

C

West's Annotated Code of West Virginia [Currentness](#)

Chapter 29. Miscellaneous Boards and Officers

▢ [Article 3. Fire Prevention and Control Act \(Refs & Annos\)](#)

➔ **§ 29-3-16a. Smoke detectors in one- and two-family dwellings; carbon monoxide detectors in residential units; penalty**

(a) On or before the first day of July, one thousand nine hundred ninety-one, an operational smoke detector shall be installed in the immediate vicinity of each sleeping area within all one- and two-family dwellings, including any “manufactured home” as that term is defined in subsection (j), section two, article nine, chapter twenty-one of this code. The smoke detector shall be capable of sensing visible or invisible particles of combustion and shall meet the specifications and be installed as provided in the national fire protection association standard 72, “Standard for the Installation, Maintenance and Use of Household Fire Warning Equipment”, 1996 edition, and in the manufacturer's specifications. When activated, the smoke detector shall provide an alarm suitable to warn the occupants of the danger of fire.

(b) The owner of each dwelling described in subsection (a) of this section shall provide, install and replace the operational smoke detectors required by this section. So as to assure that the smoke detector continues to be operational, in each dwelling described in subsection (a) of this section which is not occupied by the owner thereof, the tenant in any dwelling shall perform routine maintenance on the smoke detectors within the dwelling.

(c) Where a dwelling is not occupied by the owner and is occupied by an individual who is deaf or hearing impaired, the owner shall, upon written request by or on behalf of the individual, provide and install a smoke detector with a light signal sufficient to warn the deaf or hearing-impaired individual of the danger of fire.

(d) An automatic fire sprinkler system installed in accordance with the national fire protection association standard 13D, “Standard for the Installation of Sprinkler Systems in Residential Occupancies”, 1989 edition, may be provided in lieu of smoke detectors.

(e) After investigating a fire in any dwelling described in subsection (a) of this section, the local investigating authority shall issue to the owner a smoke detector installation order in the absence of the required smoke detectors.

(f) After the first day of July, one thousand nine hundred ninety-eight, an operational carbon monoxide detector with a suitable alarm shall be installed in accordance with the manufacturer's direction:

(1) In any newly constructed residential unit which has a fuel-burning heating or cooking source including, but not limited to, an oil or gas furnace or stove; and

(2) In any residential unit which is connected to a newly constructed building, including, but not limited to, a garage, storage shed or bar, which has a fuel-burning heating or cooking source, including, but not limited to, an oil or gas furnace or stove.

(g) Any person installing a carbon monoxide detector in a residential unit shall inform the owner, lessor or the occupant or occupants of the residential unit of the dangers of carbon monoxide poisoning and instructions on the operation of the carbon monoxide detector installed.

(h) When repair or maintenance work is undertaken on a fuel-burning heating or cooking source or a venting system in an existing residential unit, the person making the repair or performing the maintenance shall inform the owner, lessor or the occupant or occupants of the unit being served by the fuel-burning heating or cooking source or venting system of the dangers of carbon monoxide poisoning and recommend the installation of a carbon monoxide detector.

(i) Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars nor more than one hundred dollars.

(j) A violation of this section may not be considered by virtue of the violation to constitute evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages.

(k) A violation of this section may not constitute a defense in any civil action or proceeding involving any insurance policy.

(l) Nothing in this section shall be construed to limit the rights of any political subdivision in this state to enact laws imposing upon owners of any dwelling or other building described in subsection (a) or (f) of this section a greater duty with regard to the installation, repair and replacement of the smoke detectors or carbon monoxide detectors than is required by this section.

CREDIT(S)

Acts 1984, c. 82; Acts 1989, c. 80; Acts 1991, c. 73; Acts 1998, c. 155, eff. July 1, 1998; Acts 1999, c. 129, eff. Feb. 19, 1999; Acts 2000, c. 42, eff. March 9, 2000; Acts 2002, c. 149, eff. 90 days after March 9, 2002.

NOTES OF DECISIONS

Exemptions 3

Failure to comply with code 2

Nature and grounds of liability 1

1. Nature and grounds of liability

Statutory provision excluding civil liability on the basis of violation of statute requiring smoke detectors in residential rental property is not an evidentiary bar but, rather, a manifestation of intent of legislature to create substantive law that there not be civil liability for violation of that particular statute. Code, 29-3-16a(g); [Rules of Evid., Rule 402](#). [Reed v. Phillips, 1994, 452 S.E.2d 708, 192 W.Va. 392. Landlord And Tenant](#) 🔑 164(1)

Statutory provision excluding civil liability which might otherwise result in violation of smoke detector statute does not limit tort liability for the failure to provide smoke detectors that might arise outside of that particular statute and does not prohibit liability based on violation of rules and regulations of the State Fire Commissioner and the statutory warranty of habitability. Code, 29-3-16a(g), [37-6-30](#); W.Va. Code R., title 7, §§ 87-1-4.1, 87-1-11.6B(2). [Reed v. Phillips, 1994, 452 S.E.2d 708, 192 W.Va. 392. Landlord And Tenant](#) 🔑 164(1)

Violation of statute requiring smoke detectors in residential rental property does not give rise to prima facie case of negligence in view of subsection of the statute excluding civil liability which might otherwise result from violation. Code, 29-3-16a(g). [Reed v. Phillips, 1994, 452 S.E.2d 708, 192 W.Va. 392. Landlord And Tenant](#) 🔑 169(4)

2. Failure to comply with code

Failure to comply with fire code or similar sets of regulations constitutes prima facie negligence if injury proximately flows from noncompliance and injury is of the sort the regulation was intended to prevent. Code, 29-3-16a(g). [Reed v. Phillips, 1994, 452 S.E.2d 708, 192 W.Va. 392. Negligence](#) 🔑 341; [Negligence](#) 🔑 409; [Negligence](#) 🔑 1666

3. Exemptions

State Fire Code provision expressly exempting single family dwelling house from smoke detector requirement precluded claim brought by father of guest, who was killed in fire of single family dwelling house rented by tenants, alleging that landlords were negligent in failing to have smoke detectors and/or fire extinguishment apparatus available on rental property. Code, 29-3-16a(a). [Redden v. Comer, 1997, 488 S.E.2d 484, 200 W.Va. 209. Landlord And Tenant](#) 🔑 167(8)

W. Va. Code, § 29-3-16a, WV ST § 29-3-16a

Current through End of the 2009 Second Extraordinary Session

Copr. (C) 2009 Thomson Reuters. No claim to orig. U.S. govt. works

END OF DOCUMENT