

1-1 By: Van de Putte S.B. No. 1099  
1-2 (In the Senate - Filed March 2, 2011; March 16, 2011, read  
1-3 first time and referred to Committee on Business and Commerce;  
1-4 April 11, 2011, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 7, Nays 0; April 11, 2011,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1099 By: Van de Putte

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to smoke alarms and fire extinguishers in residential  
1-11 rental units.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subsections (a) and (b), Section 92.006,  
1-14 Property Code, are amended to read as follows:

1-15 (a) A landlord's duty or a tenant's remedy concerning  
1-16 security deposits, security devices, the landlord's disclosure of  
1-17 ownership and management, or utility cutoffs, as provided by  
1-18 Subchapter C, D, E, or G, respectively, may not be waived. A  
1-19 landlord's duty to install a smoke alarm [~~detector~~] under  
1-20 Subchapter F may not be waived, nor may a tenant waive a remedy for  
1-21 the landlord's noninstallation or waive the tenant's limited right  
1-22 of installation and removal. The landlord's duty of inspection and  
1-23 repair of smoke alarms [~~detectors~~] under Subchapter F may be waived  
1-24 only by written agreement.

1-25 (b) A landlord's duties and the tenant's remedies concerning  
1-26 security devices, the landlord's disclosure of ownership and  
1-27 management, or smoke alarms [~~detectors~~], as provided by Subchapter  
1-28 D, E, or F, respectively, may be enlarged only by specific written  
1-29 agreement.

1-30 SECTION 2. The heading to Subchapter F, Chapter 92,  
1-31 Property Code, is amended to read as follows:

1-32 SUBCHAPTER F. SMOKE ALARMS AND FIRE EXTINGUISHERS [~~DETECTORS~~]

1-33 SECTION 3. Sections 92.251, 92.252, 92.253, 92.254, 92.255,  
1-34 92.257, 92.2571, 92.258, and 92.259, Property Code, are amended to  
1-35 read as follows:

1-36 Sec. 92.251. DEFINITIONS [~~DEFINITION~~]. In this subchapter:

1-37 (1) "Bedroom" means a room designed with the intent  
1-38 that it be used for sleeping purposes.

1-39 (2) "Dwelling [,"dwelling] unit" means a home, mobile  
1-40 home, duplex unit, apartment unit, condominium unit, or any  
1-41 dwelling unit in a multiunit residential structure. It also means a  
1-42 "dwelling" as defined by Section 92.001.

1-43 (3) "Smoke alarm" means a device designed to detect  
1-44 and to alert occupants of a dwelling unit to the visible and  
1-45 invisible products of combustion by means of an audible alarm.

1-46 Sec. 92.252. APPLICATION OF OTHER LAW; MUNICIPAL  
1-47 REGULATION. (a) The duties of a landlord and the remedies of a  
1-48 tenant under this subchapter are in lieu of common law, other  
1-49 statutory law, and local ordinances regarding a residential  
1-50 landlord's duty to install, inspect, or repair a fire extinguisher  
1-51 or smoke alarm [~~detector~~] in a dwelling unit. However, this  
1-52 subchapter does not:

1-53 (1) affect a local ordinance adopted before September  
1-54 1, 1981, that requires landlords to install smoke alarms  
1-55 [~~detectors~~] in new or remodeled dwelling units before September 1,  
1-56 1981, if the ordinance conforms with or is amended to conform with  
1-57 this subchapter;

1-58 (2) limit or prevent adoption or enforcement of a  
1-59 local ordinance relating to fire safety as a part of a building,  
1-60 fire, or housing code, including any requirements relating to the  
1-61 installation of smoke alarms [~~detectors~~] or the type of smoke  
1-62 alarms [~~detectors~~];

1-63 (3) otherwise limit or prevent the adoption of a local

2-1 ordinance that conforms to this subchapter but which contains  
 2-2 additional enforcement provisions, except as provided by  
 2-3 Subsection (b); or

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

2-8 (b) If a smoke alarm [~~detector~~] powered by battery has been  
 2-9 installed in a dwelling unit built before September 1, 1987, in  
 2-10 compliance with this subchapter and local ordinances, a local  
 2-11 ordinance may not require that a smoke alarm [~~detector~~] powered by  
 2-12 alternating current be installed in the unit unless:

2-13 (1) the interior of the unit is repaired, remodeled,  
 2-14 or rebuilt at a projected cost of more than \$5,000 [~~\$2,500~~] and:

2-15 (A) the repair, remodeling, or rebuilding  
 2-16 requires a municipal building permit; and

2-17 (B) either:  
 2-18 (i) the repair, remodeling, or rebuilding  
 2-19 results in the removal of interior walls or ceiling finishes  
 2-20 exposing the structure; or

2-21 (ii) the interior of the unit provides  
 2-22 access for building wiring through an attic, crawl space, or  
 2-23 basement without the removal of interior walls or ceiling finishes;

2-24 (2) an addition occurs to the unit at a projected cost  
 2-25 of more than \$5,000 [~~\$2,500~~];

2-26 (3) a smoke alarm [~~detector~~] powered by alternating  
 2-27 current was actually installed in the unit at any time prior to  
 2-28 September 1, 1987; or

2-29 (4) a smoke alarm [~~detector~~] powered by alternating  
 2-30 current was required by lawful city ordinance at the time of initial  
 2-31 construction of the unit.

2-32 Sec. 92.253. EXEMPTIONS. (a) This subchapter does not  
 2-33 apply to:

2-34 (1) a dwelling unit that is occupied by its owner, no  
 2-35 part of which is leased to a tenant;

2-36 (2) a dwelling unit in a building five or more stories  
 2-37 in height in which smoke alarms [~~detectors~~] are required or  
 2-38 regulated by local ordinance; or

2-39 (3) a nursing or convalescent home licensed by the  
 2-40 [~~Texas~~] Department of State Health Services and certified to meet  
 2-41 the Life Safety Code under federal law and regulations.

2-42 (b) Notwithstanding this subchapter, a person licensed [~~by~~  
 2-43 ~~the State Board of Insurance~~] to install fire alarms or fire  
 2-44 detection devices under Chapter 6002 [~~Article 5.43-2~~], Insurance  
 2-45 Code, shall comply with that chapter [~~article~~] when installing  
 2-46 smoke alarms [~~detectors~~].

2-47 Sec. 92.254. SMOKE ALARM [~~DETECTOR~~]. (a) A smoke alarm  
 2-48 [~~detector~~] must be:

2-49 (1) designed to detect both the visible and invisible  
 2-50 products of combustion;

2-51 (2) designed with an alarm audible to a person in the  
 2-52 bedrooms it serves; and

2-53 (3) [~~powered by battery, alternating current, or other~~  
 2-54 ~~power source as required by local ordinance,~~

2-55 [~~(4)~~] tested and listed for use as a smoke alarm  
 2-56 [~~detector~~] by Underwriters Laboratories, Inc., Factory Mutual  
 2-57 Research Corporation, or United States Testing Company, Inc. [~~and~~

2-58 [~~(5) in good working order.~~]

2-59 (a-1) If requested by a tenant as an accommodation for a  
 2-60 person with a hearing-impairment disability or as required by law  
 2-61 as a reasonable accommodation for a person with a  
 2-62 hearing-impairment disability, a smoke alarm [~~detector~~] must, in  
 2-63 addition to complying with Subsection (a), be capable of alerting a  
 2-64 hearing-impaired person in the bedrooms it serves.

2-65 (b) Except as provided by Section 92.255(b), a smoke alarm  
 2-66 may be powered by battery, alternating current, or other power  
 2-67 source as required by local ordinance. The power system and  
 2-68 installation procedure of a security device that is electrically  
 2-69 operated rather than battery operated must comply with applicable

3-1 local ordinances.

3-2 Sec. 92.255. INSTALLATION AND LOCATION ~~[IN NEW~~  
 3-3 ~~CONSTRUCTION]~~. (a) ~~A [Before the first tenant takes possession of~~  
 3-4 ~~a dwelling unit, the]~~ landlord shall install at least one smoke  
 3-5 ~~alarm in [detector outside, but in the vicinity of,]~~ each separate  
 3-6 ~~bedroom in a [the] dwelling unit. In addition[, except]:~~

3-7 (1) if the dwelling unit is designed to use a single  
 3-8 room for dining, living, and sleeping, the smoke alarm ~~[detector]~~  
 3-9 must be located inside the room;

3-10 (2) if multiple ~~[the]~~ bedrooms are served by the same  
 3-11 corridor, at least one smoke alarm ~~[detector]~~ must be installed in  
 3-12 the corridor in the immediate vicinity of the bedrooms; and

3-13 (3) if the dwelling unit has multiple levels, at least  
 3-14 one smoke alarm must be [bedroom is] located on each [a] level  
 3-15 ~~[above the living and cooking area, the smoke detector for the~~  
 3-16 ~~bedrooms must be placed in the center of the ceiling directly above~~  
 3-17 ~~the top of the stairway].~~

3-18 (b) If a dwelling unit was occupied as a residence before  
 3-19 September 1, 2011, or a certificate of occupancy was issued for the  
 3-20 dwelling unit before that date, a smoke alarm installed in  
 3-21 accordance with Subsection (a) may be powered by battery and is not  
 3-22 required to be interconnected with other smoke alarms ~~[In this~~  
 3-23 ~~section, "bedroom" means a room designed with the intent that it be~~  
 3-24 ~~used for sleeping purposes].~~

3-25 Sec. 92.257. INSTALLATION PROCEDURE. (a) Subject to  
 3-26 Subsections (b) and (c), a smoke alarm ~~[detector]~~ must be installed  
 3-27 according to the manufacturer's recommended procedures.

3-28 (b) A smoke alarm ~~[detector]~~ must be installed on a ceiling  
 3-29 or wall. If on a ceiling, it must be no closer than six inches to a  
 3-30 wall. If on a wall, it must be no closer than six inches and no  
 3-31 farther than 12 inches from the ceiling.

3-32 (c) A smoke alarm ~~[detector]~~ may be located other than as  
 3-33 required by Subsection (a) or (b) if a local ordinance or a local or  
 3-34 state fire marshal approves.

3-35 Sec. 92.2571. ALTERNATIVE COMPLIANCE. A landlord complies  
 3-36 with the requirements of this subchapter relating to the provision  
 3-37 of smoke alarms ~~[detectors]~~ in the dwelling unit if the landlord:

3-38 (1) has a fire detection device, as defined by Section  
 3-39 6002.002 [Article 5.43-2], Insurance Code, that includes a fire  
 3-40 alarm [smoke detection] device, as defined by Section 6002.002,  
 3-41 Insurance Code, installed in a dwelling unit; or

3-42 (2) for a dwelling unit that is a one-family or  
 3-43 two-family dwelling unit, installs smoke detectors in compliance  
 3-44 with Chapter 766, Health and Safety Code.

3-45 Sec. 92.258. INSPECTION AND REPAIR. (a) The landlord  
 3-46 shall inspect and repair a smoke alarm ~~[detector]~~ according to this  
 3-47 section.

3-48 (b) The landlord shall determine that the smoke alarm  
 3-49 ~~[detector]~~ is in good working order at the beginning of the tenant's  
 3-50 possession by testing the smoke alarm ~~[detector]~~ with smoke, by  
 3-51 operating the testing button on the smoke alarm ~~[detector]~~, or by  
 3-52 following other recommended test procedures of the manufacturer for  
 3-53 the particular model.

3-54 (c) During the term of a lease or during a renewal or  
 3-55 extension, the landlord has a duty to inspect and repair a smoke  
 3-56 alarm ~~[detector]~~, but only if the tenant gives the landlord notice  
 3-57 of a malfunction or requests to the landlord that the smoke alarm  
 3-58 ~~[detector]~~ be inspected or repaired. This duty does not exist with  
 3-59 respect to damage or a malfunction caused by the tenant, the  
 3-60 tenant's family, or the tenant's guests or invitees during the term  
 3-61 of the lease or a renewal or extension, except that the landlord has  
 3-62 a duty to repair or replace the smoke alarm ~~[detector]~~ if the tenant  
 3-63 pays in advance the reasonable repair or replacement cost,  
 3-64 including labor, materials, taxes, and overhead.

3-65 (d) The landlord must comply with the tenant's request for  
 3-66 inspection or repair of a smoke alarm within a reasonable time,  
 3-67 considering the availability of material, labor, and utilities.

3-68 (e) The landlord has met the duty to inspect and repair if  
 3-69 the smoke alarm ~~[detector]~~ is in good working order after the

4-1 landlord tests the smoke alarm [~~detector~~] with smoke, operates the  
4-2 testing button on the smoke alarm [~~detector~~], or follows other  
4-3 recommended test procedures of the manufacturer for the particular  
4-4 model.

4-5 (f) The landlord is not obligated to provide batteries for a  
4-6 battery-operated smoke alarm [~~detector~~] after a tenant takes  
4-7 possession if the smoke alarm [~~detector~~] was in good working order  
4-8 at the time the tenant took possession.

4-9 (g) A smoke alarm [~~detector~~] that is in good working order  
4-10 at the beginning of a tenant's possession is presumed to be in good  
4-11 working order until the tenant requests repair of the smoke alarm  
4-12 [~~detector~~] as provided by this subchapter.

4-13 Sec. 92.259. LANDLORD'S FAILURE TO INSTALL, INSPECT, OR  
4-14 REPAIR. (a) A landlord is liable according to this subchapter if:

4-15 (1) the landlord did not install a smoke alarm  
4-16 [~~detector~~] at the time of initial occupancy by the tenant as  
4-17 required by this subchapter or a municipal ordinance permitted by  
4-18 this subchapter; or

4-19 (2) the landlord does not install, inspect, or repair  
4-20 the smoke alarm [~~detector~~] on or before the seventh day after the  
4-21 date the tenant gives the landlord written notice that the tenant  
4-22 may exercise his remedies under this subchapter if the landlord  
4-23 does not comply with the request within seven days.

4-24 (b) If the tenant gives notice under Subsection (a)(2) and  
4-25 the tenant's lease is in writing, the lease may require the tenant  
4-26 to make the initial request for installation, inspection, or repair  
4-27 of a smoke alarm in writing.

4-28 SECTION 4. The heading to Section 92.2611, Property Code,  
4-29 is amended to read as follows:

4-30 Sec. 92.2611. TENANT'S DISABLING OF A SMOKE ALARM  
4-31 [~~DETECTOR~~].

4-32 SECTION 5. Section 92.2611, Property Code, is amended by  
4-33 amending Subsections (a) through (d) and (f) and adding Subsection  
4-34 (d-1) to read as follows:

4-35 (a) A tenant is liable according to this subchapter if the  
4-36 tenant removes a battery from a smoke alarm [~~detector~~] without  
4-37 immediately replacing it with a working battery or knowingly  
4-38 disconnects or intentionally damages a smoke alarm [~~detector~~],  
4-39 causing it to malfunction.

4-40 (b) Except as provided in Subsection (c), a landlord of a  
4-41 tenant who is liable under Subsection (a) may obtain a judgment  
4-42 against the tenant for damages suffered by the landlord because the  
4-43 tenant removed a battery from a smoke alarm [~~detector~~] without  
4-44 immediately replacing it with a working battery or knowingly  
4-45 disconnected or intentionally damaged the smoke alarm [~~detector~~],  
4-46 causing it to malfunction.

4-47 (c) A tenant is not liable for damages suffered by the  
4-48 landlord if the damage is caused by the landlord's failure to repair  
4-49 the smoke alarm [~~detector~~] within a reasonable time after the  
4-50 tenant requests it to be repaired, considering the availability of  
4-51 material, labor, and utilities.

4-52 (d) A landlord of a tenant who is liable under Subsection  
4-53 (a) may obtain or exercise one or more of the remedies in Subsection  
4-54 (e) if:

4-55 (1) a lease between the landlord and tenant contains a  
4-56 notice, in underlined or boldfaced print, which states in substance  
4-57 that the tenant must not disconnect or intentionally damage a smoke  
4-58 alarm [~~detector~~] or remove the battery without immediately  
4-59 replacing it with a working battery and that the tenant may be  
4-60 subject to damages, civil penalties, and attorney's fees under  
4-61 Section 92.2611 of the Property Code for not complying with the  
4-62 notice; and

4-63 (2) the landlord has given notice to the tenant that  
4-64 the landlord intends to exercise the landlord's remedies under this  
4-65 subchapter if the tenant does not reconnect, repair, or replace the  
4-66 smoke alarm [~~detector~~] or replace the removed battery within seven  
4-67 days after being notified by the landlord to do so.

4-68 (d-1) The notice in Subsection (d)(2) [~~Subdivision (2)~~]  
4-69 must be in a separate document furnished to the tenant after the

5-1 landlord has discovered that the tenant has disconnected or damaged  
5-2 the smoke alarm [~~detector~~] or removed a battery from it.

5-3 (f) A tenant's guest or invitee who suffers damage because  
5-4 of a landlord's failure to install, inspect, or repair a smoke alarm  
5-5 [~~detector~~] as required by this subchapter may recover a judgment  
5-6 against the landlord for the damage. A tenant's guest or invitee  
5-7 who suffers damage because the tenant removed a battery without  
5-8 immediately replacing it with a working battery or because the  
5-9 tenant knowingly disconnected or intentionally damaged the smoke  
5-10 alarm [~~detector~~], causing it to malfunction, may recover a judgment  
5-11 against the tenant for the damage.

5-12 SECTION 6. Subchapter F, Chapter 92, Property Code, is  
5-13 amended by adding Sections 92.263 and 92.264 to read as follows:

5-14 Sec. 92.263. INSPECTION OF RESIDENTIAL FIRE EXTINGUISHER.

5-15 (a) If a landlord has installed a 1A10BC residential fire  
5-16 extinguisher as defined by the National Fire Protection Association  
5-17 or other nonrechargeable fire extinguisher in accordance with a  
5-18 local ordinance or other law, the landlord or the landlord's agent  
5-19 shall inspect the fire extinguisher:

- 5-20 (1) at the beginning of a tenant's possession; and
- 5-21 (2) within a reasonable time after receiving a written  
5-22 request by a tenant.

5-23 (b) At a minimum, an inspection under this section must  
5-24 include:

- 5-25 (1) checking to ensure the fire extinguisher is  
5-26 present; and
- 5-27 (2) checking to ensure the fire extinguisher gauge or  
5-28 pressure indicator indicates the correct pressure as recommended by  
5-29 the manufacturer of the fire extinguisher.

5-30 (c) A fire extinguisher that satisfies the inspection  
5-31 requirements of Subsection (b) at the beginning of a tenant's  
5-32 possession is presumed to be in good working order until the tenant  
5-33 requests an inspection in writing.

5-34 Sec. 92.264. DUTY TO REPAIR OR REPLACE. (a) The landlord  
5-35 shall repair or replace a fire extinguisher at the landlord's  
5-36 expense if:

- 5-37 (1) on inspection, the fire extinguisher is found:
  - 5-38 (A) not to be functioning; or
  - 5-39 (B) not to have the correct pressure indicated on  
5-40 the gauge or pressure indicator as recommended by the manufacturer  
5-41 of the fire extinguisher; or
- 5-42 (2) a tenant has notified the landlord that the tenant  
5-43 has used the fire extinguisher for a legitimate purpose.

5-44 (b) If the tenant or the tenant's invited guest removes,  
5-45 misuses, damages, or otherwise disables a fire extinguisher:

- 5-46 (1) the landlord is not required to repair or replace  
5-47 the fire extinguisher at the landlord's expense; and
- 5-48 (2) the landlord is required to repair or replace the  
5-49 fire extinguisher within a reasonable time if the tenant pays in  
5-50 advance the reasonable repair or replacement cost, including labor,  
5-51 materials, taxes, and overhead.

5-52 SECTION 7. Section 92.256, Property Code, is repealed.

5-53 SECTION 8. With respect to a dwelling unit first occupied or  
5-54 for which a certificate of occupancy was issued before September 1,  
5-55 2011, a landlord shall comply with the change in law made by Section  
5-56 92.255, Property Code, as amended by this Act, on or before January  
5-57 1, 2013.

5-58 SECTION 9. This Act takes effect September 1, 2011.

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