respect to a dwelling unit first occupied or for which a certificate of occupancy was issued before September 1, 2011, to comply with the change in law made by Section 92.255, Property Code, as amended by this Act, on or before January 1, 2013.

SECTION 9. Effective date: September 1, 2011.