

BILL ANALYSIS

Senate Research Center
84R7871 SCL-F

S.B. 1197
By: Eltife
Business & Commerce
4/6/2015
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Chapter 417 of the Government Code states that the State Fire Marshal's Office (SFMO) is the chief investigator for arson and suspected arson investigations in the state. This authority was established in 1910 and the investigative function of that authority has not been significantly amended since 1913. Chapter 417 also directs SFMO to investigate when a firefighter dies in the line of duty or if the firefighter's death occurs in connection with an on-duty incident. Once SFMO has concluded the firefighter fatality investigation, it must submit a detailed report of the findings. The firefighter fatality report is prepared to address needed corrections relating to any contributing factors related to the death in an effort to reduce loss of life for future on-duty incidents and is submitted to the commissioner of insurance.

As a part of its investigative function, SFMO must conduct interviews, which may involve persons reluctant to provide information. Current statute provides SFMO with the power to compel individuals to serve as witnesses and requires them to provide statements; however, the statute is outdated and could benefit from modernizing language to reflect current standards, similar to the authority provided to county fire marshals in the Local Government Code. Moreover, the statute lacks clarity with respect to crime scenes involving vehicle fires.

Section 417.0075 of the Government Code states that SFMO "shall investigate circumstances surrounding the death of the firefighter," but it does not provide clear direction for how the office should proceed in investigating and reporting factors surrounding the death of a firefighter. Additional provisions are needed in the statute to allow for appropriate coordination and communication between all governmental entities during an investigation to ensure all contributing factors are properly investigated and fully reported.

S.B. 1197 updates the existing SFMO fire investigation authority as it relates to the privacy of interviews and examinations with additional language needed for fire investigation authority (similar to the authority provided to county fire marshals in Chapter 352 of the Local Government Code). S.B. 1197 also amends fire investigation authority to specifically include vehicle fire investigations.

As proposed, S.B. 1197 amends current law relating to fire investigations by the state fire marshal, and creates a criminal offense.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 417.007, Government Code, by amending Subsections (a), (b), and (c) and adding Subsections (b-1) and (b-2), as follows:

- (a) Requires the state fire marshal to immediately investigate a fire occurring in this state in which property is destroyed or an individual dies or is injured if the commissioner of insurance (commissioner) directs the investigation or, in the discretion of the

commissioner, if the investigation is requested by certain government officials as set forth.

(b) Authorizes the state fire marshal at any time to enter and examine a building, vehicle, or premises at which a fire is in progress or has occurred and an adjacent building, vehicle, or premises, rather than authorizes the state fire marshal at any time to 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. Requires that entry be in compliance with search and seizure law and applicable federal law if control of the building, vehicle, or premises has been relinquished.

(b-1) Authorizes the state fire marshal to obtain an order from a magistrate to conduct an examination under Subsection (b) if entry is refused. Requires that the order:

(1) limit the investigation to the circumstances of the origin and cause of the fire; and

(2) be executed in accordance with Articles 18.06 (Execution of Warrants) and 18.07 (Days Allowed for Warrant to Run), Code of Criminal Procedure.

(b-2) Requires the state fire marshal, if the state fire marshal determines in an investigation conducted under Subsection (b) that a criminal offense occurred, to comply with state search and seizure law and federal law.

(c) Requires the state fire marshal to 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, accidentally, or by natural causes. Requires the state fire marshal to make a written report of the investigation to the commissioner. Makes a nonsubstantive change.

SECTION 2. Amends Sections 417.0075(b) and (c), Government Code, as follows:

(b) Requires the state fire marshal, if a firefighter dies in the line of duty or if the firefighter's death occurs in connection with an on-duty incident in this state, to investigate the circumstances surrounding the death of the firefighter, including the cause of the fire and any factors and criminal offenses that may have contributed to the death of the firefighter.

(c) Provides that, 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 (Investigation of Fire). Requires the state fire marshal to coordinate the investigative efforts of federal, state, and local governmental entities, rather than the investigative efforts of local government officials, and authorizes the state fire marshal to enlist established fire service organizations and private entities to assist in the investigation.

SECTION 3. Amends Chapter 417, Government Code, by adding Sections 417.0076, 417.0077, 417.0078, and 417.0079, as follows:

Sec. 417.0076. **PRIVACY OF INVESTIGATIONS.** (a) Authorizes the state fire marshal, in an investigation under this chapter, to:

(1) conduct the investigation in private;

(2) prevent an individual who is not under investigation from accessing a building, vehicle, or premises under investigation;

(3) prevent an individual not needed for the investigation from accessing a building, vehicle, or premises under investigation; and

(4) keep witnesses separated until each witness is examined.

(b) Authorizes the state fire marshal to withhold from the public any testimony or personal property taken in an investigation under this chapter.

Sec. 417.0077. SERVICE OF PROCESS. Requires that service of process required by this chapter be made by a peace officer and signed by the state fire marshal.

Sec. 417.0078. EFFECT ON CIVIL ACTIONS. Provides that an action taken by the state fire marshal in the investigation of a fire does not affect the rights of an insurance policyholder or any person regarding a loss caused by the fire.

Sec. 417.0079. LIMITATION OF LIABILITY. Provides that the state fire marshal and the assistants and employees of the state fire marshal are not liable for an act or omission in the performance of their duties unless the act or omission is the result of gross negligence or intentional conduct.

SECTION 4. Amends Chapter 417, Government Code, by adding Section 417.011, as follows:

Sec. 417.011. CRIMINAL OFFENSE; IMPEDING INVESTIGATION. (a) Provides that a person commits an offense if the person, in connection with an investigation conducted under this chapter:

(1) refuses to provide testimony under oath; or

(2) on the request of the state fire marshal, fails to provide to the state fire marshal any book, paper, or other document relating to a matter under investigation.

(b) Provides that an offense under this section is a Class B misdemeanor.

(c) Requires the state fire marshal, if a witness refuses to cooperate with an investigation conducted under this chapter, to refer the matter to the appropriate prosecuting attorney.

SECTION 5. Repealer: Section 417.007(f) (authorizing the state fire marshal to, in his discretion, conduct or direct the conduct of an investigation in private, exclude from the place of the investigation persons not needed for the investigation, and keep witnesses separated), Government Code.

Repealer: Section 417.007(g) (authorizing the state fire marshal to elect to withhold from the public any testimony taken in an investigation under this section), Government Code.

SECTION 6. Effective date: September 1, 2015.