

1-1 By: Miller of Comal, et al. H.B. No. 1168
1-2 (Senate Sponsor - Van de Putte)
1-3 (In the Senate - Received from the House April 27, 2011;
1-4 April 28, 2011, read first time and referred to Committee on
1-5 Administration; May 12, 2011, reported adversely, with favorable
1-6 Committee Substitute by the following vote: Yeas 4, Nays 0;
1-7 May 12, 2011, sent to printer.)

1-8 COMMITTEE SUBSTITUTE FOR H.B. No. 1168 By: Uresti

1-9 A BILL TO BE ENTITLED
1-10 AN ACT

1-11 relating to smoke alarms and fire extinguishers in residential
1-12 rental units.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Sections 92.006(a) and (b), Property Code, are
1-15 amended to read as follows:

1-16 (a) A landlord's duty or a tenant's remedy concerning
1-17 security deposits, security devices, the landlord's disclosure of
1-18 ownership and management, or utility cutoffs, as provided by
1-19 Subchapter C, D, E, or G, respectively, may not be waived. A
1-20 landlord's duty to install a smoke alarm [~~detector~~] under
1-21 Subchapter F may not be waived, nor may a tenant waive a remedy for
1-22 the landlord's noninstallation or waive the tenant's limited right
1-23 of installation and removal. The landlord's duty of inspection and
1-24 repair of smoke alarms [~~detectors~~] under Subchapter F may be waived
1-25 only by written agreement.

1-26 (b) A landlord's duties and the tenant's remedies concerning
1-27 security devices, the landlord's disclosure of ownership and
1-28 management, or smoke alarms [~~detectors~~], as provided by Subchapter
1-29 D, E, or F, respectively, may be enlarged only by specific written
1-30 agreement.

1-31 SECTION 2. The heading to Subchapter F, Chapter 92,
1-32 Property Code, is amended to read as follows:

1-33 SUBCHAPTER F. SMOKE ALARMS AND FIRE EXTINGUISHERS [~~DETECTORS~~]

1-34 SECTION 3. Sections 92.251, 92.252, 92.253, 92.254, 92.255,
1-35 92.257, 92.2571, 92.258, and 92.259, Property Code, are amended to
1-36 read as follows:

1-37 Sec. 92.251. DEFINITIONS [~~DEFINITION~~]. In this subchapter:

1-38 (1) "Bedroom" means a room designed with the intent
1-39 that it be used for sleeping purposes.

1-40 (2) "Dwelling [,"dwelling] unit" means a home, mobile
1-41 home, duplex unit, apartment unit, condominium unit, or any
1-42 dwelling unit in a multiunit residential structure. It also means a
1-43 "dwelling" as defined by Section 92.001.

1-44 (3) "Smoke alarm" means a device designed to detect
1-45 and to alert occupants of a dwelling unit to the visible and
1-46 invisible products of combustion by means of an audible alarm.

1-47 Sec. 92.252. APPLICATION OF OTHER LAW; MUNICIPAL
1-48 REGULATION. (a) The duties of a landlord and the remedies of a
1-49 tenant under this subchapter are in lieu of common law, other
1-50 statutory law, and local ordinances regarding a residential
1-51 landlord's duty to install, inspect, or repair a fire extinguisher
1-52 or smoke alarm [~~detector~~] in a dwelling unit. However, this
1-53 subchapter does not:

1-54 (1) affect a local ordinance adopted before September
1-55 1, 1981, that requires landlords to install smoke alarms
1-56 [~~detectors~~] in new or remodeled dwelling units before September 1,
1-57 1981, if the ordinance conforms with or is amended to conform with
1-58 this subchapter;

1-59 (2) limit or prevent adoption or enforcement of a
1-60 local ordinance relating to fire safety as a part of a building,
1-61 fire, or housing code, including any requirements relating to the
1-62 installation of smoke alarms [~~detectors~~] or the type of smoke
1-63 alarms [~~detectors~~];

2-1 (3) otherwise limit or prevent the adoption of a local
2-2 ordinance that conforms to this subchapter but which contains
2-3 additional enforcement provisions, except as provided by
2-4 Subsection (b); or

2-5 (4) affect a local ordinance that requires regular
2-6 inspections by local officials of smoke alarms [~~detectors~~] in
2-7 dwelling units and that requires smoke alarms [~~detectors~~] to be
2-8 operational at the time of inspection.

2-9 (b) If a smoke alarm [~~detector~~] powered by battery has been
2-10 installed in a dwelling unit built before September 1, 1987, in
2-11 compliance with this subchapter and local ordinances, a local
2-12 ordinance may not require that a smoke alarm [~~detector~~] powered by
2-13 alternating current be installed in the unit unless:

2-14 (1) the interior of the unit is repaired, remodeled,
2-15 or rebuilt at a projected cost of more than \$5,000 [~~\$2,500~~] and:

2-16 (A) the repair, remodeling, or rebuilding
2-17 requires a municipal building permit; and

2-18 (B) either:

2-19 (i) the repair, remodeling, or rebuilding
2-20 results in the removal of interior walls or ceiling finishes
2-21 exposing the structure; or

2-22 (ii) the interior of the unit provides
2-23 access for building wiring through an attic, crawl space, or
2-24 basement without the removal of interior walls or ceiling finishes;

2-25 (2) an addition occurs to the unit at a projected cost
2-26 of more than \$5,000 [~~\$2,500~~];

2-27 (3) a smoke alarm [~~detector~~] powered by alternating
2-28 current was actually installed in the unit at any time prior to
2-29 September 1, 1987; or

2-30 (4) a smoke alarm [~~detector~~] powered by alternating
2-31 current was required by lawful city ordinance at the time of initial
2-32 construction of the unit.

2-33 Sec. 92.253. EXEMPTIONS. (a) This subchapter does not
2-34 apply to:

2-35 (1) a dwelling unit that is occupied by its owner, no
2-36 part of which is leased to a tenant;

2-37 (2) a dwelling unit in a building five or more stories
2-38 in height in which smoke alarms [~~detectors~~] are required or
2-39 regulated by local ordinance; or

2-40 (3) a nursing or convalescent home licensed by the
2-41 [~~Texas~~] Department of State Health Services and certified to meet
2-42 the Life Safety Code under federal law and regulations.

2-43 (b) Notwithstanding this subchapter, a person licensed [~~by~~
2-44 ~~the State Board of Insurance~~] to install fire alarms or fire
2-45 detection devices under Chapter 6002 [~~Article 5.43-2~~], Insurance
2-46 Code, shall comply with that chapter [~~article~~] when installing
2-47 smoke alarms [~~detectors~~].

2-48 Sec. 92.254. SMOKE ALARM [~~DETECTOR~~]. (a) A smoke alarm
2-49 [~~detector~~] must be:

2-50 (1) designed to detect both the visible and invisible
2-51 products of combustion;

2-52 (2) designed with an alarm audible to a person in the
2-53 bedrooms it serves; and

2-54 (3) [~~powered by battery, alternating current, or other~~
2-55 ~~power source as required by local ordinance,~~

2-56 [~~(4)~~] tested and listed for use as a smoke alarm
2-57 [~~detector~~] by Underwriters Laboratories, Inc., Factory Mutual
2-58 Research Corporation, or United States Testing Company, Inc. [~~, and~~
2-59 [~~(5) in good working order.~~]

2-60 (a-1) If requested by a tenant as an accommodation for a
2-61 person with a hearing-impairment disability or as required by law
2-62 as a reasonable accommodation for a person with a
2-63 hearing-impairment disability, a smoke alarm [~~detector~~] must, in
2-64 addition to complying with Subsection (a), be capable of alerting a
2-65 hearing-impaired person in the bedrooms it serves.

2-66 (b) Except as provided by Section 92.255(b), a smoke alarm
2-67 may be powered by battery, alternating current, or other power
2-68 source as required by local ordinance. The power system and
2-69 installation procedure of a security device that is electrically

3-1 operated rather than battery operated must comply with applicable
3-2 local ordinances.

3-3 Sec. 92.255. INSTALLATION AND LOCATION ~~[IN NEW~~
3-4 ~~CONSTRUCTION]~~. (a) ~~A [Before the first tenant takes possession of~~
3-5 ~~a dwelling unit, the]~~ landlord shall install at least one smoke
3-6 ~~alarm in [detector outside, but in the vicinity of,]~~ each separate
3-7 ~~bedroom in a [the] dwelling unit. In addition[, except]:~~

3-8 (1) if the dwelling unit is designed to use a single
3-9 room for dining, living, and sleeping, the smoke alarm ~~[detector]~~
3-10 must be located inside the room;

3-11 (2) if multiple ~~[the]~~ bedrooms are served by the same
3-12 corridor, at least one smoke alarm ~~[detector]~~ must be installed in
3-13 the corridor in the immediate vicinity of the bedrooms; and

3-14 (3) if the dwelling unit has multiple levels, at least
3-15 one smoke alarm must be [bedroom is] located on each [a] level
3-16 ~~[above the living and cooking area, the smoke detector for the~~
3-17 ~~bedrooms must be placed in the center of the ceiling directly above~~
3-18 ~~the top of the stairway].~~

3-19 (b) If a dwelling unit was occupied as a residence before
3-20 September 1, 2011, or a certificate of occupancy was issued for the
3-21 dwelling unit before that date, a smoke alarm installed in
3-22 accordance with Subsection (a) may be powered by battery and is not
3-23 required to be interconnected with other smoke alarms, except that
3-24 a smoke alarm that is installed to replace a smoke alarm that was in
3-25 place on the date the dwelling unit was first occupied as a
3-26 residence must comply with residential building code standards that
3-27 applied to the dwelling unit on that date or Section 92.252(b). ~~[In~~
3-28 ~~this section, "bedroom" means a room designed with the intent that~~
3-29 ~~it be used for sleeping purposes.]~~

3-30 Sec. 92.257. INSTALLATION PROCEDURE. (a) Subject to
3-31 Subsections (b) and (c), a smoke alarm ~~[detector]~~ must be installed
3-32 according to the manufacturer's recommended procedures.

3-33 (b) A smoke alarm ~~[detector]~~ must be installed on a ceiling
3-34 or wall. If on a ceiling, it must be no closer than six inches to a
3-35 wall or otherwise located in accordance with the manufacturer's
3-36 installation instructions. If on a wall, it must be no closer than
3-37 six inches and no farther than 12 inches from the ceiling or
3-38 otherwise located in accordance with the manufacturer's
3-39 installation instructions.

3-40 (c) A smoke alarm ~~[detector]~~ may be located other than as
3-41 required by Subsection (a) or (b) if a local ordinance or a local or
3-42 state fire marshal approves.

3-43 Sec. 92.2571. ALTERNATIVE COMPLIANCE. A landlord complies
3-44 with the requirements of this subchapter relating to the provision
3-45 of smoke alarms ~~[detectors]~~ in the dwelling unit if the landlord:

3-46 (1) has a fire detection device, as defined by Section
3-47 6002.002 [Article 5.43-2], Insurance Code, that includes a fire
3-48 alarm [smoke detection] device, as defined by Section 6002.002,
3-49 Insurance Code, installed in a dwelling unit; or

3-50 (2) for a dwelling unit that is a one-family or
3-51 two-family dwelling unit, installs smoke detectors in compliance
3-52 with Chapter 766, Health and Safety Code.

3-53 Sec. 92.258. INSPECTION AND REPAIR. (a) The landlord shall
3-54 inspect and repair a smoke alarm ~~[detector]~~ according to this
3-55 section.

3-56 (b) The landlord shall determine that the smoke alarm
3-57 ~~[detector]~~ is in good working order at the beginning of the tenant's
3-58 possession by testing the smoke alarm ~~[detector]~~ with smoke, by
3-59 operating the testing button on the smoke alarm ~~[detector]~~, or by
3-60 following other recommended test procedures of the manufacturer for
3-61 the particular model.

3-62 (c) During the term of a lease or during a renewal or
3-63 extension, the landlord has a duty to inspect and repair a smoke
3-64 alarm ~~[detector]~~, but only if the tenant gives the landlord notice
3-65 of a malfunction or requests to the landlord that the smoke alarm
3-66 ~~[detector]~~ be inspected or repaired. This duty does not exist with
3-67 respect to damage or a malfunction caused by the tenant, the
3-68 tenant's family, or the tenant's guests or invitees during the term
3-69 of the lease or a renewal or extension, except that the landlord has

4-1 a duty to repair or replace the smoke alarm [~~detector~~] if the tenant
4-2 pays in advance the reasonable repair or replacement cost,
4-3 including labor, materials, taxes, and overhead.

4-4 (d) The landlord must comply with the tenant's request for
4-5 inspection or repair of a smoke alarm within a reasonable time,
4-6 considering the availability of material, labor, and utilities.

4-7 (e) The landlord has met the duty to inspect and repair if
4-8 the smoke alarm [~~detector~~] is in good working order after the
4-9 landlord tests the smoke alarm [~~detector~~] with smoke, operates the
4-10 testing button on the smoke alarm [~~detector~~], or follows other
4-11 recommended test procedures of the manufacturer for the particular
4-12 model.

4-13 (f) The landlord is not obligated to provide batteries for a
4-14 battery-operated smoke alarm [~~detector~~] after a tenant takes
4-15 possession if the smoke alarm [~~detector~~] was in good working order
4-16 at the time the tenant took possession.

4-17 (g) A smoke alarm [~~detector~~] that is in good working order
4-18 at the beginning of a tenant's possession is presumed to be in good
4-19 working order until the tenant requests repair of the smoke alarm
4-20 [~~detector~~] as provided by this subchapter.

4-21 Sec. 92.259. LANDLORD'S FAILURE TO INSTALL, INSPECT, OR
4-22 REPAIR. (a) A landlord is liable according to this subchapter if:

4-23 (1) the landlord did not install a smoke alarm
4-24 [~~detector~~] at the time of initial occupancy by the tenant as
4-25 required by this subchapter or a municipal ordinance permitted by
4-26 this subchapter; or

4-27 (2) the landlord does not install, inspect, or repair
4-28 the smoke alarm [~~detector~~] on or before the seventh day after the
4-29 date the tenant gives the landlord written notice that the tenant
4-30 may exercise his remedies under this subchapter if the landlord
4-31 does not comply with the request within seven days.

4-32 (b) If the tenant gives notice under Subsection (a)(2) and
4-33 the tenant's lease is in writing, the lease may require the tenant
4-34 to make the initial request for installation, inspection, or repair
4-35 of a smoke alarm in writing.

4-36 SECTION 4. The heading to Section 92.2611, Property Code,
4-37 is amended to read as follows:

4-38 Sec. 92.2611. TENANT'S DISABLING OF A SMOKE ALARM
4-39 [~~DETECTOR~~].

4-40 SECTION 5. Section 92.2611, Property Code, is amended by
4-41 amending Subsections (a), (b), (c), (d), and (f) and adding
4-42 Subsection (d-1) to read as follows:

4-43 (a) A tenant is liable according to this subchapter if the
4-44 tenant removes a battery from a smoke alarm [~~detector~~] without
4-45 immediately replacing it with a working battery or knowingly
4-46 disconnects or intentionally damages a smoke alarm [~~detector~~],
4-47 causing it to malfunction.

4-48 (b) Except as provided in Subsection (c), a landlord of a
4-49 tenant who is liable under Subsection (a) may obtain a judgment
4-50 against the tenant for damages suffered by the landlord because the
4-51 tenant removed a battery from a smoke alarm [~~detector~~] without
4-52 immediately replacing it with a working battery or knowingly
4-53 disconnected or intentionally damaged the smoke alarm [~~detector~~],
4-54 causing it to malfunction.

4-55 (c) A tenant is not liable for damages suffered by the
4-56 landlord if the damage is caused by the landlord's failure to repair
4-57 the smoke alarm [~~detector~~] within a reasonable time after the
4-58 tenant requests it to be repaired, considering the availability of
4-59 material, labor, and utilities.

4-60 (d) A landlord of a tenant who is liable under Subsection
4-61 (a) may obtain or exercise one or more of the remedies in Subsection
4-62 (e) if:

4-63 (1) a lease between the landlord and tenant contains a
4-64 notice, in underlined or boldfaced print, which states in substance
4-65 that the tenant must not disconnect or intentionally damage a smoke
4-66 alarm [~~detector~~] or remove the battery without immediately
4-67 replacing it with a working battery and that the tenant may be
4-68 subject to damages, civil penalties, and attorney's fees under
4-69 Section 92.2611 of the Property Code for not complying with the

5-1 notice; and

5-2 (2) the landlord has given notice to the tenant that
5-3 the landlord intends to exercise the landlord's remedies under this
5-4 subchapter if the tenant does not reconnect, repair, or replace the
5-5 smoke alarm [~~detector~~] or replace the removed battery within seven
5-6 days after being notified by the landlord to do so.

5-7 (d-1) The notice in Subsection (d)(2) [~~Subdivision (2)~~]
5-8 must be in a separate document furnished to the tenant after the
5-9 landlord has discovered that the tenant has disconnected or damaged
5-10 the smoke alarm [~~detector~~] or removed a battery from it.

5-11 (f) A tenant's guest or invitee who suffers damage because
5-12 of a landlord's failure to install, inspect, or repair a smoke alarm
5-13 [~~detector~~] as required by this subchapter may recover a judgment
5-14 against the landlord for the damage. A tenant's guest or invitee
5-15 who suffers damage because the tenant removed a battery without
5-16 immediately replacing it with a working battery or because the
5-17 tenant knowingly disconnected or intentionally damaged the smoke
5-18 alarm [~~detector~~], causing it to malfunction, may recover a judgment
5-19 against the tenant for the damage.

5-20 SECTION 6. Subchapter F, Chapter 92, Property Code, is
5-21 amended by adding Sections 92.263 and 92.264 to read as follows:

5-22 Sec. 92.263. INSPECTION OF RESIDENTIAL FIRE EXTINGUISHER.

5-23 (a) If a landlord has installed a 1A10BC residential fire
5-24 extinguisher as defined by the National Fire Protection Association
5-25 or other non-rechargeable fire extinguisher in accordance with a
5-26 local ordinance or other law, the landlord or the landlord's agent
5-27 shall inspect the fire extinguisher:

- 5-28 (1) at the beginning of a tenant's possession; and
- 5-29 (2) within a reasonable time after receiving a written
5-30 request by a tenant.

5-31 (b) At a minimum, an inspection under this section must
5-32 include:

- 5-33 (1) checking to ensure the fire extinguisher is
5-34 present; and
- 5-35 (2) checking to ensure the fire extinguisher gauge or
5-36 pressure indicator indicates the correct pressure as recommended by
5-37 the manufacturer of the fire extinguisher.

5-38 (c) A fire extinguisher that satisfies the inspection
5-39 requirements of Subsection (b) at the beginning of a tenant's
5-40 possession is presumed to be in good working order until the tenant
5-41 requests an inspection in writing.

5-42 Sec. 92.264. DUTY TO REPAIR OR REPLACE. (a) The landlord
5-43 shall repair or replace a fire extinguisher at the landlord's
5-44 expense if:

- 5-45 (1) on inspection, the fire extinguisher is found:
 - 5-46 (A) not to be functioning; or
 - 5-47 (B) not to have the correct pressure indicated on
5-48 the gauge or pressure indicator as recommended by the manufacturer
5-49 of the fire extinguisher; or
- 5-50 (2) a tenant has notified the landlord that the tenant
5-51 has used the fire extinguisher for a legitimate purpose.

5-52 (b) If the tenant or the tenant's invited guest removes,
5-53 misuses, damages, or otherwise disables a fire extinguisher:

- 5-54 (1) the landlord is not required to repair or replace
5-55 the fire extinguisher at the landlord's expense; and
- 5-56 (2) the landlord is required to repair or replace the
5-57 fire extinguisher within a reasonable time if the tenant pays in
5-58 advance the reasonable repair or replacement cost, including labor,
5-59 materials, taxes, and overhead.

5-60 SECTION 7. Section 92.256, Property Code, is repealed.

5-61 SECTION 8. With respect to a dwelling unit first occupied or
5-62 for which a certificate of occupancy was issued before September 1,
5-63 2011, a landlord shall comply with the change in law made by Section
5-64 92.255, Property Code, as amended by this Act, on or before January
5-65 1, 2013.

5-66 SECTION 9. This Act takes effect September 1, 2011.

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