

GOVERNMENT CODE

CHAPTER 417. STATE FIRE MARSHAL

Sec. 417.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the commissioner of insurance.

(2) "Department" means the Texas Department of Insurance.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 983, Sec. 2, eff. Jan. 1, 1990; Acts 1991, 72nd Leg., ch. 628, Sec. 5, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1172, Sec. 3.01, eff. Sept. 1, 1997.

Sec. 417.002. APPOINTMENT AND TENURE. The state fire marshal is appointed by the commissioner. The state fire marshal serves at the pleasure of the commissioner and may be discharged at any time. The state fire marshal shall report to the commissioner. Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 628, Sec. 5, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1172, Sec. 3.01, eff. Sept. 1, 1997.

Sec. 417.003. STATUS AS STATE-COMMISSIONED OFFICER. The state fire marshal is a state-commissioned officer and functions in that capacity subject to rules of the commissioner.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 628, Sec. 5, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1172, Sec. 3.01, eff. Sept. 1, 1997.

Sec. 417.004. GENERAL POWERS AND DUTIES. (a) The state fire marshal, under the supervision of the commissioner, shall administer and enforce applicable provisions of the Insurance Code and other law relating to the state fire marshal. The commissioner shall perform the supervisory and rule-making functions previously performed by the Texas Commission on Fire Protection under this subsection. The commissioner and the commission shall transfer information between the two agencies as necessary to allow the agencies to perform their statutory duties. The commissioner and the commission may make and adopt by rule memoranda of understanding as necessary to coordinate their respective duties.

(b) The state fire marshal is the chief investigator in charge of the investigation of arson and suspected arson in the state.

(c) The state fire marshal may make or encourage studies of fire protection, including fire administration.

(d) The state fire marshal may conduct research to improve fire protection and fire administration and may stimulate research by public and private agencies for that purpose.

(e) The state fire marshal may, on the request of a public or nonprofit entity with duties related to fire protection, advise or assist the entity in relation to those duties.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 628, Sec. 5, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1172, Sec. 3.01, eff. Sept. 1, 1997.

Sec. 417.005. ADOPTION OF RULES. The commissioner, after consulting with the state fire marshal, may adopt necessary rules to guide the state fire marshal and fire and arson investigators commissioned by the state fire marshal in the investigation of arson, fire, and suspected arson and in the performance of other duties for the commissioner.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 628, Sec. 5, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 912, Sec. 21, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1172, Sec. 3.01, eff. Sept. 1, 1997.

Sec. 417.0051. FIRE PREVENTION AND SAFETY EDUCATION. The commissioner, through the state fire marshal:

(1) shall use pertinent and timely facts relating to fires to develop educational programs and disseminate materials necessary to educate the public effectively regarding methods of fire prevention and safety; and

(2) may accept gifts, grants, and donations from any source for the purposes of this section.

Added by Acts 1989, 71st Leg., ch. 186, Sec. 1, eff. Aug. 28, 1989. Amended by Acts 1991, 72nd Leg., ch. 628, Sec. 5, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1172, Sec. 3.01, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2003.

Sec. 417.0052. TEXAS FIRE INCIDENT REPORTING SYSTEM. The state fire marshal, under the direction of the commissioner, is responsible for maintaining and administering the Texas Fire Incident Reporting System.

Added by Acts 1997, 75th Leg., ch. 1172, Sec. 3.02, eff. Sept. 1, 1997.

Sec. 417.006. FIRE AND ARSON INVESTIGATORS. The state fire marshal may commission peace officers to act as fire and arson investigators under his supervision and to perform other law enforcement duties assigned to the commissioner and the state fire marshal by law. The state fire marshal may revoke a peace officer's commission under this section for just cause.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 628, Sec. 5, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 912, Sec. 22, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1172, Sec. 3.03, eff. Sept. 1, 1997.

Sec. 417.007. INVESTIGATION OF FIRE. (a) The state fire marshal shall immediately investigate a fire occurring in this state in which property is destroyed if the commissioner directs the investigation or, in the discretion of the commissioner, if the investigation is requested by:

(1) the mayor, fire chief, fire marshal, or police chief of a municipality in which a fire occurs;

(2) a county or district judge, sheriff, county fire marshal, chief or fire marshal of a fire department in an unincorporated area, or county attorney of a county in which a fire occurs;

(3) a fire insurance company interested in a loss or the company's general, state, or special agent;

(4) an insurance policyholder, property owner, or lessee sustaining a fire loss;

(5) a justice of the peace or a constable of a precinct in which a fire occurs; or

(6) officials of a state or federal law enforcement agency or local or special governmental district involved or interested in a fire loss that occurred in this state.

(b) The state fire marshal at any time may enter a building or premises at which a fire is in progress or has occurred and is under control of law enforcement or fire service officials to investigate the cause, origin, and circumstances of the fire. If control of the building or premises has been relinquished, entry must be in compliance with search and seizure law and applicable federal law.

(c) The state fire marshal shall conduct the investigation at the place of the fire and before an insured loss may be paid. The state fire marshal shall ascertain, if possible, whether the fire was caused intentionally, carelessly, or accidentally. The state fire marshal shall make a written report of the investigation to the commissioner.

(d) If the state fire marshal believes that further investigation is necessary, the state fire marshal shall take sworn statements from persons who in his opinion can supply relevant information and shall have the statements put in writing. The state fire marshal may administer oaths and compel the attendance of witnesses and the production of documents.

(e) If the state fire marshal believes that there is sufficient evidence to charge a person with arson, attempted arson, conspiracy to commit fraud, or another offense related to the matter under investigation, the state fire marshal shall give to the appropriate prosecuting attorney all evidence and relevant information that has been obtained, including the names of witnesses. The state fire marshal shall arrest the person if the person has not been arrested by some other authority. The state fire marshal shall assist in the prosecution of any complaint he files.

(f) The state fire marshal may, in his discretion, conduct or direct the conduct of an investigation in private and may exclude from the place of the investigation persons not needed for the investigation. Witnesses may be separated from each other and not be allowed to communicate with other witnesses until after they have testified.

(g) The state fire marshal may elect to withhold from the public any testimony taken in an investigation under this section. Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 186, Sec. 2, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 628, Sec. 5, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1172, Sec. 3.04, eff. Sept. 1, 1997.

Sec. 417.0075. INVESTIGATION OF FIREFIGHTER FATALITY. (a) In this section, the term "firefighter" includes an individual who

performs fire suppression duties for a governmental entity or volunteer fire department.

(b) If a firefighter dies in the line of duty in connection with a fire-fighting incident in this state, the state fire marshal shall investigate the circumstances surrounding the death of the firefighter, including the cause and origin of the fire, the condition of the structure, and the suppression operation, to determine the factors that may have contributed to the death of the firefighter.

(c) In conducting an investigation under this section, the state fire marshal has the same powers as those granted to the state fire marshal under Section 417.007. The state fire marshal shall coordinate the investigative efforts of local government officials and may enlist established fire service organizations and private entities to assist in the investigation.

(d) The state fire marshal shall release a report concerning an investigation conducted under this section on completion of the investigation.

(e) Not later than October 31 of each year, the state fire marshal shall deliver to the commissioner a detailed report about the findings of each investigation conducted under this section in the preceding year.

(f) Information gathered in an investigation conducted under this section is subject to Section 552.108.

(g) The authority granted to the state fire marshal under this section shall not limit in any way the authority of the county or municipal fire marshal to conduct the county or municipal fire marshal's own investigation into the death of a firefighter within the county or municipal fire marshal's jurisdiction.

Added by Acts 2001, 77th Leg., ch. 846, Sec. 1, eff. Sept. 1, 2001.

Sec. 417.008. RIGHT OF ENTRY; EXAMINATION AND CORRECTION OF DANGEROUS CONDITIONS. (a) On the complaint of any person, the state fire marshal, at any reasonable time, is entitled to enter any building or premises in the state.

(b) The state fire marshal shall enter and is entitled, at any time, to enter any mercantile, manufacturing, or public building, place of amusement, or place where public gatherings are held, or any premises belonging to such a building or place, and make a thorough examination.

(c) The state fire marshal shall order the removal of a building or structure or other remedial action if he finds that:

(1) the building or other structure, because of lack of repair, age, dilapidated condition, or other reason, is susceptible to fire and is so located or occupied that fire would endanger persons or property in the building or structure;

(2) a dangerous condition is created by:

(A) an improper arrangement of stoves, ranges, furnaces, or other heating appliances, including chimneys, flues, and pipes with which they are connected, or by their lighting systems or devices; or

(B) the manner of storage of explosives, compounds, petroleum, gasoline, kerosene, dangerous chemicals, vegetable products, ashes, or combustible, flammable, or refuse materials; or

(3) any other condition exists that is dangerous or is liable to cause or promote fire or create danger for fire fighters, occupants, or other buildings or structures.

(d) The occupant or owner of the building or premises shall immediately comply with an order made by the state fire marshal under this section. The state fire marshal may, if necessary, apply to a court of competent jurisdiction for writs or orders necessary to enforce this section, and the court may grant appropriate relief. The state fire marshal is not required to give a bond.

(e) The commissioner may adopt by rule any appropriate standard developed by a nationally recognized standards-making association under which the state fire marshal may enforce this section, except that standards adopted by rule under this subsection do not apply in a geographic area under the jurisdiction of a local government that has adopted fire protection ordinances that apply in the geographic area.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 186, Sec. 2, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 628, Sec. 5, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 912, Sec. 23, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1172, Sec. 3.05, eff. Sept. 1, 1997.

Sec. 417.0081. INSPECTION OF CERTAIN STATE-OWNED BUILDINGS. The state fire marshal, at the commissioner's direction, shall periodically inspect public buildings under the charge and control of the General Services Commission. Added by Acts 1993, 73rd Leg., ch. 684, Sec. 49, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1172, Sec. 3.06, eff. Sept. 1, 1997.

Sec. 417.0082. PROTECTION OF CERTAIN STATE-OWNED BUILDINGS AGAINST FIRE HAZARDS. (a) The state fire marshal, under the direction of the commissioner, shall take any action necessary to protect a public building under the charge and control of the General Services Commission, and the building's occupants, against an existing or threatened fire hazard.

(b) The commissioner and the General Services Commission shall make and each adopt by rule a memorandum of understanding that coordinates the agency's duties under this section. Added by Acts 1993, 73rd Leg., ch. 684, Sec. 52, eff. Sept. 1, 1993. Renumbered from V.T.C.A., Government Code Sec. 419.0081, and amended by Acts 1997, 75th Leg., ch. 1172, Sec. 3.07, eff. Sept. 1, 1997.

Sec. 417.0083. FIRE SUPPRESSION RATINGS SCHEDULE. (a) The state fire marshal shall perform duties as directed by the commissioner relating to the department's fire suppression ratings schedule.

(b) The state fire marshal may provide technical assistance to paid fire departments, volunteer fire departments, and local governments responding to the use of the fire suppression ratings schedule.

Added by Acts 1991, 72nd Leg., ch. 628, Sec. 4, eff. Sept. 1, 1991. Renumbered from V.T.C.A., Government Code Sec. 419.901 and amended by Acts 1997, 75th Leg., Sec. 3.08, eff. Sept. 1, 1997.

Sec. 417.009. DELEGATION OF AUTHORITY. (a) If for any reason the state fire marshal is unable to make a required investigation in person, the marshal may designate the fire marshal of the city or town where the investigation is to be made or another suitable person to act for the state fire marshal.

(b) The designated person has the same authority with respect to the investigation as is provided by this chapter for the state fire marshal. The designated person is entitled to compensation as provided by the commissioner.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by 1, 1997; Acts 1991, 72nd Leg., ch. 628, Sec. 5, eff. Sept. 1, 1991 by Acts 1997, 75th Leg., ch. 1172, Sec. 3.09, eff. Sept.

Sec. 417.010. ALTERNATE REMEDIES. The state fire marshal, in the enforcement of a law that is enforced by or through the state fire marshal, may in lieu of cancelling, revoking, or suspending a license or certificate of registration impose on the holder of the license or certificate of registration an order directing the holder to do one or more of the following:

(1) cease and desist from a specified activity;
(2) remit to the commissioner within a specified time a monetary forfeiture not to exceed \$10,000 for each violation of an applicable law or rule; and

(3) make restitution to a person harmed by the holder's violation of an applicable law or rule.

Added by Acts 1993, 73rd Leg., ch. 912, Sec. 24, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1172, Sec. 3.10, eff. Sept. 1, 1997.