

- SUBJECT:** Landlord and tenant responsibilities regarding smoke detectors in dwellings
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 9 ayes — Brimer, Brady, Corte, Crabb, Eiland, Giddings, Janek, Rhodes, Solomons
0 nays
- WITNESSES:** For — Pamela Brown, Texas Legal Services Center; David Mintz, Larry Niemann, David Guin, Texas Apartment Association.
Against — None
- BACKGROUND:** Property Code Chapter 92 generally requires that residential rental properties have smoke detectors installed in each unit and that they be checked by the landlord at the time of installation and before a new tenant moves into a unit. During a tenant's residency landlords have a duty to inspect and repair a smoke detector if the tenant requests it or gives notice of a malfunction, except the duty does not exist if the smoke detector is damaged or a malfunction is caused by the tenant or the tenant's family, guests or invitees.

A landlord is liable if the landlord fails to install, inspect or repair a smoke detector within a reasonable time after receiving notice from the tenant *and* the landlord does not comply within seven days after the tenant has given written notice. A tenant may obtain a court order directing the landlord to comply with the request, a judgment for any damages suffered by the tenant because of the landlord's violation, one month's rent plus \$100, court costs and attorney's fees and unilateral termination of the lease without a court proceeding.
- DIGEST:** CSHB 1637 would revise the responsibilities and liability of landlords and tenants regarding smoke detectors in residential units. Landlords would be required to test if a smoke detector was in working order at the beginning of the tenant's possession, not when a smoke detector is installed after the tenant has taken possession. A smoke detector in good working order at

the beginning of the tenant's possession would be presumed still to be in such condition until the tenant requests its repair.

A landlord would be liable for failure to install a smoke detector at the time of initial occupancy *or* when the landlord failed to install, inspect or repair a smoke detector after the tenant gives seven days notice.

Tenant remedies would be changed to allow a court order directing compliance by the landlord only if the tenant was in possession of the dwelling unit. The remedy of one month's rent plus \$100 would be considered a civil penalty and, along with the remedy of unilateral termination of the lease, would only apply to failure to install, inspect or repair, not to failure to install at the time of initial occupancy. A tenant could not obtain attorney's fees for a judgment against the landlord for damages caused by the landlord's violation.

A tenant would be liable to the landlord for any damages resulting from the tenant's removing a battery from a smoke detector without immediately replacing it with a working battery or knowingly disconnecting or intentionally damaging a smoke detector causing it to malfunction. A tenant would not be liable if the damage was caused by the landlord's failure to repair the smoke detector within a reasonable time after the tenant's request.

The tenant would be liable only if the lease included a provision in underlined or boldfaced type stating the tenant's duties regarding the smoke detector and the landlord had given notice at least seven days earlier of the landlord's intent to exercise his or her remedies if the tenant did not fix the smoke detector or replace the batteries. The landlord would have to furnish a separate notice after discovering that the tenant had disconnected or damaged the smoke detector or removed the battery. If a tenant was liable, the landlord would have the same remedies as the tenant under *current* law, except for unilateral termination of the lease.

A tenant's guest or invitee who suffered damage from a landlord's failure to install, inspect or repair a smoke detector could recover damages against the landlord. A guest or invitee who suffered damage because the tenant removed a battery from, knowingly disconnected or intentionally damaged a

smoke detector, causing it to malfunction, could recover damages against the tenant.

The bill would take effect September 1, 1995 and apply only to causes of actions accruing after the effective date.

**SUPPORTERS
SAY:**

CSHB 1637 is needed to clarify existing duties and responsibilities by landlords and tenants regarding smoke detectors. CSHB 1637 would ensure that landlords install smoke detectors and that they are in good working order prior to tenants moving into rental properties and that tenants are held responsible if they disable a smoke detector.

A landlord who failed to install smoke detector would be liable for damages in the event of a fire, even if no notice were given by the tenant. If a tenant intentionally disabled a smoke detector by removing working batteries, failing to replace expired batteries or deliberately disconnecting or damaging the unit, and failed to remedy the situation within seven days of receiving written notice, the tenant would be subject to civil penalties. Both the landlord and the tenant would be liable to guests and invitees for any damages resulting from their failure to perform their duty of keeping smoke detectors in working order.

The Texas Commission on Fire Protection reports that of about 4,800 fires that occurred in multifamily dwellings in 1993, more than 3,800 occurred in apartments in which smoke detectors were in place but not working. Fires that could have been prevented cost millions of dollars in property damage and threaten the lives of all those residing in residential rental dwellings. This bill will make tenants and landlords fully responsible for their actions in a balanced manner that also protects the rights of both.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

The committee substitute would make the landlord liable for damages for not repairing a smoke detector within a reasonable time after receiving notice from a tenant and liable for a tenant's guests or invitees in the event the landlord failed to install or repair a smoke detector. CSHB 1637 also would require a landlord to provide a seven-day notice to the tenant to

repair or replace the smoke detector prior to seeking civil remedies against the tenant. The substitute would make the tenant liable for damages caused to a tenant's guest or invitee if the tenant disabled a smoke detector or failed to replace a battery.

A related bill, HB 530 by Van de Putte, requiring visual-alarm smoke detectors for hearing-impaired renters, failed to pass on third reading in the House on April 20.