

House Bill 1385

By: Representatives Chastain of the 7<sup>th</sup>, Lumsden of the 12<sup>th</sup>, Cox of the 28<sup>th</sup>, Barrett of the 24<sup>th</sup>, Gunter of the 8<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Titles 8 and 25 of the Official Code of Georgia Annotated, relating to buildings  
2 and housing and fire protection and safety, respectively, so as to improve government  
3 efficiency by updating provisions of the office of the Safety Fire Commissioner; to provide  
4 for procedures for rules promulgation, hearings, and appeals; to provide for the appointment  
5 of a deputy commissioner of safety fire; to provide for such position's duties and powers; to  
6 provide for the payment of expenses of certain employees; to provide for subpoena power;  
7 to establish an appeals board to review certain rulings on building permits; to provide for  
8 membership and powers of such board; to provide for review of all actions and  
9 documentation of deputized personnel; to authorize evacuation orders; to provide for  
10 petitions for a rule nisi; to provide for final authority; to provide for certain powers in  
11 suspected arson investigations; to provide for immediate reporting of fatalities caused by fire  
12 or smoke; to provide for suspension or revocation of a license; to provide for an increased  
13 reinspection fee; to provide for an effective date; to provide for related matters; to repeal  
14 conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

H. B. 1385

**PART I***Fire protection and safety***SECTION 1-1.**

19 Title 25 of the Official Code of Georgia Annotated, relating to fire protection and safety, is  
20 amended in Chapter 2, relating to regulation of fire and other hazards to persons and property  
21 generally, by revising Code Section 25-2-4, relating to adoption of rules and regulations by  
22 Commissioner, as follows:

23 "25-2-4.

24 The Commissioner shall adopt such rules and regulations as he or she deems necessary to  
25 promote the enforcement of this chapter. Such rules and regulations shall have the force  
26 and effect of law and shall have state-wide application as being the state minimum fire  
27 safety standards and shall not require adoption by a municipality or county. The governing  
28 authority of any municipality or county in this state is authorized to enforce the state  
29 minimum fire safety standards on all buildings and structures except one-family and  
30 two-family dwellings and those buildings and structures listed in Code Section 25-2-13.  
31 All other applications of the state minimum fire safety standards and fees are specified in  
32 Code Sections 25-2-4.1, 25-2-12, and 25-2-12.1. Before the Commissioner shall adopt as  
33 a part of his or her rules and regulations for the enforcement of this chapter any of the  
34 principles of the various codes referred to in this chapter, he or she shall first consider and  
35 approve them as reasonably suitable for the enforcement of this chapter. Not less than  
36 15 days before any rules and regulations are promulgated, a public hearing shall be held.  
37 Notice of the hearing shall be advertised in a newspaper of general circulation. The  
38 Commissioner shall be authorized to satisfy the requirements of this Code section by  
39 complying with Code Section 33-2-9."

40 **SECTION 1-2.**

41 Said title is further amended in said chapter by revising Code Section 25-2-5, relating to  
42 appointment, qualifications, and salary of state fire marshal, as follows:

43 "25-2-5.

44 The Commissioner shall appoint a state fire marshal and a deputy commissioner of safety  
45 fire. Qualifications for appointment ~~as state fire marshal~~ of such positions shall be previous  
46 training and experience in endeavors similar to those prescribed in this chapter. The  
47 Commissioner shall fix the salary of ~~the state fire marshal~~ such positions."

48 **SECTION 1-3.**

49 Said title is further amended in said chapter by revising Code Section 25-2-6, relating to state  
50 fire marshal as head of Safety Fire Division, as follows:

51 "25-2-6.

52 The Safety Fire Division of the office of the Commissioner of Insurance shall be headed  
53 by the ~~state fire marshal~~ deputy commissioner of safety fire appointed by the  
54 Commissioner."

55 **SECTION 1-4.**

56 Said title is further amended in said chapter by revising Code Section 25-2-7, relating to  
57 appointment process for deputy state fire marshal and other personnel, as follows:

58 "25-2-7.

59 The deputy commissioner of safety fire, in coordination with the state fire marshal, subject  
60 to the approval of the Commissioner, shall appoint a deputy state fire marshal and  
61 administrative fire safety specialists and shall employ such office personnel as may be  
62 required to carry out this chapter. The deputy state fire marshal and administrative fire  
63 safety specialists shall be chosen by virtue of their previous training and experience in the

64 particular duties which shall be assigned to them. They shall take an oath to perform  
65 faithfully the duties of their office."

66 **SECTION 1-5.**

67 Said title is further amended in said chapter by revising Code Section 25-2-8, relating to  
68 payment of expenses of employees in state fire marshal's office, as follows:

69 "25-2-8.

70 All state employees connected with the ~~state fire marshal's office~~ Safety Fire Division of  
71 the office of the Commissioner of Insurance shall be allowed subsistence, lodging, and  
72 other expenses in connection with the execution of their duties when away from their  
73 headquarters. Transportation for such employees shall be paid at the mileage rate fixed by  
74 law for other state employees."

75 **SECTION 1-6.**

76 Said title is further amended in said chapter by revising subsection (c) of Code  
77 Section 25-2-9, relating to authority of state fire marshal and employees to investigate and  
78 arrest, as follows:

79 "(c) Personnel employed and authorized by the state fire marshal shall have the power to  
80 make arrests for criminal violations established as a result of investigations. Such  
81 personnel shall hold certification as a peace officer from the Georgia Peace Officer  
82 Standards and Training Council and shall have the power to execute arrest warrants and  
83 search warrants for criminal violations, to serve subpoenas issued for examination,  
84 investigation, and trial of all offenses determined by their investigations, and to arrest, upon  
85 probable cause and without warrant, any person found violating any of the provisions of  
86 applicable criminal laws. Authorized personnel empowered to make arrests pursuant to  
87 this Code section shall be empowered to carry firearms as authorized by the state fire  
88 marshal in the performance of their duties. It shall be unlawful for any person to resist an

89 arrest authorized by this Code section or to interfere in any manner, including abetting or  
 90 assisting such resistance or interference, with personnel employed by the state fire marshal  
 91 in the duties imposed upon such personnel by law."

92 **SECTION 1-7.**

93 Said title is further amended in said chapter by revising Code Section 25-2-10, relating to  
 94 appeal process and requirement for surety bond, as follows:

95 "25-2-10.

96 (a) Any ~~Should~~ any person, firm, corporation, or public entity be dissatisfied with any  
 97 ruling or decision of the state fire marshal, the right is granted to appeal within ten days to  
 98 the Commissioner aggrieved or adversely affected by an order or action of the  
 99 Commissioner under this title may request a hearing within ten days of receipt of the order  
 100 or notice of the action in accordance with the procedure for the conduct of hearings in  
 101 contested cases as provided under Chapter 2 of Title 33.

102 (b) If the ~~any~~ person, firm, corporation, or public entity is dissatisfied with the decision of  
 103 the Commissioner, appeal is authorized to the superior court within 30 days aggrieved or  
 104 adversely affected by a final order of the Commissioner, the form of proceeding for judicial  
 105 review shall be by a petition for review in the Superior Court of Fulton County in the  
 106 manner provided under Chapter 13 of Title 50 Code Section 33-2-27.

107 (c) In the event of such ~~appeal~~ petition for review as provided in subsection (b) of this  
 108 Code section, the person, firm, corporation, or public entity shall give a surety bond which  
 109 will be conditioned upon compliance with the order and direction of ~~the state fire marshal~~  
 110 or the Commissioner or both. The amount of bond shall be fixed by the Commissioner in  
 111 such amount as will reasonably cover the order issued by the Commissioner or the state fire  
 112 marshal or both."

**SECTION 1-8.**

113  
114 Said title is further amended in said chapter by revising Code Section 25-2-11, which is  
115 designated as reserved, as follows:

116 "25-2-11.

117 (a) The purpose of this Code section is to provide a mechanism for any party aggrieved  
118 or adversely affected by a final ruling of a local governing authority on a building permit  
119 based on an interpretation or variance of the state minimum fire safety standards to appeal  
120 such ruling to an appeals board. Such party shall be authorized to submit an appeal to the  
121 Commissioner, and such appeal shall go before an appeals board within five business days  
122 of submission; provided, however, that the appeals board shall be authorized to delay such  
123 hearing for good cause.

124 (b) There is established an appeals board consisting of the state fire marshal, who shall  
125 serve as chairperson of such board, and six members appointed by the Commissioner as  
126 follows:

127 (1) One member from a county or municipal governing authority as described in  
128 paragraph (1) of subsection (a) of Code Section 25-2-12;

129 (2) One member from a municipal governing authority as described in subsection (b) of  
130 Code Section 25-2-12;

131 (3) One residential contractor licensed under Chapter 41 of Title 43;

132 (4) One licensed commercial general contractor licensed under Chapter 41 of Title 43;  
133 and

134 (5) Two additional appointees to be determined by the Commissioner.

135 (c) The term of each appointed member of the appeals board shall be for one year. Each  
136 member shall serve until a successor is appointed and qualified. Members of the appeals  
137 board shall serve as such without compensation but shall receive the same expense  
138 allowance as that received by members of the General Assembly and the same mileage

139 allowance for the use of a personal car or a travel allowance of actual transportation cost  
140 if traveling by public carrier as that received by all other state officials and employees.

141 (d) The Safety Fire Division of the office of the Commissioner of Insurance shall provide  
142 reasonable administrative support to the appeals board.

143 (e) The appeals board shall be authorized to uphold, modify, and reverse in whole or in  
144 part a local authority's final ruling. The appeals board shall be authorized to overrule a  
145 local authority's order to cease and desist, stop work, or similar order when such orders are  
146 found not to have presented an imminent danger to life and safety of the occupants of the  
147 building or structure in question.

148 (f) The Commissioner shall promulgate rules and regulations necessary to implement the  
149 provisions of this Code section. Reserved."

150 **SECTION 1-9.**

151 Said title is further amended in said chapter by revising subsection (e) of Code  
152 Section 25-2-12.1, relating to deputizing of local fire marshals, deputy local fire marshals,  
153 and state inspectors as state officers, as follows:

154 "(e) All deputized local fire marshals, deputy local fire marshals, and state inspectors shall  
155 submit monthly reports of their activities to the state fire marshal and shall comply with the  
156 administrative and operational procedures of the ~~state fire marshal's office~~ Safety Fire  
157 Division of the office of the Commissioner of Insurance. The state fire marshal or the  
158 Commissioner's designee shall be authorized to review all actions and documentation of  
159 deputized personnel at any time to assure compliance with administrative and operational  
160 procedures. The state fire marshal or the Commissioner's designee shall be authorized to  
161 reverse, change, mitigate, or assume direction of any action of deputized personnel. Any  
162 deputized local fire marshal, deputy local fire marshal, or state inspector who is found by  
163 the state fire marshal to be negligent in performing his appointed duties or in fulfilling his  
164 responsibilities shall be removed from his position as a state officer."

165 **SECTION 1-10.**

166 Said title is further amended in said chapter by adding a new subsection to Code Section  
167 25-2-14.2, relating to authority of state fire marshal to deny permit or request for certificate  
168 or to issue stop-work order, to read as follows:

169 "(c) The Commissioner or his or her designee shall be authorized to issue an immediate  
170 evacuation order of all persons from any building or structure, whether or not building  
171 construction is complete or such building or structure has been issued a certificate of  
172 occupancy, when such building or structure or any condition or cause presents an imminent  
173 life safety hazard of any type. Such order shall remain in effect until the Commissioner or  
174 his or her designee is satisfied such hazard is fully mitigated."

175 **SECTION 1-11.**

176 Said title is further amended in said chapter by revising Code Section 25-2-23, relating to  
177 issuance of notice to correct unsafe conditions, as follows:

178 "25-2-23.

179 (a) When any of the officers listed in Code Section 25-2-22 finds any building or other  
180 structure which, for want of repair or by reason of age or dilapidated condition or any other  
181 cause is especially liable to fire hazard or which is so situated as to endanger other property  
182 or the safety of the public, or when, in or around any building or structure, such officer  
183 finds combustible or explosive matter, inflammables, or other conditions dangerous to the  
184 safety of the building or structure, notice may be given to the owner or agent and occupant  
185 of the building or structure to correct such unsafe conditions as may be found.

186 (b) The Commissioner or his or her designee shall be authorized to issue an immediate  
187 evacuation order of all persons from any building or structure, whether or not such building  
188 or structure has been issued a certificate of occupancy, when such building or structure or  
189 any condition or cause presents an imminent life safety hazard of any type. Such order

190 shall remain in effect until the Commissioner or his or her designee is satisfied such hazard  
191 is fully mitigated."

192 **SECTION 1-12.**

193 Said title is further amended in said chapter by revising Code Section 25-2-24, relating to  
194 filing of petition for court order compelling compliance with notice, as follows:

195 "25-2-24.

196 (a) If any owner, agent, or occupant fails to comply with the notice prescribed in provided  
197 for under subsection (a) of Code Section 25-2-23 within the time specified in the notice,  
198 the state fire marshal or his delegated officials, with the approval of the Commissioner,  
199 may petition the court for a rule nisi to show cause why an order should not be issued by  
200 the court that the same be removed or remedied. Such court order shall forthwith be  
201 complied with by the owner or occupant of the premises or building within such time as  
202 may be fixed in the court order.

203 (b) Any appeal of an order issued by the Commissioner or his or her designee pursuant to  
204 subsection (b) of Code Section 25-2-23 shall proceed as provided for under Code  
205 Section 25-2-10."

206 **SECTION 1-13.**

207 Said title is further amended in said chapter by revising Code Section 25-2-26, relating to  
208 enforcement of Code Sections 25-2-22 through 25-2-25 by court order, as follows:

209 "25-2-26.

210 In accordance with Code Section 25-2-3, the Commissioner shall be authorized to  
211 implement and enforce the provisions of this title and the rules and regulations made  
212 pursuant to this title, except as provided for in Code Section 25-2-12, subject to a petition  
213 for judicial review to the Superior Court of Fulton County as provided for in Code  
214 Section 25-2-10. Code Sections 25-2-22 through 25-2-25 shall be construed so that the

215 ~~final authority for ordering the carrying out and enforcement of such Code sections shall~~  
216 ~~be by order of the court and not by the Commissioner or his delegated authority."~~

217 **SECTION 1-14.**

218 Said title is further amended in said chapter by revising subsection (a) of Code  
219 Section 25-2-28, relating to suspected arson investigation - power to subpoena witnesses and  
220 documents, administration of oaths, and court order to compel compliance, as follows:

221 "(a) ~~The state fire marshal or the deputy state fire marshal~~ Commissioner or his or her  
222 designee shall have the power to summon and compel the attendance of witnesses ~~before~~  
223 ~~either or both of them, in any county in which the witness resides,~~ to testify in relation to  
224 any matter ~~which is designated by Code Section 25-2-27~~ regulated under this title as a  
225 subject of inquiry and to issue subpoenas to compel the production of all books, records,  
226 documents, and papers pertaining to such subject of inquiry. The state fire marshal and  
227 deputy state fire marshal may also administer oaths and affirmations to persons appearing  
228 as witnesses before them. Any person summoned shall have the right of counsel at the  
229 hearing if he or she desires."

230 **SECTION 1-15.**

231 Said title is further amended in said chapter by revising Code Section 25-2-32.1, relating to  
232 reports to Safety Fire Division of serious burn injuries, as follows:

233 "25-2-32.1.

234 (a) Every case of a burn injury or wound where the victim sustained second-degree or  
235 third-degree burns to 5 percent or more of the body or any burns to the upper respiratory  
236 tract or laryngeal edema due to the inhalation of superheated air, and every case of a burn  
237 injury or wound which is likely to or may result in death, shall be reported at once to the  
238 Safety Fire Division of the office of the Commissioner of Insurance. The Safety Fire  
239 Division shall accept the report and notify the proper investigatory agency as may be

240 appropriate. A written report shall be provided to the Safety Fire Division within 72 hours.  
241 The report shall be made by the physician attending or treating the case or by the manager,  
242 superintendent, or other person in charge whenever such case is treated in a hospital  
243 sanitarium, institution, or other medical facility.

244 (b) All fatalities allegedly resulting from fire or smoke shall be reported immediately to  
245 the Safety Fire Division by the coroner or medical examiner of the county where such  
246 fatalities occurred. No coroner or medical examiner shall move or cause to be moved a  
247 decedent's body until authorized by personnel employed or authorized by the state fire  
248 marshal or the Commissioner or his or her designee."

249 **SECTION 1-16.**

250 Said title is further amended in said chapter by revising Code Section 25-2-38, relating to  
251 criminal penalties for violations of chapter and rules, regulations, or orders of Commissioner,  
252 as follows:

253 "25-2-38.

254 (a) Any person, firm, or corporation violating any provision of this chapter or failing or  
255 refusing to comply with any regulation promulgated under this chapter shall be guilty of  
256 a misdemeanor and shall be punished by imprisonment for not more than 12 months, by  
257 a fine of not more than \$1,000.00 per violation, or both.

258 (b) A law enforcement officer shall be authorized to issue a citation, summons, or  
259 accusation or to effect a custodial arrest in addition to the issuance of a citation, summons,  
260 or accusation. The citation, summons, or accusation shall enumerate the specific charges  
261 against the person and either the date upon which the person is to appear and answer the  
262 charges or a notation that the person will be later notified of the date upon which the person  
263 is to appear and answer the charges.

264 (c) Any probate court, state court, or other court of competent jurisdiction shall be  
265 authorized to hear and adjudicate misdemeanor violations of this title."

266 **SECTION 1-17.**

267 Said title is further amended in said chapter by revising paragraph (2) of subsection (f) of  
268 Code Section 25-2-40, relating to smoke detectors required in new dwellings and dwelling  
269 units and exceptions, as follows:

270 "(2) Any occupant who fails to maintain a smoke detector in a dwelling, dwelling unit,  
271 or other facility, other than a nursing home, listed in subsection (a) of this Code section  
272 in good working order as required in this Code section shall be subject to a maximum fine  
273 of ~~\$25.00~~ \$250.00 per detector, provided that a warning shall be issued for a first  
274 violation."

275 **SECTION 1-18.**

276 Said title is further amended in Article 1 of Chapter 15, relating to other safety inspections  
277 and regulations of boilers and pressure vessels, by revising Code Section 25-15-28, relating  
278 to appeals, as follows:

279 "25-15-28.

280 (a) Any person aggrieved by an order or an act of the Commissioner or the chief inspector  
281 under this article may, within ~~15~~ ten days of notice thereof, request a hearing ~~before an~~  
282 ~~administrative law judge of the Office of State Administrative Hearings, as provided by~~  
283 ~~Code Section 50-13-41~~ in accordance with the procedure for conduct of hearings in  
284 contested cases provided under Chapter 2 of Title 33.

285 (b) ~~Any person aggrieved by a decision of an administrative law judge may file an appeal~~  
286 ~~pursuant to Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'~~"

287  
288  
289

**PART II**

*Buildings and housing*

**SECTION 2-1.**

290 Title 8 of the Official Code of Georgia Annotated, relating to buildings and housing, is  
291 amended in Part 2 of Article 2 of Chapter 2, relating to manufactured homes, by revising  
292 Code Section 8-2-135, relating to licensing, by striking "and" at the end of paragraph (4), by  
293 replacing the period with "; and" at the end of paragraph (5), and by adding a new paragraph  
294 to read as follows:

295 "(6) Upon receipt of a sufficient number of complaints or complaints of a serious nature  
296 about a licensee or upon a licensee's continued noncompliance with this part or  
297 regulations promulgated under this part, the Commissioner shall have the authority to  
298 suspend or revoke a license issued under this Code section."

299

**SECTION 2-2.**

300 Said title is further amended in said part by revising subsection (a) of Code  
301 Section 8-2-135.1, relating to manufacturing and monitoring inspection fees, as follows:

302 "(a) During such time as the Commissioner's office is acting as the primary inspection  
303 agency pursuant to Section 623 of the National Manufactured Housing Construction and  
304 Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq., or the regulations issued  
305 thereunder, every manufacturer who manufactures manufactured homes in Georgia shall  
306 pay to the Commissioner a manufacturing inspection fee for each manufactured home  
307 manufactured in Georgia, irrespective of whether the manufactured home is offered for sale  
308 in this state. This manufacturing inspection fee shall be \$30.00 for each certification label,  
309 as defined in Section 623 of the National Manufactured Housing Construction and Safety  
310 Standards Act of 1974, 42 U.S.C. Section 5401, et seq. For any reinspection, a ~~\$15.00~~  
311 \$250.00 additional fee shall be charged."

312 **SECTION 2-3.**

313 Said title is further amended in said part by revising subsection (a) of Code Section 8-2-137,  
314 relating to hearings and dispute resolution program, as follows:

315 "(a) Any hearing conducted under the provisions of this chapter or of the rules and  
316 regulations promulgated under this part shall be in accordance with ~~Chapter 13 of Title 50,~~  
317 ~~the 'Georgia Administrative Procedure Act.'~~ Chapter 2 of Title 33."

318 **SECTION 2-4.**

319 Said title is further amended in said part by revising subsection (b) of Code Section 8-2-141,  
320 relating to monetary penalty and injunctive relief, as follows:

321 "(b) Any such monetary penalty may be imposed by the Commissioner after notice and  
322 opportunity for hearing as provided under Chapter 13 of Title 50, the 'Georgia  
323 Administrative Procedure Act.' The Commissioner shall be authorized to satisfy the  
324 requirements of this subsection by complying with Chapter 2 of Title 33. The amount of  
325 such penalty may be collected by the Commissioner in the same manner that money  
326 judgments are now enforced in the superior courts of this state."

327 **SECTION 2-5.**

328 Said title is further amended in Part 3 of said article, relating to installation of manufactured  
329 homes and mobile homes, by revising subsection (a) of Code Section 8-2-168, relating to  
330 hearings, as follows:

331 "(a) The adoption of rules and conduct of hearings under this part shall be in compliance  
332 with the provisions of ~~Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'~~  
333 Chapter 2 of Title 33."

334 **SECTION 2-6.**

335 Said title is further amended in Article 3 of said chapter, relating to application of building  
 336 and fire related codes to existing buildings, by revising Code Section 8-2-221, relating to  
 337 appeals of rulings or decisions, as follows:

338 "8-2-221.

339 Should any person, firm, corporation, or other entity be dissatisfied with any ruling or  
 340 decision of the state fire marshal pursuant to the provisions of this article, the right is  
 341 granted to appeal within ten days to the Commissioner. If the person, firm, corporation,  
 342 or other entity is dissatisfied with the decision of the Commissioner, appeal is authorized  
 343 to the superior court within 30 days in the manner provided under Chapter ~~13~~ 2 of Title  
 344 ~~50~~ 33. In the event of such appeal, the person, firm, corporation, or other entity shall give  
 345 a surety bond which will be conditioned upon compliance with the order and direction of  
 346 the state fire marshal or the Commissioner or both. The amount of bond shall be fixed by  
 347 the Commissioner in such amount as will reasonably cover the order issued by the  
 348 Commissioner or the state fire marshal or both."

349 **PART III**

350 *Effective date and repealer*

351 **SECTION 3-1.**

352 This Act shall become effective upon its approval by the Governor or upon its becoming law  
 353 without such approval.

354 **SECTION 3-2.**

355 All laws and parts of laws in conflict with this Act are repealed.