

By: Miller of Comal, et al.

H.B. No. 1168

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to smoke alarms and fire extinguishers in residential  
3 rental units.

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

5 SECTION 1. Sections 92.006(a) and (b), Property Code, are  
6 amended to read as follows:

7 (a) A landlord's duty or a tenant's remedy concerning  
8 security deposits, security devices, the landlord's disclosure of  
9 ownership and management, or utility cutoffs, as provided by  
10 Subchapter C, D, E, or G, respectively, may not be waived. A  
11 landlord's duty to install a smoke alarm [~~detector~~] under  
12 Subchapter F may not be waived, nor may a tenant waive a remedy for  
13 the landlord's noninstallation or waive the tenant's limited right  
14 of installation and removal. The landlord's duty of inspection and  
15 repair of smoke alarms [~~detectors~~] under Subchapter F may be waived  
16 only by written agreement.

17 (b) A landlord's duties and the tenant's remedies concerning  
18 security devices, the landlord's disclosure of ownership and  
19 management, or smoke alarms [~~detectors~~], as provided by Subchapter  
20 D, E, or F, respectively, may be enlarged only by specific written  
21 agreement.

22 SECTION 2. The heading to Subchapter F, Chapter 92,  
23 Property Code, is amended to read as follows:

24 SUBCHAPTER F. SMOKE ALARMS AND FIRE EXTINGUISHERS [~~DETECTORS~~]

1 SECTION 3. Sections 92.251, 92.252, 92.253, 92.254, 92.255,  
2 92.257, 92.2571, 92.258, and 92.259, Property Code, are amended to  
3 read as follows:

4 Sec. 92.251. DEFINITIONS [~~DEFINITION~~]. In this subchapter:

5 (1) "Bedroom" means a room designed with the intent  
6 that it be used for sleeping purposes.

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

11 (3) "Smoke alarm" means a device designed to detect  
12 and to alert occupants of a dwelling unit to the visible and  
13 invisible products of combustion by means of an audible alarm.

14 Sec. 92.252. APPLICATION OF OTHER LAW; MUNICIPAL  
15 REGULATION. (a) The duties of a landlord and the remedies of a  
16 tenant under this subchapter are in lieu of common law, other  
17 statutory law, and local ordinances regarding a residential  
18 landlord's duty to install, inspect, or repair a fire extinguisher  
19 or smoke alarm [~~detector~~] in a dwelling unit. However, this  
20 subchapter does not:

21 (1) affect a local ordinance adopted before September  
22 1, 1981, that requires landlords to install smoke alarms  
23 [~~detectors~~] in new or remodeled dwelling units before September 1,  
24 1981, 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 smoke alarms [~~detectors~~] or the type of smoke  
3 alarms [~~detectors~~];

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

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

12 (b) If a smoke alarm [~~detector~~] powered by battery has been  
13 installed in a dwelling unit built before September 1, 1987, in  
14 compliance with this subchapter and local ordinances, a local  
15 ordinance may not require that a smoke alarm [~~detector~~] powered by  
16 alternating current be installed in the unit unless:

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

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

21 (B) either:

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

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

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

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

6 (4) a smoke alarm [~~detector~~] powered by alternating  
7 current was required by lawful city ordinance at the time of initial  
8 construction of the unit.

9 Sec. 92.253. EXEMPTIONS. (a) This subchapter does not  
10 apply to:

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

13 (2) a dwelling unit in a building five or more stories  
14 in height in which smoke alarms [~~detectors~~] are required or  
15 regulated by local ordinance; or

16 (3) a nursing or convalescent home licensed by the  
17 [~~Texas~~] Department of State Health Services and certified to meet  
18 the Life Safety Code under federal law and regulations.

19 (b) Notwithstanding this subchapter, a person licensed [~~by~~  
20 ~~the State Board of Insurance~~] to install fire alarms or fire  
21 detection devices under Chapter 6002 [~~Article 5.43-2~~], Insurance  
22 Code, shall comply with that chapter [~~article~~] when installing  
23 smoke alarms [~~detectors~~].

24 Sec. 92.254. SMOKE ALARM [~~DETECTOR~~]. (a) A smoke alarm  
25 [~~detector~~] must be:

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

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

3 (3) [~~powered by battery, alternating current, or other~~  
4 ~~power source as required by local ordinance,~~

5 [~~(4)~~] tested and listed for use as a smoke alarm  
6 [~~detector~~] by Underwriters Laboratories, Inc., Factory Mutual  
7 Research Corporation, or United States Testing Company, Inc. [~~, and~~

8 [~~(5) in good working order.~~]

9 (a-1) If requested by a tenant as an accommodation for a  
10 person with a hearing-impairment disability or as required by law  
11 as a reasonable accommodation for a person with a  
12 hearing-impairment disability, a smoke alarm [~~detector~~] must, in  
13 addition to complying with Subsection (a), be capable of alerting a  
14 hearing-impaired person in the bedrooms it serves.

15 (b) Except as provided by Section 92.255(b), a smoke alarm  
16 may be powered by battery, alternating current, or other power  
17 source as required by local ordinance. The power system and  
18 installation procedure of a security device that is electrically  
19 operated rather than battery operated must comply with applicable  
20 local ordinances.

21 Sec. 92.255. INSTALLATION AND LOCATION [~~IN NEW~~  
22 ~~CONSTRUCTION~~]. (a) A [~~Before the first tenant takes possession of~~  
23 ~~a dwelling unit, the~~] landlord shall install at least one smoke  
24 alarm in [~~detector outside, but in the vicinity of,~~] each separate  
25 bedroom in a [~~the~~] dwelling unit. In addition [~~, except~~]:

26 (1) if the dwelling unit is designed to use a single  
27 room for dining, living, and sleeping, the smoke alarm [~~detector~~]

1 must be located inside the room;

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

5 (3) if the dwelling unit has multiple levels, at least  
6 one smoke alarm must be ~~[bedroom is]~~ located on each ~~[a]~~ level  
7 ~~[above the living and cooking area, the smoke detector for the~~  
8 ~~bedrooms must be placed in the center of the ceiling directly above~~  
9 ~~the top of the stairway].~~

10 (b) If a dwelling unit was occupied as a residence before  
11 September 1, 2011, or a certificate of occupancy was issued for the  
12 dwelling unit before that date, a smoke alarm installed in  
13 accordance with Subsection (a) may be powered by battery and is not  
14 required to be interconnected with other smoke alarms. ~~[In this~~  
15 ~~section, "bedroom" means a room designed with the intent that it be~~  
16 ~~used for sleeping purposes.]~~

17 Sec. 92.257. INSTALLATION PROCEDURE. (a) Subject to  
18 Subsections (b) and (c), a smoke alarm ~~[detector]~~ must be installed  
19 according to the manufacturer's recommended procedures.

20 (b) A smoke alarm ~~[detector]~~ must be installed on a ceiling  
21 or wall. If on a ceiling, it must be no closer than six inches to a  
22 wall. If on a wall, it must be no closer than six inches and no  
23 farther than 12 inches from the ceiling.

24 (c) A smoke alarm ~~[detector]~~ may be located other than as  
25 required by Subsection (a) or (b) if a local ordinance or a local or  
26 state fire marshal approves.

27 Sec. 92.2571. ALTERNATIVE COMPLIANCE. A landlord complies

1 with the requirements of this subchapter relating to the provision  
2 of smoke alarms [~~detectors~~] in the dwelling unit if the landlord:

3 (1) has a fire detection device, as defined by Section  
4 6002.002 [~~Article 5.43-2~~], Insurance Code, that includes a fire  
5 alarm [~~smoke-detection~~] device, as defined by Section 6002.002,  
6 Insurance Code, installed in a dwelling unit; or

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

10 Sec. 92.258. INSPECTION AND REPAIR. (a) The landlord shall  
11 inspect and repair a smoke alarm [~~detector~~] according to this  
12 section.

13 (b) The landlord shall determine that the smoke alarm  
14 [~~detector~~] is in good working order at the beginning of the tenant's  
15 possession by testing the smoke alarm [~~detector~~] with smoke, by  
16 operating the testing button on the smoke alarm [~~detector~~], or by  
17 following other recommended test procedures of the manufacturer for  
18 the particular model.

19 (c) During the term of a lease or during a renewal or  
20 extension, the landlord has a duty to inspect and repair a smoke  
21 alarm [~~detector~~], but only if the tenant gives the landlord notice  
22 of a malfunction or requests to the landlord that the smoke alarm  
23 [~~detector~~] be inspected or repaired. This duty does not exist with  
24 respect to damage or a malfunction caused by the tenant, the  
25 tenant's family, or the tenant's guests or invitees during the term  
26 of the lease or a renewal or extension, except that the landlord has  
27 a duty to repair or replace the smoke alarm [~~detector~~] if the tenant

1 pays in advance the reasonable repair or replacement cost,  
2 including labor, materials, taxes, and overhead.

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

6 (e) The landlord has met the duty to inspect and repair if  
7 the smoke alarm [~~detector~~] is in good working order after the  
8 landlord tests the smoke alarm [~~detector~~] with smoke, operates the  
9 testing button on the smoke alarm [~~detector~~], or follows other  
10 recommended test procedures of the manufacturer for the particular  
11 model.

12 (f) The landlord is not obligated to provide batteries for a  
13 battery-operated smoke alarm [~~detector~~] after a tenant takes  
14 possession if the smoke alarm [~~detector~~] was in good working order  
15 at the time the tenant took possession.

16 (g) A smoke alarm [~~detector~~] that is in good working order  
17 at the beginning of a tenant's possession is presumed to be in good  
18 working order until the tenant requests repair of the smoke alarm  
19 [~~detector~~] as provided by this subchapter.

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

22 (1) the landlord did not install a smoke alarm  
23 [~~detector~~] at the time of initial occupancy by the tenant as  
24 required by this subchapter or a municipal ordinance permitted by  
25 this subchapter; or

26 (2) the landlord does not install, inspect, or repair  
27 the smoke alarm [~~detector~~] on or before the seventh day after the



1 date the tenant gives the landlord written notice that the tenant  
2 may exercise his remedies under this subchapter if the landlord  
3 does not comply with the request within seven days.

4 (b) If the tenant gives notice under Subsection (a)(2) and  
5 the tenant's lease is in writing, the lease may require the tenant  
6 to make the initial request for installation, inspection, or repair  
7 of a smoke alarm in writing.

8 SECTION 4. The heading to Section 92.2611, Property Code,  
9 is amended to read as follows:

10 Sec. 92.2611. TENANT'S DISABLING OF A SMOKE ALARM  
11 [~~DETECTOR~~].

12 SECTION 5. Section 92.2611, Property Code, is amended by  
13 amending Subsections (a), (b), (c), (d), and (f) and adding  
14 Subsection (d-1) to read as follows:

15 (a) A tenant is liable according to this subchapter if the  
16 tenant removes a battery from a smoke alarm [~~detector~~] without  
17 immediately replacing it with a working battery or knowingly  
18 disconnects or intentionally damages a smoke alarm [~~detector~~],  
19 causing it to malfunction.

20 (b) Except as provided in Subsection (c), a landlord of a  
21 tenant who is liable under Subsection (a) may obtain a judgment  
22 against the tenant for damages suffered by the landlord because the  
23 tenant removed a battery from a smoke alarm [~~detector~~] without  
24 immediately replacing it with a working battery or knowingly  
25 disconnected or intentionally damaged the smoke alarm [~~detector~~],  
26 causing it to malfunction.

27 (c) A tenant is not liable for damages suffered by the

1 landlord if the damage is caused by the landlord's failure to repair  
2 the smoke alarm [~~detector~~] within a reasonable time after the  
3 tenant requests it to be repaired, considering the availability of  
4 material, labor, and utilities.

5 (d) A landlord of a tenant who is liable under Subsection  
6 (a) may obtain or exercise one or more of the remedies in Subsection  
7 (e) if:

8 (1) a lease between the landlord and tenant contains a  
9 notice, in underlined or boldfaced print, which states in substance  
10 that the tenant must not disconnect or intentionally damage a smoke  
11 alarm [~~detector~~] or remove the battery without immediately  
12 replacing it with a working battery and that the tenant may be  
13 subject to damages, civil penalties, and attorney's fees under  
14 Section 92.2611 of the Property Code for not complying with the  
15 notice; and

16 (2) the landlord has given notice to the tenant that  
17 the landlord intends to exercise the landlord's remedies under this  
18 subchapter if the tenant does not reconnect, repair, or replace the  
19 smoke alarm [~~detector~~] or replace the removed battery within seven  
20 days after being notified by the landlord to do so.

21 (d-1) The notice in Subsection (d)(2) [~~Subdivision (2)~~]  
22 must be in a separate document furnished to the tenant after the  
23 landlord has discovered that the tenant has disconnected or damaged  
24 the smoke alarm [~~detector~~] or removed a battery from it.

25 (f) A tenant's guest or invitee who suffers damage because  
26 of a landlord's failure to install, inspect, or repair a smoke alarm  
27 [~~detector~~] as required by this subchapter may recover a judgment

1 against the landlord for the damage. A tenant's guest or invitee  
2 who suffers damage because the tenant removed a battery without  
3 immediately replacing it with a working battery or because the  
4 tenant knowingly disconnected or intentionally damaged the smoke  
5 alarm [detector], causing it to malfunction, may recover a judgment  
6 against the tenant for the damage.

7 SECTION 6. Subchapter F, Chapter 92, Property Code, is  
8 amended by adding Sections 92.263 and 92.264 to read as follows:

9 Sec. 92.263. INSPECTION OF RESIDENTIAL FIRE EXTINGUISHER.

10 (a) If a landlord has installed a 1A10BC residential fire  
11 extinguisher as defined by the National Fire Protection Association  
12 or other non-rechargeable fire extinguisher in accordance with a  
13 local ordinance or other law, the landlord or the landlord's agent  
14 shall inspect the fire extinguisher:

- 15 (1) at the beginning of a tenant's possession; and  
16 (2) within a reasonable time after receiving a written  
17 request by a tenant.

18 (b) At a minimum, an inspection under this section must  
19 include:

- 20 (1) checking to ensure the fire extinguisher is  
21 present; and  
22 (2) checking to ensure the fire extinguisher gauge or  
23 pressure indicator indicates the correct pressure as recommended by  
24 the manufacturer of the fire extinguisher.

25 (c) A fire extinguisher that satisfies the inspection  
26 requirements of Subsection (b) at the beginning of a tenant's  
27 possession is presumed to be in good working order until the tenant

1 requests an inspection in writing.

2 Sec. 92.264. DUTY TO REPAIR OR REPLACE. (a) The landlord  
3 shall repair or replace a fire extinguisher at the landlord's  
4 expense if:

5 (1) on inspection, the fire extinguisher is found:

6 (A) not to be functioning; or

7 (B) not to have the correct pressure indicated on  
8 the gauge or pressure indicator as recommended by the manufacturer  
9 of the fire extinguisher; or

10 (2) a tenant has notified the landlord that the tenant  
11 has used the fire extinguisher for a legitimate purpose.

12 (b) If the tenant or the tenant's invited guest removes,  
13 misuses, damages, or otherwise disables a fire extinguisher:

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

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

20 SECTION 7. Section 92.256, Property Code, is repealed.

21 SECTION 8. With respect to a dwelling unit first occupied or  
22 for which a certificate of occupancy was issued before September 1,  
23 2011, a landlord shall comply with the change in law made by Section  
24 92.255, Property Code, as amended by this Act, on or before January  
25 1, 2013.

26 SECTION 9. This Act takes effect September 1, 2011.