

By: Miller of Comal, et al.

H.B. No. 1168

Substitute the following for H.B. No. 1168:

By: Quintanilla

C.S.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.