

Protecting and Enhancing Public Access to Codes (Pro Codes) Act of 2023

Why the Pro Codes Act?

- Non-profit standards development organizations (SDOs) convene *all stakeholders* to develop consensus-based standards on a wide array of safety matters at no cost to taxpayers. For example, the 125-year-old National Fire Protection Association (NFPA), a self-funded 501(c)(3), develops more than 300 safety standards protecting people from fire and electrical hazards with input from safety experts, builders, developers, manufacturers, consumers, government officials, and others.
- SDOs that incur the costs of this consensus-based process, including hiring staff to help develop the standards; publishing reports and the standards themselves; renting offices and spaces for multi-day meetings; collecting public input; and providing administrative and editorial support.
- To fund their efforts, SDOs typically sell copies of their standards to professionals who use them in the course of their business, like builders and developers. As an original work of authorship, SDO standards are protected by copyright.
- Federal, state, and local governments routinely adopt laws or regulations that require adherence to a particular standard, incorporating the standard into the law by referencing it by name. Recognizing the public interest in these incorporated standards, some SDOs, including NFPA, make all of their standards freely available for online viewing on the internet.
- Some argue that the copyright on a standard is forfeited when it is incorporated by reference in statute. Some courts have called the SDOs' copyrights into question, ruling that despite the immense public benefits and congressional preference for private, consensus-based standards development, SDOs lose the benefit of copyright protection for incorporated safety standards.
- Extinguishing the copyright for a standard incorporated by reference makes it impossible for SDOs to sell copies of their standards to the professionals who use them. Alternatives to the current process, like taxpayer or private industry funding or a fee-for-service model, have significant negative consequences, including lacking the impartiality and efficiency of the current system.

What Can We Do?

Enact legislation to protect and enhance public access to codes

- The Pro Codes Act would ensure that a standard does not lose its copyright protection by virtue of having been incorporated by reference into law or regulation, *provided* that the standard is available for free viewing on a publicly accessible website.
- This solution allows citizens to know what the law is without having to pay for it while preserving the efficient and effective SDO system that serves an important public service at no cost to the taxpayer.