

By: Sanford

H.B. No. 4358

A BILL TO BE ENTITLED

AN ACT

relating to smoke alarms and carbon monoxide alarms in residential rental units.

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

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

(a) A landlord's duty or a tenant's remedy concerning security deposits, security devices, the landlord's disclosure of ownership and management, or utility cutoffs, as provided by Subchapter C, D, E, or G, respectively, may not be waived. A landlord's duty to install a smoke alarm and carbon monoxide alarm under Subchapter F may not be waived, nor may a tenant waive a remedy for the landlord's noninstallation or waive the tenant's limited right of installation and removal. The landlord's duty of inspection and repair of smoke alarms and carbon monoxide alarms under Subchapter F may be waived only by written agreement.

(b) A landlord's duties and the tenant's remedies concerning security devices, the landlord's disclosure of ownership and management, or smoke alarms and carbon monoxide alarms, as provided by Subchapter D, E, or F, respectively, may be enlarged only by specific written agreement.

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

SUBCHAPTER F. SMOKE ALARMS, CARBON MONOXIDE ALARMS, AND FIRE

EXTINGUISHERS

Sec. 92.251. DEFINITIONS. In this subchapter:

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

(2) "Carbon monoxide alarm" means a device designed to detect and to alert occupants of a dwelling unit to the presence of a harmful carbon monoxide source by means of an audible alarm.

(3) "Carbon monoxide source" means:

(A) a heater, furnace, fireplace, or cooking source that uses coal, kerosene, petroleum products, wood, or another fuel that emits carbon monoxide as a by-product of combustion; or

(B) an attached garage.

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

(5) [~~(3)~~] "Smoke alarm" means a device designed to detect and to alert occupants of a dwelling unit to the visible and invisible products of combustion by means of an audible alarm.

Sec. 92.252. APPLICATION OF OTHER LAW; MUNICIPAL REGULATION. (a) 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 duty to install, inspect, or repair a fire extinguisher, ~~or~~ smoke alarm, or carbon monoxide alarm in a dwelling unit.

However, this subchapter does not:

1           (1) affect a local ordinance adopted before January 1,  
2 2020 [~~September 1, 1981~~], that requires landlords to install smoke  
3 alarms or carbon monoxide alarms in new or remodeled dwelling units  
4 before January 1, 2020 [~~September 1, 1981~~], if the ordinance  
5 conforms with or is amended to conform with this subchapter;

6           (2) limit or prevent adoption or enforcement of a  
7 local ordinance relating to fire safety as a part of a building,  
8 fire, or housing code, including any requirements relating to the  
9 installation of smoke alarms or carbon monoxide alarms or the type  
10 of smoke alarms or carbon monoxide alarms;

11           (3) otherwise limit or prevent the adoption of a local  
12 ordinance that conforms to this subchapter but which contains  
13 additional enforcement provisions, except as provided by  
14 Subsections [~~Subsection~~] (b) and (c); or

15           (4) affect a local ordinance that requires regular  
16 inspections by local officials of smoke alarms or carbon monoxide  
17 alarms in dwelling units and that requires smoke alarms or carbon  
18 monoxide alarms to be operational at the time of inspection.

19           (b) If a smoke alarm powered by battery has been installed  
20 in a dwelling unit built before September 1, 1987, in compliance  
21 with this subchapter and local ordinances, a local ordinance may  
22 not require that a smoke alarm powered by alternating current be  
23 installed in the unit unless:

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

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

1 (B) either:

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

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

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

10 (3) a smoke alarm powered by alternating current was  
11 actually installed in the unit at any time prior to September 1,  
12 1987; or

13 (4) a smoke alarm powered by alternating current was  
14 required by lawful city ordinance at the time of initial  
15 construction of the unit.

16 (c) If a carbon monoxide alarm powered by battery has been  
17 installed in a dwelling unit built before January 1, 2020, in  
18 compliance with this subchapter and local ordinances, a local  
19 ordinance may not require that a carbon monoxide alarm powered by  
20 alternating current be installed in the unit unless:

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

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

25 (B) either:

26 (i) the repair, remodeling, or rebuilding  
27 results in the removal of interior walls or ceiling finishes

1 exposing the structure; or

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

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

7 (3) a carbon monoxide alarm powered by alternating  
8 current was actually installed in the unit at any time before  
9 January 1, 2020; or

10 (4) a carbon monoxide alarm powered by alternating  
11 current was required by lawful city ordinance at the time of initial  
12 construction of the unit.

13 Sec. 92.253. EXEMPTIONS. (a) This subchapter does not  
14 apply to:

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

17 (2) a dwelling unit in a building five or more stories  
18 in height in which smoke alarms and carbon monoxide alarms are  
19 required or regulated by local ordinance; or

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

23 (a-1) The provisions of this subchapter relating to carbon  
24 monoxide alarms apply to a dwelling unit in a building only if a  
25 heater, furnace, fireplace, or cooking source that uses coal,  
26 kerosene, petroleum products, wood, or another fuel that emits  
27 carbon monoxide as a by-product of combustion is installed in the

1 building.

2 (b) Notwithstanding this subchapter, a person licensed to  
3 install fire alarms or fire detection devices under Chapter 6002,  
4 Insurance Code, shall comply with that chapter when installing  
5 smoke alarms.

6 Sec. 92.254. SMOKE ALARM; CARBON MONOXIDE ALARM. (a) A  
7 smoke alarm must be:

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

10 (2) designed with an alarm audible to a person in the  
11 occupancy areas [~~bedrooms~~] it serves; and

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

15 (a-1) If requested by a tenant as an accommodation for a  
16 person with a hearing-impairment disability or as required by law  
17 as a reasonable accommodation for a person with a  
18 hearing-impairment disability, each [~~a~~] smoke alarm or carbon  
19 monoxide alarm must, in addition to complying with Subsection (a),  
20 be capable of alerting a hearing-impaired person in the occupancy  
21 areas [~~bedrooms~~] it serves.

22 (b) Except as provided by Section 92.255(b) or (c), as  
23 applicable, a smoke alarm or carbon monoxide alarm may be powered by  
24 a 10-year sealed non-removable battery, alternating current, or  
25 other power source as required by local ordinance. The power system  
26 and installation procedure of a security device that is  
27 electrically operated rather than battery operated must comply with

1 applicable local ordinances.

2 (c) A carbon monoxide alarm must be:

3 (1) designed to detect the presence of a harmful level  
4 of carbon monoxide;

5 (2) designed with an alarm audible to a person in the  
6 occupancy area it serves; and

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

10 Sec. 92.255. INSTALLATION AND LOCATION. (a) A landlord  
11 shall install at least one smoke alarm and at least one carbon  
12 monoxide alarm in each separate bedroom in a dwelling unit. In  
13 addition:

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

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

21 (3) if the dwelling unit has multiple levels, at least  
22 one smoke alarm and one carbon monoxide alarm must be located on  
23 each level.

24 (b) If a dwelling unit was occupied as a residence before  
25 September 1, 2011, or a certificate of occupancy was issued for the  
26 dwelling unit before that date, a smoke alarm installed in  
27 accordance with Subsection (a) may be powered by battery and is not

1 required to be interconnected with other smoke alarms, except that  
2 a smoke alarm that is installed to replace a smoke alarm that was in  
3 place on the date the dwelling unit was first occupied as a  
4 residence must comply with residential building code standards that  
5 applied to the dwelling unit on that date or Section 92.252(b).

6 (c) If a dwelling unit was occupied as a residence before  
7 January 1, 2020, or a certificate of occupancy was issued for the  
8 dwelling unit before that date, a carbon monoxide alarm installed  
9 in accordance with Subsection (a) may be powered by battery and is  
10 not required to be interconnected with other carbon monoxide  
11 alarms, except that a carbon monoxide alarm that is installed to  
12 replace a carbon monoxide alarm that was in place on the date the  
13 dwelling unit was first occupied as a residence must comply with  
14 residential building code standards that applied to the dwelling  
15 unit on that date or Section 92.252(c).

16 Sec. 92.257. INSTALLATION PROCEDURE. (a) Subject to  
17 Subsections (b) and (c), a smoke alarm or carbon monoxide alarm must  
18 be installed according to the manufacturer's recommended  
19 procedures.

20 (b) A smoke alarm or carbon monoxide alarm must be installed  
21 on a ceiling or wall. If on a ceiling, it must be no closer than six  
22 inches to a wall or otherwise located in accordance with the  
23 manufacturer's installation instructions. If on a wall, it must be  
24 no closer than six inches and no farther than 12 inches from the  
25 ceiling or otherwise located in accordance with the manufacturer's  
26 installation instructions.

27 (c) A smoke alarm or carbon monoxide alarm may be located



1 other than as required by Subsection (a) or (b) if a local ordinance  
2 or a local or state fire marshal approves.

3 Sec. 92.2571. ALTERNATIVE COMPLIANCE FOR SMOKE ALARMS. A  
4 landlord complies with the requirements of this subchapter relating  
5 to the provision of smoke alarms in the dwelling unit if the  
6 landlord:

7 (1) has a fire detection device, as defined by Section  
8 6002.002, Insurance Code, that includes a fire alarm device, as  
9 defined by Section 6002.002, Insurance Code, installed in a  
10 dwelling unit; or

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

14 Sec. 92.258. INSPECTION AND REPAIR. (a) The landlord shall  
15 inspect and repair a smoke alarm or carbon monoxide alarm according  
16 to this section.

17 (b) The landlord shall determine that a [the] smoke alarm or  
18 carbon monoxide alarm is in good working order at the beginning of  
19 the tenant's possession by:

20 (1) [~~testing the smoke alarm with smoke, by~~] operating  
21 the testing button on the smoke alarm or carbon monoxide alarm;

22 (2) [~~, or by~~] following other recommended test  
23 procedures of the manufacturer for the particular model of smoke  
24 alarm or carbon monoxide alarm; or

25 (3) for a smoke alarm, testing with smoke.

26 (c) During the term of a lease or during a renewal or  
27 extension, the landlord has a duty to inspect and repair a smoke

1 alarm or carbon monoxide alarm, but only if the tenant gives the  
2 landlord notice of a malfunction or requests to the landlord that  
3 the smoke alarm or carbon monoxide alarm be inspected or repaired.  
4 This duty does not exist with respect to damage or a malfunction  
5 caused by the tenant, the tenant's family, or the tenant's guests or  
6 invitees during the term of the lease or a renewal or extension,  
7 except that the landlord has a duty to repair or replace the smoke  
8 alarm or carbon monoxide alarm if the tenant pays in advance the  
9 reasonable repair or replacement cost, including labor, materials,  
10 taxes, and overhead.

11 (d) The landlord must comply with the tenant's request for  
12 inspection or repair of a smoke alarm or carbon monoxide alarm  
13 within a reasonable time, considering the availability of material,  
14 labor, and utilities.

15 (e) The landlord has met the duty to inspect and repair a  
16 smoke alarm or carbon monoxide alarm if the [~~smoke~~] alarm is in good  
17 working order after the landlord:

18 (1) [~~tests the smoke alarm with smoke,~~] operates the  
19 testing button on the smoke alarm or carbon monoxide alarm;

20 (2) [~~or~~] follows other recommended test procedures  
21 of the manufacturer for the particular model of smoke alarm or  
22 carbon monoxide alarm; or

23 (3) if testing a smoke alarm, tests the smoke alarm  
24 with smoke.

25 (f) The landlord is not obligated to provide batteries for a  
26 battery-operated smoke alarm or carbon monoxide alarm having a  
27 removable battery after a tenant takes possession if:

1           (1) the smoke alarm or carbon monoxide alarm was  
2 installed before January 1, 2020; and

3           (2) the smoke alarm or carbon monoxide alarm was in  
4 good working order at the time the tenant took possession.

5           (g) A smoke alarm or carbon monoxide alarm that is in good  
6 working order at the beginning of a tenant's possession is presumed  
7 to be in good working order until the tenant requests repair of the  
8 smoke alarm or carbon monoxide alarm as provided by this  
9 subchapter.

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

12           (1) the landlord did not install a smoke alarm or  
13 carbon monoxide alarm at the time of initial occupancy by the tenant  
14 as required by this subchapter or a municipal ordinance permitted  
15 by this subchapter; or

16           (2) the landlord does not install, inspect, or repair  
17 a [the] smoke alarm or carbon monoxide alarm on or before the  
18 seventh day after the date the tenant gives the landlord written  
19 notice that the tenant may exercise the tenant's [~~his~~] remedies  
20 under this subchapter if the landlord does not comply with the  
21 request within seven days.

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

26           Sec. 92.260. TENANT REMEDIES. A tenant of a landlord who is  
27 liable under Section [92.259](#) may obtain or exercise one or more of

1 the following remedies:

2 (1) a court order directing the landlord to comply  
3 with the tenant's request if the tenant is in possession of the  
4 dwelling unit;

5 (2) a judgment against the landlord for damages  
6 suffered by the tenant because of the landlord's violation;

7 (3) a judgment against the landlord for a civil  
8 penalty of one month's rent plus \$100 if the landlord violates  
9 Section 92.259(a)(2);

10 (4) a judgment against the landlord for court costs;

11 (5) a judgment against the landlord for attorney's  
12 fees in an action under Subdivision (1) or (3); and

13 (6) unilateral termination of the lease without a  
14 court proceeding if the landlord violates Section 92.259(a)(2).

15 Sec. 92.261. LANDLORD'S DEFENSES. The landlord has a  
16 defense to liability under Section 92.259 if:

17 (1) on the date the tenant gives the notice required by  
18 Section 92.259 the tenant has not paid all rent due from the tenant;  
19 or

20 (2) on the date the tenant terminates the lease or  
21 files suit the tenant has not fully paid costs requested by the  
22 landlord and authorized by Section 92.258.

23 Sec. 92.2611. TENANT'S DISABLING OF A SMOKE ALARM OR CARBON  
24 MONOXIDE ALARM. (a) Except as otherwise provided by this section,  
25 a [A] tenant is liable according to this subchapter if the tenant:

26 (1) removes a battery from a smoke alarm or carbon  
27 monoxide alarm without immediately replacing the battery [~~it~~] with

1 a working battery; or

2           (2) knowingly disconnects or intentionally damages a  
3 smoke alarm or carbon monoxide alarm, causing the smoke alarm or  
4 carbon monoxide alarm [~~it~~] to malfunction.

5           (b) Except as provided by this section [~~in Subsection (c)~~],  
6 a landlord of a tenant who is liable under Subsection (a) may obtain  
7 a judgment against the tenant for damages suffered by the landlord  
8 because the tenant:

9           (1) removed a battery from a smoke alarm or carbon  
10 monoxide alarm without immediately replacing the battery [~~it~~] with  
11 a working battery; or

12           (2) knowingly disconnected or intentionally damaged a  
13 [~~the~~] smoke alarm or carbon monoxide alarm, causing the smoke alarm  
14 or carbon monoxide alarm [~~it~~] to malfunction.

15           **(b-1) A tenant is not liable under Subsection (a) and a**  
16 **landlord may not obtain a judgment against a tenant under**  
17 **Subsection (b) if:**

18           (1) it is determined that the sensing unit of a carbon  
19 monoxide alarm from which a tenant removed a battery or that a  
20 tenant disconnected or damaged had stopped functioning before the  
21 removal, disconnection, or damage; and

22           (2) the tenant notified the landlord that the sensing  
23 unit of the carbon monoxide alarm no longer functioned not more than  
24 seven days after the date the tenant made that determination.

25           (c) A tenant is not liable for damages suffered by the  
26 landlord if the damage is caused by the landlord's failure to repair  
27 the smoke alarm or carbon monoxide alarm within a reasonable time

1 after the tenant requests it to be repaired, considering the  
2 availability of material, labor, and utilities.

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

6 (1) a lease between the landlord and tenant contains a  
7 notice, in underlined or boldfaced print, which states in substance  
8 that the tenant:

9 (A) must not disconnect or intentionally damage a  
10 smoke alarm or remove the battery without immediately replacing the  
11 battery [it] with a working battery;

12 (B) must not disconnect or intentionally damage a  
13 carbon monoxide alarm or remove the battery without immediately  
14 replacing the battery with a working battery, unless the tenant  
15 determines that the carbon monoxide sensing unit no longer  
16 functions and notifies the landlord not more than seven days after  
17 the date the tenant makes that determination; and

18 (C) [that the tenant] may be subject to damages,  
19 civil penalties, and attorney's fees under Section 92.2611 of the  
20 Property Code for not complying with the notice; and

21 (2) the landlord has given notice to the tenant that  
22 the landlord intends to exercise the landlord's remedies under this  
23 subchapter if the tenant does not reconnect, repair, or replace the  
24 smoke alarm or carbon monoxide alarm or replace a battery [the]  
25 removed from a smoke alarm or carbon monoxide alarm with a working  
26 battery within seven days after being notified by the landlord to do  
27 so.

1 (d-1) The notice in Subsection (d)(2) must be in a separate  
2 document furnished to the tenant after the landlord has discovered  
3 that the tenant has disconnected or damaged the smoke alarm or  
4 carbon monoxide alarm or removed a battery from the alarm [~~it~~].

5 (e) If a tenant is liable under Subsection (a) and the  
6 tenant does not comply with the landlord's notice under Subsection  
7 (d), the landlord shall have the following remedies against the  
8 tenant:

9 (1) a court order directing the tenant to comply with  
10 the landlord's notice;

11 (2) a judgment against the tenant for a civil penalty  
12 of one month's rent plus \$100;

13 (3) a judgment against the tenant for court costs; and

14 (4) a judgment against the tenant for reasonable  
15 attorney's fees.

16 (f) A tenant's guest or invitee who suffers damage because  
17 of a landlord's failure to install, inspect, or repair a smoke alarm  
18 or carbon monoxide alarm as required by this subchapter may recover  
19 a judgment against the landlord for the damage. A tenant's guest or  
20 invitee may recover a judgment against the tenant for damage  
21 suffered [~~who suffers damage~~] because the tenant:

22 (1) removed a battery from a smoke alarm or carbon  
23 monoxide alarm without immediately replacing the battery [~~it~~] with  
24 a working battery;

25 (2) [~~or because the tenant~~] knowingly disconnected or  
26 intentionally damaged a [the] smoke alarm or carbon monoxide alarm,  
27 causing it to malfunction; or

1           (3) determined a carbon monoxide alarm's sensing unit  
2 no longer functioned and did not notify the landlord on or before  
3 the seventh day after the date the tenant made that determination [~~7~~  
4 ~~may recover a judgment against the tenant for the damage~~].

5           Sec. 92.262. AGENTS FOR DELIVERY OF NOTICE. A managing or  
6 leasing agent, whether residing or maintaining an office on-site or  
7 off-site, is the agent of the landlord for purposes of notice and  
8 other communications required or permitted by this subchapter.

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 3. With respect to a dwelling unit first occupied or  
21 for which a certificate of occupancy was issued before September 1,  
22 2019, a landlord shall comply with the change in law made by this  
23 Act not later than January 1, 2020.

24           SECTION 4. This Act takes effect September 1, 2019.