

No. 1980-85

AN ACT

HB 1106

Providing for certain authorized agencies to receive from insurance companies information relating to fire losses; providing for insurance companies to notify authorized agencies of suspicious fire losses, providing for immunity for insurance companies that provide information under this act; providing for the exchange and confidentiality of information and providing penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the "Arson Reporting Immunity Act."

Section 2. Definitions.

The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Action." Includes nonaction or the failure to take action.

"Authorized agencies."

(1) For the purposes of this act shall include:

- (i) the State Police Commissioner and other police officers charged with the investigation of fires at the place where the fire actually took place;
- (ii) the fire commissioner or fire chief of all first, second, second class A and third class cities;
- (iii) the Attorney General;
- (iv) the prosecuting attorney responsible for prosecutions in the county where the fire occurred;
- (v) the Federal Bureau of Investigation;
- (vi) the Federal Bureau of Alcohol, Tobacco and Firearms;
- (vii) the United States Attorney when authorized or charged with investigation or prosecution of the fire in-question;
- (viii) Department of Environmental Resources Bureau of Forestry;

(2) Solely for the purposes of section 3(b), an appropriate authorized agency is:

- (i) the State Police Commissioner or his authorized representative; or
- (ii) the fire commissioner or fire chief of all first, second, second class A and third class cities and the fire chief of any other municipality with a paid fire department when that municipality is not serviced by the State Police Commissioner or his authorized representative for the purpose of investigating fires.

“Insurance company.” Any insurance company authorized to transact the business of insurance in this Commonwealth and empowered to issue policies of insurance against loss by the perils of fire or explosion, including the Pennsylvania Fair Plan created pursuant to the act of July 31, 1968 (P.L.738, No.233), known as “The Pennsylvania Fair Plan Act.”

“Fire loss.” Shall include loss by explosion.

“Relevant.” Any information having a tendency to make the existence of any fact that is of consequence to the investigation or determination of the issue more or less probable than it would be without the information.

Section 3. Disclosure of information.

(a) Fire loss information.—Any authorized agency may, in writing, require any insurance company at interest to release to the requesting authorized agency any or all relevant information or evidence deemed important to the authorized agency which the insurance company may have in its possession relating to a fire loss under investigation by the authorized agency. Relevant information may include, without limitation herein:

- (1) pertinent policy information relevant to a fire loss under investigation, including any application for such a policy;
- (2) underwriting information or risk inspection reports;
- (3) policy premium payment records which are available;
- (4) history of previous claims made by the insured; and
- (5) material relating to the investigation of the loss, including statements of any person, proof of loss, and any other information relevant to the investigation by the authorized agency.

(b) Notification for investigation.—

(1) Whenever the investigation of a fire loss by an insurance company insuring the loss indicates that the probable cause of the fire loss was arson, then the company shall notify, in writing, the appropriate authorized agency and upon the request of any authorized agency, shall provide the requesting authorized agency with such fire loss information developed from the company’s inquiry into the fire loss as may be requested by the authorized agency and the insurance company may provide to any authorized agency any information it may have relating to a fire loss;

(2) Nothing in this subsection shall abrogate or impair any rights or duties created under subsection (a).

(c) Notification to policyholder.—When information is given by any insurance company to an authorized agency pursuant to subsection (a) or (b):

- (1) The insurance company shall send written notice to the policyholder or policyholders about whom the information pertains, except if the insurance company receives notice that the authorized agency finds, based on specific facts, that there is reason to believe that such information will result in:

- (i) Endangerment to the life or physical safety of any person.
- (ii) Flight from prosecution.
- (iii) Destruction of or tampering with evidence.
- (iv) Intimidation of any potential witness or witnesses.
- (v) Obstruction of or seriously jeopardizing an investigation.

(2) The insurance company shall send written notice not sooner than 45 nor more than 60 days from the time the information is furnished to an authorized agency except when the authorized agency specifies that a notice should not be sent in accordance with the exceptions enumerated under paragraph (1) in which event the insurance company shall send written notice to the policyholder not sooner than 180 days nor more than 190 days following the date such information is furnished to an authorized agency.

(3) Every insurance company or authorized agency and any person acting on behalf of an insurance company or authorized agency complying with or attempting in good faith to comply with paragraphs (1) and (2) shall be absolutely immune from any civil liability arising out of any acts or omissions in so doing.

(4) Nothing in this subsection shall be construed to create any rights to privacy or causes of action on behalf of policyholders which are not in existence as of the effective date of this act.

(d) Release of information.—An authorized agency that is provided with information pursuant to subsection (a) or (b) may, at its discretion, in good faith, release or provide orally or in writing such information that it may possess in whole or in part to any other authorized agency or insurance company in furtherance of the authorized agency's own investigative purposes.

Section 4. Immunity.

Any insurance company, or person designated to act in its behalf; or any authorized agency or person authorized to act on its behalf, who shall release information, whether oral or written, pursuant to section 3(a), (b) or (d) shall be immune from liability arising out of a civil action and from criminal prosecution with respect to the release of such information, unless there be actual malice.

Section 5. Evidence.

Except as provided in section 3(d), any authorized agency or insurance company defined in section 2 who receives any information furnished pursuant to this act, shall hold the information in strict confidence until such time as its release is required pursuant to a criminal or civil proceeding.

Section 6. Penalty.

(a) Disclosure of information.—Any person who shall fail or refuse to release any information required to be released under this act or who discloses information required to be held in confidence, or who otherwise violates any provision of this act (except section 3(c)(1) and (2)) shall, upon conviction thereof, be guilty of a misdemeanor of the third degree.

(b) Immunity from liability.—Any person who shall release or disclose information required to be held in confidence pursuant to section 5 (other than as provided under section 3(a), (b) or (d)) shall not be afforded the protection of immunity from liability arising out of a civil action or criminal prosecution as provided in section 4.

Section 7. Construction of act.

(a) Municipal ordinances.—The provisions of this act shall not be construed to affect or repeal any ordinances of any municipality relating to fire prevention or the control of arson.

(b) Impairment of rights not intended.—With the exception of section 4, all other provisions of this act shall not be construed to impair any existing statutory or common law rights, powers or duties.

Section 8. Regulations.

(a) State Police Commissioner.—The State Police Commissioner may adopt such rules and publish regulations concerning the implementation of section 3(d), as he may deem necessary.

(b) Insurance Commissioner.—The Insurance Commissioner may adopt such rules and publish regulations concerning the implementation of this act except for section 3(d).

Section 9. Report to General Assembly.

Not later than 18 months after the effective date of this act, the State Police Commissioner shall report to the General Assembly on the legality, feasibility, advisability, and the manner, if any, of providing investigatory material to insurance companies. Such report shall be submitted only after consultation with the Department of Justice, representatives of the insurance industry, other authorized agencies and any other organizations or individuals at interest as determined by the commissioner.

Section 10. Effective date.

This act shall take effect in 120 days.

APPROVED—The 2nd day of July, A. D. 1980.

DICK THORNBURGH