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SELECT ARSON LAWS
IN THE STATES

An Examination of State Laws
to Assist Public and Private
Officials in Combating Arson

Written by:
Mary Fairchild

NCSL Criminal Justice Staff
Lanny Proffer, Director
Mary Fairchild, Research Assistant
Mindy Gaynes, Support Staff

FORWARD

Numerous kinds of legislation are being considered at the state level to help public and private agencies combat the arson problem. Based on information requests from legislators and legislative staff, three areas of particular interest regarding anti-arson legislation have been identified to comprise the body of this report. These areas are: 1) criminal arson laws; 2) arson reporting immunity laws; and 3) legislation to recover back taxes and/or demolition expenses.

Other significant areas that fall into the scope of legislative activity include: 1) arson task force units and arson award programs; 2) state Fair Access to Insurance (FAIR) plans; 3) licensing of public insurance adjusters; 4) submitting false information on insurance claims; 5) code violation reporting and enforcement; 6) training programs for law enforcement, firefighters, prosecutors and judges; 7) crime laboratories; 8) recording and reporting requirements for fires; and 9) public education programs. Each of these areas is important and may be the subject of legislative questioning. NCSL criminal justice staff will be happy to assist anyone who needs information about these subjects.

* * *

The author wishes to thank the Committee for Arson Control, the Alliance of American Insurers, and the LEAA arson unit for their assistance in providing information for this report.

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THE ARSON PROBLEM

Over \$1 billion in property losses and \$12 billion in indirect economic losses are attributed to arson every year. According to the FBI Uniform Crime Reports, each incident of arson causes an average loss of \$6,433 compared with \$1,741 for car theft, \$499 for burglary and \$388 for robbery. Indirect costs suffered by the community include death and injury to citizens and firefighters, increased insurance premiums, higher taxes to pay for police, fire and court services, lost tax revenues and lost jobs and businesses.

Arson fires are a problem in both rural and urban areas and are set by juveniles as well as adults. Arson fires are set in buildings, motor vehicles, forests and watershed areas. According to a recent study by the Law Enforcement Assistance Administration (LEAA) entitled A Survey of Arson and Arson Response Capabilities in Selected Jurisdictions, motives for arson are:

- | | |
|----------------------|-----|
| 1. Vandalism | 42% |
| 2. Spite | 23% |
| 3. Pyromania | 14% |
| 4. Arson for Profit | 14% |
| 5. Crime Concealment | 7% |

It is important to note that the vast majority of arsons are attributed to vandalism; only 14% of arson crimes are motivated for profit.

In other criminal probes, investigators assume a criminal act has been committed. However, fires are assumed to be accidental until proven otherwise, through an investigation. Because 75% of all firefighters in the United States are volunteers and traditionally have been trained only to extinguish fires, most fires are not investigated.

Since it is almost impossible to reconstruct the scene of a fire because most of the evidence is destroyed, skilled investigators are needed who can recognize and recover any evidence. After costly laboratory analysis, prosecution is further hindered because of the lack of abundant and detected evidence and the common absence of witnesses. Since much of the testimony presented is technical, arson investigators often complain that prosecutors hesitate to press a case because of the nature of the testimony and the evidence. It is not surprising, therefore, that arrest and conviction rates for arson are quite low. For every 100 suspicious or incendiary fires in the U.S., nine persons are

arrested, two are convicted and 0.7 are incarcerated. These figures fare poorly when compared with other major crimes which maintain an overall average of 21 arrests, six convictions and three incarcerations per 100 crimes.

The nature of the arson problem requires cooperation among all levels of government, agencies within those levels and the private sector. Representatives from the insurance industry have formed special committees to evaluate the problem, devise solutions to be implemented within the industry and develop legislation which they believe is necessary to reduce arson.

Although arson is not a federal crime, several agencies come into contact with arson crimes. The LEAA and the United States Fire Administration (USFA) are coordinating a program to provide financial and technical assistance to state and local governments. The LEAA is responsible for providing financial and technical assistance to state and local law enforcement agencies and the USFA is actively involved in improving detection capabilities, prevention, reporting requirements and educating the public about fires. The LEAA recently awarded grants to Massachusetts, Connecticut, Rhode Island, New Jersey, Delaware, Florida, Arizona, Maryland, Illinois and to 25 additional local governments. Grants will support programs to improve investigations and prosecutions of arson, data collection, analysis of evidence, and arson education programs. Further, the LEAA has entered into inter-agency agreements with the USFA, FBI and the Bureau of Alcohol, Tobacco and Firearms (ATF) to provide over \$700,000 for nationwide training and for technical assistance to city task forces.

In addition to the LEAA, USFA and AFT, other agencies involved are the Federal Insurance Agency, U.S. Department of Housing and Urban Development, FBI, IRS and the U.S. Postal Service.

However significant federal assistance is to state and local governments, arson remains a state and local problem. It is at these levels that coordination and cooperation must exist if the arson problem is to be controlled.

CRIMINAL ARSON LAWS

Background

Early common law defined arson as the willful and malicious burning of another's dwelling or adjacent structures. Historically, an exception was made for burning one's own property by specifying that the property be someone else's. Most state laws reflect these early legal definitions. Arson is still considered to be a crime against property rather than a crime against the person; arson against a dwelling is considered a more serious offense than other kinds of arson. Although some states make it a crime to burn your own property, many states recognize this to be within the law.

In order for a fire to be classified as arson, it must be shown that the fire was intentionally set and "incendiary" in nature. Since explosions frequently lead to fires and fires lead to explosions, several states include "exploding" as well as "burning" in their definition of arson. Although states differ in defining the various degrees of arson, the following common characteristics do occur:

- ** Level of intent (reckless burning; malicious burning; intent to defraud an insurer)
- ** Type of property burned (commercial property; dwelling house; personal property)
- ** Value of property burned
- ** Level of danger that exists to another as a result of the fire
- ** Death or injury to another as a result of the fire
- ** Occupied vs. unoccupied structure
- ** Property of another vs. property of one's own

Model Laws

Most state laws appear to be based on one of two "model" arson laws: the Model Arson Law or Section 220 of the Model Penal Code, or both. The Model Arson Law, published by the National Board of Fire Underwriters in 1948, distinguishes among different degrees of arson based on the type of property burned. In contrast, the Model Penal Code, drafted by the American Law Institute in 1960, addresses different aspects of the crime. A more recent "model" law has been drafted by the Alliance of American Insurers, the American Insurance Association, the National Association of

Independent Insurers and the Property Loss Research Bureau. The law, referred to as the Model Arson Penal Law combines many of the characteristics of the Model Arson Law and the Model Penal Code. Below is a brief description of each law.

MODEL ARSON LAW

- ** Arson, First Degree: Burning of dwellings
- ** Arson, Second Degree: Burning of buildings, other than dwellings
- ** Arson, Third Degree: Burning of personal property belonging to another with a value of \$25 or more
- ** Arson, Fourth Degree: Attempted arson; burning to defraud an insurer

MODEL PENAL CODE, Section 220

- ** Arson, Subsection (a): The destruction on any building or occupied structure of another. The distinction is not made between a dwelling house and other building. Subsection (b): Burning of any property to defraud an insurer.
- ** Reckless burning or Exploding: Exploding is treated as burning. Any fire or explosion which is started on purpose and places another person or building in danger.
- ** Failure to Control or Report a Dangerous Fire: Requires attempts, if safe, to extinguish a fire or report a fire if the person knows he has a duty to do so.

MODEL ARSON PENAL LAW

- ** Arson, Subparagraph (1) Aggravated arson: Starting a fire or causing an explosion or conspiring to do so with the intent to destroy an inhabited building of another or causing death or injury to another.
Subparagraph (2) Arson: Destruction of an unoccupied structure of another or damaging other property with the intent to defraud an insurer.
Subparagraph (3) Reckless Burning.
- ** Also covers failure to control or report a dangerous fire, causing a catastrophe and possession of explosive or incendiary.

See appendix for model laws.

State Laws

Characteristics of the above model laws are reflected in the state laws discussed here. The laws mentioned here show how different states define arson, distinguish among degrees, and address arson-related crimes.

Several states make a distinction between degrees of arson based on the *threat to human life*. In LOUISIANA, aggravated arson is committed when a person intentionally damages by explosive or setting fire to any structure, watercraft or movable where a life might be endangered. Aggravated arson carries a sentence of five to 20 years and a fine up to \$25,000. Simple arson is committed when a person intentionally damages by fire or explosive the property of another without consent. The sentence is based on the amount of damage done. If the damage is over \$500, a sentence of two to 15 years and a fine up to \$15,000 may be imposed. If the damage is less than \$500, a sentence of zero to five years and a fine of up to \$2,500, or both, may be imposed. Burning with the intent to defraud an insurer results in a possible sentence of zero to five years, a fine of \$2,000, or both.

ILLINOIS law also distinguishes between simple and aggravated arson. Aggravated arson is committed when a person knowingly damages a building or structure by setting fire or using explosives when (1) he has reason to know that one or more persons are present, (2) any person suffers great bodily harm or permanent disability or disfigurement or (3) a fireman or policeman is injured in the line of duty. Aggravated arson is a Class X felony which carries a determinate sentence of six to 30 years in prison. TENNESSEE law also treats aggravated arson as a Class X felony; however, the punishment is a prison term of life or a minimum of 10 years.

In KANSAS, arson is committed by one who knowingly, by fire or explosive, damages any building or property that another person has an interest in without the consent of such person; or damages any building or property with the intent to defraud an insurer or a lienholder. If arson is committed in a building or structure where another human being is present, it becomes aggravated arson.

In 1979, TEXAS redefined the levels of first and second degree arson. Like Kansas, the definition for both degrees is the same and degree of the offense depends on whether or not bodily injury occurs as a result of the arson crime. If bodily injury does occur, the offense is classified as arson in the first degree and carries a more severe penalty.

In INDIANA, arson covers the threat to human life; the dwelling of another without his consent; and property where the loss exceeds \$5,000 (amended 1980 by S 279). Such circumstances constitute a Class B felony unless the action results in bodily injury to another person in which case the offense becomes a Class A felony.

FLORIDA recently revised their law, making it a first degree felony to damage by fire or explosives any dwelling or its contents regardless of whether or not it is occupied or any other structure where it is reasonable to believe that it may be occupied by another person. In PENNSYLVANIA, a person is guilty of first degree arson by intentionally setting fire or causing an explosion on his own property or that of another and recklessly places another person in danger of death or injury.

In MISSISSIPPI, arson in the first degree applies to a dwelling house and parcels thereof. Further, Mississippi law places arson of state supported school buildings in the category of first degree arson. Any person who starts a fire intentionally or by accident in a public school and fails to sound an alarm or report the fire can be imprisoned for not less than two or more than 10 years.

In DELAWARE, second degree arson is committed by "intentionally damaging a building by starting a fire or causing an explosion". Unlike most of the above states, Delaware allows an affirmative defense if (1) no other person had a proprietary or possessory interest in the building or is some did, permission was given to start the fire, (2) the defendant intended to damage the building for a lawful purpose and (3) the defendant had no reasonable grounds to believe that his conduct might endanger another person or another building.

NEBRASKA law defines four degrees of arson; burning to defraud an insurer; setting fire to a penal institution; and burning hay, grain or other property valued at \$35 or more.

Certain properties may be lawfully destroyed by burning if they have been condemned, have no value for habitation or business, or no longer serve a useful purpose. Setting fire to woods and prairies is also a crime. However, a person can set fire to these lands if they adjoin his farm or property to prevent an accident by fire at certain times in the year. The person must notify his or her neighbor of the intention to start the fire and is not immune from civil remedies for injuries that may result from the fire.

Felony Murder

CONNECTICUT recently adopted legislation that not only doubles the penalties for different classes of arson but also creates a new category for *felony murder* by arson. "A person is guilty of murder when acting alone or with one or more persons, he commits arson and, in the course of such arson, causes the death of another person." A person convicted of murder under this section is punished by life imprisonment and is not eligible for parole. Connecticut law was also amended to cover situations where attempted arson results in the death of another person.

It is a capital offense in ARIZONA if a person acting alone or with another commits or attempts to commit arson and in doing so, causes the death of another person. INDIANA, FLORIDA and ALABAMA are among the other states with similar laws.

Arson-for-Profit

Under many state laws, it is difficult, if not impossible, to prosecute an individual who hires or arranges for an arsonist to torch a piece of property. It is often necessary to prosecute under a separate conspiracy statute. Recently, many states have designed legislation aimed directly at *arson-for-profit* schemes where one person or a group of individuals do not directly set the arson fire.

In 1979, GEORGIA amended its arson laws to include specific language aimed at arson-for-profit. A person commits arson in Georgia when by fire or by explosives he "knowingly damages or knowingly causes, aids, abets, advises, encourages, hires, counsels, or procures another to damage" property. This language is written into all three degrees of arson and is meant to cover the person who not only starts the fire but any other person who conspires to set the fire. In TENNESSEE, setting fire to your own building or structure or that of another, or "procuring the same to be done" carries a sentence of three to 21 years.

OHIO law includes a specific category of *arson-for-hire*, a second degree felony punishable by a prison term of not less than two or more than 15 years. In INDIANA, arson-for-hire is a Class B felony. However, if the offense results in bodily injury, it becomes a Class A felony. Additionally, the law was amended in 1980 to make arson to defraud an insurer a Class C felony.

CALIFORNIA takes a somewhat different approach regarding arson-for-profit. If any arson crime is motivated for monetary gain, the court may impose a fine of twice the anticipated or actual gross gain in addition to the penalty proscribed by law.

Arson-Related Crimes

Other state laws to address arson-related crimes include *causing a catastrophe, failure to report a dangerous fire and the possession or manufacture of incendiary devices*. FLORIDA, GEORGIA and ILLINOIS are among the states penalizing individuals for the possession, manufacture or transport of incendiary devices.

Among the states which have provisions for failure to control or report a dangerous fire are ARKANSAS and FLORIDA. In ARKANSAS, failure to control or report a dangerous fire is committed when a person knows that a fire is unattended and is endangering the life, physical safety, or substantial property of another and he fails to act in a reasonable manner to put out the fire without endangering himself and fails to report it in a reasonable manner. This offense is a Class three misdemeanor. FLORIDA, NORTH DAKOTA and MAINE are among the other states with similar laws.

PENNSYLVANIA, NEW JERSEY, MISSOURI and ARKANSAS are among the states which provide penalties for causing a catastrophe. In PENNSYLVANIA, a person who intentionally or knowingly causes a fire, explosion, flood or other disaster that results in potentially widespread injury or damage, commits a first degree felony. If the crime is committed in a reckless manner, it is graded as a second degree felony. The New Jersey law is similar except that New Jersey actually defines widespread damage. Widespread damage exists if serious bodily injury results to 10 or more "habitations"; or to a building which would normally have contained 50 or more persons at the time of the offense. In Missouri, causing a catastrophe results when 10 or more people die or substantial damage occurs to five or more buildings, inhabited structures or a vital public facility. In Arkansas, causing a catastrophe occurs if serious physical injury or death results to 10 or more persons; or substantial damage to 10 or more occupiable structures or property loss exceeds \$500,000. NORTH DAKOTA and MAINE are among the states with similar provisions.

See Appendix for Statute Citations.

QUESTIONS THAT A LEGISLATOR SHOULD ASK WHEN REVISING CRIMINAL ARSON LAWS

1. Should exploding as well as burning be included in the definition of arson?
2. Should arson include the burning of one's own property or should the crime be limited to the burning of another's property? If the definition includes the burning of one's own property, is it necessary to include exceptions for lawful burning?
3. Should a distinction be made between a dwelling house and other kinds of buildings?
4. Should a person who burns to defraud an insurer be punished more severely than a person who burns with another motive?
5. Is additional language necessary to cover conspiratory arson or arson-for-hire?

APPENDIX A

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CRIMINAL CODES ARSON: RELATED OFFENSES

<u>State</u>	<u>Statutory Citation</u>
Alabama	Code of Alabama 13A-7-40
Alaska	Alaska Stat. 11.20.010 et seq.
Arizona	Arizona Rev. Stat. 13-1701 et seq.
Arkansas	Ark. Stat. Ann., Criminal Code, Sects. 14-1901 et seq.
California	West's Ann. Calif. Codes; Penal Code, Sects. 450 et seq.
Colorado	Colo. Rev. Stat. 18-4-101 et seq.
Connecticut	P.A. 79-570, 1979 - amends Gen. St. of Conn. Sects. 53a 111 et seq. & 53a - 54c
Delaware	Del. Code Ann. Title II 801 et sea.
Florida	Fla. Stat. 1979, Ch. 806
Georgia	Criminal Code of GA, Ch. 26-14
Hawaii	Hawaii Rev. Stat. Sects. 708-820 et seq.
Idaho	Idaho Code Sect. 18-801 et seq.
Illinois	Ill. Rev. Stat. Ch. 38 Sect. 20.1-1
Indiana	Burns Ind. Stat. Ann. Title 35-43-1-1
Iowa	Code of Iowa 1979 Ch. 712
Kansas	Kan. Stat. Ann. 21-3718 et seq.
Kentucky	KY Rev. Stat. 513.010 et seq.
Louisiana	LA Rev. Stat. Sect. 14:51 et seq.
Maine	Maine Rev. Stat. Ann. Title 17-A Sect. 802 et seq.
Maryland	Ann. Code of MD Art. 27 Sect. 6 et seq.
Massachusetts	Mass. Gen. Laws. Ann. Ch. 266.1 et seq.
Michigan	Mich. Stat. Ann. Title 28.266
Minnesota	Minn. Stat. 609.561 et seq.
Mississippi	Miss. Code 1972 Ann. 97-17-1 et seq.
Missouri	Vernons Ann. Missouri Stat. Ch. 569.040

Criminal Codes
Arson: Related Offenses
Continued

State	Statutory Citation
Montana	Montana Code Ann. 45-6-101 et seq.
Nebraska	Rev. Stat. of Neb. 28-501 et seq.
Nevada	Nev. Rev. Stat. 205.010 et seq.
New Hampshire	NH Rev. Stat. Ann. Ch. 634:1 et seq.
New Jersey	NJ Stat. Ann./ NJ Code of Criminal Justice 2C:17-1 et seq.
New Mexico	NM Stat. Ann. 30-17-5
New York	McKinney's Ann. Laws of NY, Penal Law, Sect. 150.00 et seq.
North Carolina	Gen. Stat. of NC Art. 15, Sect. 14-15 et seq.
North Dakota	ND Century Code Ch. 12.1-21
Ohio	Ohio Rev. Code 2909.01 et seq.
Oklahoma	21 Okla. Stat. Ann. 1401 1979-80 Supplement
Oregon	Ore. Rev. Stat. 164.305 et seq.
Pennsylvania	18 C.P.S.A. Sect. 3301 et seq.
Rhode Island	Gen. Laws of RI 11-4-1 et seq.
South Carolina	Code of Laws of SC 16-11-110 et seq.
South Dakota	SD Codified Laws 22-33-1 et seq.
Tennessee	Tenn. Code Ann. 39-501 et seq.
Texas	Vernon's Tex. Codes Ann., Penal Code, Sect. 28.01 et seq.
Utah	Utah Code Ann. 76-6-102 et seq.
Vermont	VT Stat. Ann. 11-501 et seq.
Virginia	Code of VA 18.2-77
Washington	Rev. Code of Wash. 9A.48.010 et seq.
West Virginia	WV Code Vol. 17, Ch. 61-3-1 et seq.
Wisconsin	Wisc. Stat. Ann. Vol. 41, 943.02 et seq.
Wyoming	Wyoming Stat. Ann. 6-7-101

MODEL ARSON LAW

(Quoted from SUGGESTIONS FOR ARSON INVESTIGATORS, National Board of Fire Underwriters, 1956, pp. 45-46)

ARSON--First degree.

Burning of Dwellings.

Any person who willfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels or procures the burning of any dwelling house, whether occupied, unoccupied or vacant, or any kitchen, shop, barn, stable or other outhouse that is parcel thereof, or belonging to or adjoining thereto, whether the property of himself or of another, shall be guilty of Arson in the first degree, and upon conviction thereof, be sentenced to the penitentiary for not less than two nor more than twenty years.

ARSON--Second degree.

Burning of Buildings, Etc., Other Than Dwellings.

Any person who willfully and maliciously sets fire to or burns or causes to be burned, or who aids, counsels or procures the burning of any building or structure of whatsoever class or character, whether the property of himself or another, not included or described in the preceding section, shall be guilty of Arson in the second degree, and upon conviction thereof, be sentenced to the penitentiary for not less than one nor more than ten years.

ARSON--Third degree.

Burning of Other Property.

Any person who willfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels or procures the burning of any personal property of whatsoever class or character; (such property being of the value of twenty-five dollars and the property of another person), shall be guilty of Arson in the third degree and upon conviction thereof, be sentenced to the penitentiary for not less than one nor more than three years.

ARSON--Fourth degree.

Attempt to Burn Buildings or Property.

(a) Any person who willfully and maliciously attempts to set fire to or attempts to burn or to aid, counsel or procure the burning of any of the buildings or property mentioned in the foregoing sections, or who

commits any act preliminary thereto, or in furtherance thereof, shall be guilty of Arson in the fourth degree and upon conviction thereof, be sentenced to the penitentiary for not less than one nor more than two years or fined not to exceed one thousand dollars.

Definition of an Attempt to Burn.

(b) The placing or distributing of any flammable, explosive or combustible material or substance, or any device in any building or property mentioned in the foregoing sections in an arrangement or preparation with intent to eventually willfully and maliciously set fire to or burn same, or to procure the setting fire to or burning of same shall, for the purposes of this act, constitute an attempt to burn such building or property.

Burning to Defraud Insurer.

Any person who willfully and with intent to injure or defraud the insurer sets fire to or burns or attempts so to do or who causes to be burned or who aids, counsels or procures the burning of any building, structure or personal property, of whatsoever class or character, whether the property of himself or of another, which shall at the time be insured by any person, company or corporation against loss or damage by fire, shall be guilty of a felony and upon conviction thereof, be sentenced to the penitentiary for not less than one nor more than five years.

Model Penal Code

OFFENSES AGAINST PROPERTY

ARTICLE 220. ARSON, CRIMINAL MISCHIEF,
AND OTHER PROPERTY DESTRUCTION

Section 220.1. Arson and Related Offenses.

(1) Arson. A person is guilty of arson, a felony of the second degree, if he starts a fire or causes an explosion with the purpose of:

(a) destroying a building or occupied structure of another; or

(b) destroying or damaging any property, whether his own or another's, to collect insurance for such loss. It shall be an affirmative defense to prosecution under this paragraph that the actor's conduct did not recklessly endanger any building or occupied structure of another or place any person in danger of death or bodily injury.

(2) Reckless Burning or Exploding. A person commits a felony of the third degree if he purposely starts a fire or causes an explosion, whether on his own property or another's, and thereby recklessly:

(a) places another person in danger of death or bodily injury; or

(b) places a building or occupied structure of another in danger of damage or destruction.

(3) Failure to Control or Report Dangerous Fire. A person who knows that a fire is endangering life or a substantial amount of property of another and fails to take reasonable measures to put out or control the fire, when he can do so without substantial risk to himself, or to give a prompt fire alarm, commits a misdemeanor if:

(a) he knows that he is under an official, contractual, or other legal duty to prevent or combat the fire; or

(b) the fire was started, albeit lawfully, by him or with his assent, or on property in his custody or control.

(4) Definitions. "Occupied structure" includes a ship, trailer, sleeping car, airplane, or other vehicle, structure or place adapted for overnight accommodation of persons or for carrying on business therein, whether or not a person is actually present. Property is that of another, for the purposes of this section, if anyone other than the actor has a possessory or proprietary interest therein. If a building or structure is divided into separately occupied units, any unit not occupied by the actor is an occupied structure of another.

STATUS OF SECTION

Presented to the Institute in Tentative Draft No. 11, and considered at the May 1960 meeting.

For Commentary, see Tentative Draft No. 11, p. 34.

Minor changes have been made to conform to votes and suggestions of the Institute, notably deletion of a proposed paragraph (c) in Subsection (3), which would have required a person to report or control a dangerous fire if he was in a peculiarly favorable position to do so without risk or inconvenience.

Section 220.2 Causing or Risking Catastrophe.

(1) Causing Catastrophe. A person who causes a catastrophe by explosion, fire, flood, avalanche, collapse of building, release of poison gas, radioactive material or other harmful or destructive force or substance, or by any other means of causing potentially widespread injury or damage, commits a felony of the second degree if he does so purposely or knowingly, or a felony of the third degree if he does so recklessly.

(2) Risking Catastrophe. A person is guilty of a misdemeanor if he recklessly creates a risk of catastrophe in the employment of fire, explosives or other dangerous means listed in Subsection(1).

(3) Failure to Prevent Catastrophe. A person who knowingly or recklessly fails to take reasonable measures to prevent or mitigate a catastrophe commits a misdemeanor if:

(a) he knows that he is under an official, contractual or other legal duty to take such measures; or

(b) he did or assented to the act causing or threatening the catastrophe.

STATUS OF SECTION

Presented to the Institute of Tentative Draft No. 11 and considered at the May 1960 meeting.

For Commentary, see Tentative Draft No. 11, p. 52.

Changed only to delete from Subsection (3), pursuant to direction of the Institute, a paragraph (c) which required a person to prevent or mitigate a catastrophe if he was in a peculiarly favorable position to do so without risk or inconvenience. Minor verbal changes have also been made.

Section 220.3 Criminal Mischief.

(1) Offense Defined. A person is guilty of criminal mischief if he:

(a) damages tangible property of another purposely, recklessly, or by negligence in the employment of fire, explosives, or other dangerous means listed in Section 220.2(1); or

(b) purposely or recklessly tampers with tangible property of another so as to endanger person or property; or

(c) purposely or recklessly causes another to suffer pecuniary loss by deception or threat.

(2) Grading. Criminal mischief is a felony of the third degree if the actor purposely causes pecuniary loss in excess of \$5,000, or a substantial interruption or impairment of public communication, transportation, supply of water, gas or power, or other public service. It is a misdemeanor if the actor purposely causes pecuniary loss in excess of \$100, or a petty misdemeanor if he purposely or recklessly causes pecuniary loss in excess of \$25. Otherwise criminal mischief is a violation.

STATUS OF SECTION

Presented to the Institute originally as Sections 206.50 and 205.51 of Tentative Draft No. 2, and considered at the May 1954 meeting. Revised to present form in Tentative Draft No. 11, which was considered by the Institute at the May 1960 meeting.

For Commentary, see Tentative Draft No. 2, pp. 126, 129.

Appendix A⁴

MODEL ARSON PENAL LAW
OFFENSES AGAINST PROPERTY
ARTICLE 100

ARSON, CRIMINAL MISCHIEF AND OTHER PROPERTY DESTRUCTION

Sect. 100.1 Arson and Related Offenses

- (1) Aggravated Arson. A person is guilty of aggravated arson, a felony of the first degree, if he starts a fire or causes an explosion or if he aids, counsels or procures a fire or explosion, with the purpose of:
 - (a) destroying or damaging an inhabited building or occupied structure of another; or
 - (b) causing, either directly or indirectly, death or bodily injury to any other person.
- (2) Arson. A person is guilty of arson, a felony of the second degree, if he starts a fire or causes an explosion, or if he aids, counsels or procures the setting of a fire or causing of an explosion, with the purpose of:
 - (a) destroying or damaging a building or unoccupied structure of another; or
 - (b) destroying or damaging any real or any personal property, whether his own or another's, to collect insurance for such loss.
- (3) Reckless Burning or Exploding. A person commits a felony of the third degree if he purposely starts a fire or causes an explosion, or if he aids, counsels or procures a fire or explosion, whether on his own property or another's, and thereby recklessly:
 - (a) places another person in danger of death or bodily injury; or
 - (b) places a building or structure of another, whether occupied or not, in danger of damage or destruction; or
 - (c) places any personal property of another having a value of \$ _____ or more in danger of damage or destruction.
- (4) Failure to Control or Report Dangerous Fire. A person who knows that a fire is endangering life or property of another and fails to take reasonable measures to put out or control the fire, when he can do so without substantial risk to himself, or to give a

prompt fire alarm commits a misdemeanor if:

- (a) he knows that he is under an official, contractual or other legal duty to control or combat the fire; or
 - (b) the fire was started, albeit lawfully, by him or with his assent, or on property in his custody or control.
- (5) Definitions. "Occupied Structure" means any structure, vehicle or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present.

"Property of Another" means a building or other property, whether real or personal, in which a person other than the offender has an interest which the offender has no authority to defeat or impair, even though the offender may also have an interest in the building or property.

If a building or structure is divided into separately occupied units, any unit not occupied by the offender is an occupied structure of another.

Sect. 100.2 Causing or Risking Catastrophe

- (1) Causing Catastrophe. A person who causes a catastrophe by explosion, fire, flood, avalanche, collapse of building, release of poison gas, radioactive material or other harmful or destructive force or substance, or by any other means of causing potentially widespread injury or damage, commits a felony of the second degree if he does so purposely or knowingly, or a felony of the third degree if he does so recklessly.
- (2) Risking Catastrophe. A person is guilty of a misdemeanor if he recklessly creates a risk of catastrophe in the employment of fire, explosives or other dangerous means listed in Subsection (1).
- (3) Failure to Prevent Catastrophe. A person who knowingly or recklessly fails to take reasonable measures to mitigate a catastrophe commits a misdemeanor if:
 - (a) he knows that he is under an official, contractual or other legal duty to take such measures; or
 - (b) he did or assented to the act causing or threatening the catastrophe.

Sect. 100.3 Criminal Mischief

- (1) Offense Defined. A person is guilty of criminal mischief if he:

- (a) damages or alters any tangible real or personal property of another purposely, recklessly, or by negligence in the employment of fire, explosives, or other dangerous means listed in Section 100.2(1); or
 - (b) purposely or recklessly tampers with tangible property of another so as to endanger person(s) or property; or
 - (c) purposely or recklessly causes another to suffer pecuniary loss by deception or threat.
- (2) Grading. Criminal mischief is a felony of the third degree if the actor purposely causes pecuniary loss in excess of \$_____, or a substantial interruption or impairment of public communication, transportation, supply of water, gas or power, or other public service. It is a misdemeanor if the actor purposely causes pecuniary loss in excess of \$_____ or a petty misdemeanor if he purposely or recklessly causes pecuniary loss in excess of \$_____.

Sect. 100.4 Possession of Explosive or Incendiary Materials or Devices

A person is guilty of a felony of the third degree when he shall possess, manufacture or transport any incendiary or explosive device or material with the intent to use or to provide such device or material to commit any offense described in 100.1 (1) (2) and (3).

Sect. 100.5 Attempted Arson

A person is guilty of attempted arson, a felony of the third degree, if he places or distributes any flammable or combustible material, or any gas, radioactive material, or other harmful or destructive material or substance, in an arrangement or preparation with the intent to eventually start a fire or explosion, with the purpose of wilfully and maliciously:

- (a) destroying or damaging any building or structure of another whether occupied or not; or
- (b) destroying or damaging any personal property of another having a value of \$_____ or more; or
- (c) placing any person in danger of life or bodily harm.

Sect. 100.6 False Reports

A person is guilty of a misdemeanor if he knowingly conveys or causes to be conveyed to any person false information concerning the placement of any incendiary or explosive device or any other destructive substance in any place where persons or property could be endangered.

ARSON REPORTING IMMUNITY LAWS

Both law enforcement agencies and insurance companies initiate separate investigations of fires. Insurance companies have information that is vital to law enforcement agencies to identify arson fires and to complete ongoing arson investigations. Such information includes previous claim records, payment history and previous investigations. A mechanism must exist to allow law enforcement agencies to obtain this information. In the past, most states have not had a procedure to require insurance companies to alert the authorities if a fire is determined to be suspicious. The law enforcement agency will only pursue insurance information when it has knowledge of an arson fire. Generally, law enforcement agencies obtain this information by subpoena, allowing the insurance company to legitimately release information without violating the rights of the policyholder.

The need for a subpoena has been criticized for being time-consuming and too narrow because it requires releasing very specific information. Also, information that has not been fully verified is gathered during any investigation and insurance companies are reluctant to release this kind of information. When information is released by the insurance company or the company denies a claim to pay for damages resulting from the fire, the policyholder may bring a civil action against the company for damages.

A civil action is decided on the *preponderance* of the evidence presented whereas guilt in a criminal case must be proven "*beyond a reasonable doubt*". It is essential that prosecutors have as much information as possible to establish elements of an arson crime. Insurance companies, however, are faced with a dilemma. While an insurance company may suspect that its policyholder has indeed committed arson based on data collected by its agent, the company knows that if the criminal case is never filed, or if the case is lost against the policyholder, the insured might turn around and sue the insurance company for releasing unverified and potentially damaging information.

For these reasons, officials from both law enforcement agencies and from insurance companies indicate that legislation is needed to make it easier to identify arson and release information during the investigation of arson crimes.

New Legislation

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In 1976, OHIO became the first state to pass arson immunity legislation. Since then, the Alliance of American Insurers has drafted the "Model Arson Immunity Bill" for consideration by state legislatures. To date, 36 states have adopted legislation that is similar to the Ohio law or the "Model Arson Immunity Bill", or both (See Appendix). State immunity laws require insurance companies to turn over information upon written request of the proper law enforcement officials specified by law. State laws then provide limited civil or criminal immunity, or both, absent fraud and malice, to insurance companies when acting in good faith. Except in MONTANA and KANSAS, limited immunity is extended to insurance companies in both criminal and civil proceedings that may arise as a result of releasing information. Montana and Kansas extend limited immunity in civil actions only. Kansas law provides that a civil action cannot be filed against an insurance company for releasing information under the provisions of the act unless it can be shown that "gross negligence, bad faith, malice or fraud" exists. States do not protect insurance companies when they do not act in "good faith". In addition, at least 20 states provide that certain law enforcement agencies may be required to testify in any civil action that may arise against an insurance company.

State laws clearly indicate which public agencies may request information to be released from insurance companies. This differs from state to state depending on which agency(s) is responsible for arson detection, investigation and prosecution. In ARIZONA, only the state fire marshal may require an insurer to release information. In TEXAS, the state fire marshal or any local fire marshal or chief of a political subdivision may request an insurance company to release information. In other states like KANSAS, seven public agencies are considered as "authorized" to request information. These agencies include the state fire marshal, the state attorney general, all law enforcement and official fire departments and federal agencies.

Most states indicate, but do not limit the information which can be requested and released. These items include:

1. The application for insurance
2. Policy premium payment records
3. History of previous claims
4. Other materials relating to the investigation of the loss

In TEXAS, authorized agencies can request information only when the damages exceed \$1,000. Other states do not mention a monetary limit when the agency requests information.

In several states the requesting or receiving agency is allowed to release or discuss the information with other agencies. This is necessary in those states where more than one agency is responsible for arson detection, investigation and prosecution. These states include ARIZONA, IOWA, FLORIDA, KANSAS and NEW MEXICO. To protect the policyholder, many states mandate that public agencies keep the information confidential among themselves until such time that it must be released for use in a civil or criminal proceeding.

Reciprocity

Unlike Ohio's law, the "Arson Reporting Immunity Bill" contains a reciprocity provision that allows the two-way exchange of information between law enforcement officials and insurance officials. When drafting the model law, this provision was included to help insurance companies gather all information about a suspicious fire. It is argued that to control the arson problem, law enforcement agencies and insurance companies must cooperate and work together. The two-way exchange of information helps both parties make well-informed decisions during an investigation. For the insurance company, this decision may be whether or not to deny a claim. For the law enforcement agency, the decision may be whether or not to file criminal charges. Approximately 16 states have included some provision for reciprocity.

CONNECTICUT law is representative of several states which have included reciprocity in their immunity laws. In Connecticut, insurance companies may request, in writing, information from the state fire marshal regarding any investigation about a suspicious or incendiary fire loss. Similar laws exist in IOWA, NEW MEXICO, SOUTH DAKOTA, KANSAS, VIRGINIA and WASHINGTON. However, these states further require that the information be released to the insurance company within 30 days.

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NEW HAMPSHIRE has taken a different approach by requiring the state fire marshal or any fire chief whose department is investigating a fire loss to notify "any insurance company believed to have an interest as insurer" about the investigation. Such notice must include a description about the nature of the investigation.

To further protect against potential abuse, RHODE ISLAND requires that after a written request is made, the party must submit an application to a district judge requesting an order to release such information. The application must be accompanied by a written statement that the party believes 1) the fire loss is suspicious and 2) the party has information about the fire loss that is crucial to an investigation or prosecution, or both. The judge may then, at his discretion, issue an order directing the party to release the information (Ch. 278.1-3). This procedure applies to both the law enforcement agency and the insurance company.

SOUTH DAKOTA law requires the "authorized agency to notify the policyholder, in writing, of any request for information from either the agency or the insurance company".

Arguments against incorporating a reciprocity provision include:

- ** Allowing insurance companies to have information gathered in a criminal investigation may be used for other purposes such as approving insurance coverage. How can the law control the use of this information and prevent abuses to the policyholder?
- ** How can other interests be prevented from using this information if insurance companies are allowed access?
- ** Information gathered in a criminal investigation should be protected from all outside sources.

Insurance Companies to Report Suspicious Fires

A certain percentage of suspicious or incendiary fires are never reported to law enforcement agencies. Because of this problem, most state immunity laws provide or require insurance companies to report suspicious fire losses to the authorities. Some states also require that pertinent information about the fire loss accompany the report. When more than one agency exists, states commonly provide that notifying one of the agencies is sufficient to meet reporting requirements.

NEW HAMPSHIRE limits this reporting requirement to suspicious losses of over \$1,000 while UTAH requires companies to file a report of any

suspicious fire. In Utah, an extensive report is required that includes the name of the insured, the location of the property, market value of the property, the actual loss, the amount of insurance coverage and the amount of insurance paid. In addition, Utah law requires copies of final insurance adjustments be sent to the state fire marshal.

In contrast, TEXAS law does not require insurance companies to initiate contact with law enforcement officials. The law goes on to mention that nothing in the act "shall be construed to authorize a public official or agency to promulgate or require any type of form or periodic report by an insurer".

Compliance

Several states provide a penalty for failure to comply with various provisions of their immunity laws. These provisions include 1) failure to release information upon request of an authorized public agency, 2) failure to keep the information in confidence and 3) failure to report a suspicious or incendiary fire. Failure to comply is a misdemeanor in at least 15 states and is commonly punishable by a fine. In MARYLAND, a person may also receive a sentence of up to 10 days imprisonment.

Rather than making non-compliance a criminal offense, CALIFORNIA permits the public agency to petition the superior court for an order to require compliance requiring the release of information.

See Appendix for Statute Citations.

QUESTIONS A LEGISLATOR SHOULD ASK WHEN
CONSIDERING ARSON IMMUNITY LEGISLATION

1. What public agency(s) should be authorized to request and receive information from an insurance company?
2. How should the law protect the rights of the policyholder
3. Should there be limits on the types of information released and should the materials be released within a certain period of time?
4. Should insurance companies be allowed to request and receive information from law enforcement agencies?
5. Should insurance companies be required to notify a law enforcement agency about a suspicious claim?
6. Should public agencies be allowed to discuss and exchange insurance information?
7. Should information about claims be limited by a specific dollar amount?

APPENDIX B

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B ³ Arson Reporting Immunity Bill	32

ARSON IMMUNITY LAWS

<u>State</u>	<u>Statutory Citation</u>
Arizona	Title 20, Ariz. Rev. Stat., Ch. 9
California	Ch. II of Part II of Division I of the Cal. Insurance Code.
Connecticut	Conn. Gen. Stat., Sect. 38-114(h), Revised to 1979
Florida	Sects. 633.111 and 633.175, Fla. Stat.
Georgia	Code of GA Ann. 92A-734.1
Illinois	Ill. Rev. Stat., Ch. 73, Sect. 1153
Iowa	Acts of the 68th Gen. Assembly, 1979 Session, Ch. 36
Kansas	Kan. Stat. Ann., 31 - 401
Louisiana	LSA-R.S. 40:1568.2
Maine	25 Maine Rev. Stat. Ann, Sect. 2402
Maryland	Ann. Code of MD, Art. 38A, Sects. 56 and 57
Massachusetts	Mass. Gen. Laws, Ch. 148, Sect. 32
Montana	Title 50, Ch. 63, Part IV, Mont. Code Ann.
Nebraska	Sects. 81-5,115 through 81-5,131, Neb. Rev. Stat., Supplement 1979
New Mexico	Sects. 41-8-1 through 41-8-6, NM Stat. Ann. 1978 Compilation
New York	McKinney's Con. Laws of NY, Book 27, Insur. Law 336
North Carolina	NC Gen. Stat. 69-7.1
North Dakota	Sect. 18-01-05.1 of the ND Century Code
Ohio	Ohio Code Supplement 3737.16
Rhode Island	27-8.1-3, RI Gen. Laws
South Dakota	SD Codified Laws 34-32A et seq.

State	Statutory Citation
Texas	Vernons TX Insurance Code, Art. 5.45
Utah	63-29-24, Utah Code Ann, 1953
Wisconsin	Sect. 165.55(14) of the 1977 Wis. Stat.
Virginia	Sect. 27-85.3 of the VA Code
Washington	Rev. Code of Washington, 48.50
West Virginia	WV Code 29-3-12a

			CIVIL IMMUNITY	CRIMINAL IMMUNITY	AGENCIES GET INFORMATION	COMPANIES INITIATE CONTACT	COMPANIES GET INFORMATION	NOTICE TO ONE AGENCY	AGENCIES SHARE INFORMATION	AUTHORITIES TESTIFY	
			1	2	3	4	5	6	7	8	
ALABAMA	1979	SB359	X	X	X	X	—	X	X	—	
ALASKA	—										
ARIZONA	1979	HB2014	X	X	X	X	—	X	X	X	
ARKANSAS	—										
CALIFORNIA	1978	SB1386	X	X	X	X	—	X	—	X	
COLORADO	1979	SB30		X*	X	X	—	X	X	X	
CONNECTICUT	1977,9	SB385	X	X	X	X	X	—	X	—	
DELAWARE	—										
FLORIDA	1978	SB754	X	X	X	X	—	X	X	X	
GEORGIA	1977	HB257	X	X	X	X	—	X	X	X	
HAWAII	1979	HB988	X	X	X	X	X	X	X	—	
IDAHO	—										
ILLINOIS	1977	HB2220	X	X	X	X	—	—	X	—	
INDIANA	1979	HB1940	X	X	X	X	X	X	—	X	
IOWA	1979	SF339	X	X	X	X	X	—	X	X	
KANSAS	1979	HB2134	X	—	X	X	X	X	X	X	
KENTUCKY	—										
LOUISIANA	1978	SB419	X	X	X	X	—	X	X	—	
MAINE	1977	HB959	X	X	—	—	—	—	—	—	
MARYLAND	1978	HB370	X	X	X	X	—	—	—	—	
MASSACHUSETTS	1978	HB5914	X	X	X	X	X	X	X	X	
MICHIGAN	1978	SB1264	X	X	X	X	—	X	X	—	
MINNESOTA	1979	HF1324	X	X	X	X	—	X	—	X	
MISSISSIPPI	—										
MISSOURI	—										

*Prepared by the Insurance Committee for Arson Control.

			CIVIL IMMUNITY	CRIMINAL IMMUNITY	COMPANIES GET INFORMATION	COMPANIES INITIATE CONTACT	COMPANIES GET INFORMATION	NOTICE TO ONE AGENCY	AGENCIES SHARE INFORMATION	AGENCIES TESTIFY	
			1	2	3	4	5	6	7	8	
MONTANA	1979	SB148	X	—	X	X	—	X	X	X	X
NEBRASKA	1979	LB301	X	X	X	X	X	X	X	X	X
NEVADA	—										
NEW HAMPSHIRE	1979	HB742	X	X	X	X	X	X	X	X	—
NEW JERSEY	—										
NEW MEXICO	1979	SB216	X	X	X	X	X	X	—	—	X
NEW YORK	1977	SB4383		X*	X	X	—	—	X	—	—
NORTH CAROLINA	1977	SB408	X	X	X	X	—	X	X	—	—
NORTH DAKOTA	1979	HB1500	X	X	X	2*	X	X	—	—	—
OHIO	1976	SB462	X	X	X	X	—	X	X	—	—
OKLAHOMA	1979	HB1031	X	X	X	X	3*	X	X	X	X
OREGON	—										
PENNSYLVANIA	—										
		HB7445									
RHODE ISLAND	1978,9	HB6208	X	X	X	X	X	X	X	X	X
SOUTH CAROLINA	—										
SOUTH DAKOTA	1979	HB1104	X	X	X	X	X	X	X	X	X
TENNESSEE	1979	SB43	X	X	X	X	—	—	X	—	—
TEXAS	1977	SB1260	X	X	X	—	—	—	X	—	—
UTAH	1979	HB260	X	X	X	X	—	X	—	—	—
VERMONT	—										
VIRGINIA	1979	HB1243	X	X	X	X	X	X	—	—	X
WASHINGTON	1979	SB2727	X	X	X	X	X	X	X	X	X
WEST VIRGINIA	1978	SB365		X*	X	X	—	X	X	—	—
WISCONSIN	1978	SB317	X	X	X	2*	X	—	—	—	—
WYOMING											

* grants limited immunity, but does not use the terms criminal or civil

2* does not require insurance companies to report suspicious claims but states that they "may report"

3* provides that insurance companies may ask agencies for information but specifically states that release of the information by the agencies is not mandated

ARSON REPORTING IMMUNITY BILL

To enact section _____ of the revised code, providing for certain authorized agencies to request and receive from insurance companies information relating to fire losses; providing for insurance companies to notify authorized agencies of suspicious fire losses such notice to be indicative of a request for an official investigation; providing for immunity to those insurance companies that provide information under the provisions of this act; providing for the exchange of information between the insurance companies and the authorized agencies and the exchange of information between authorized agencies; providing for confidentiality of released information; providing for testimony in matters under litigation and; providing for penalties for violation of the provisions of this act.

Section 1. Definitions

- (a) This act shall be known as the Arson Reporting-Immunity Statute.
- (b) "Authorized Agencies" shall mean:
 - (1) The State Fire Marshal when authorized or charged with the investigation of fires at the place where the fire actually took place.
 - (2) The Director of the State Department of Law Enforcement or similar State Director;
 - (3) The Prosecuting Attorney responsible for prosecutions in the county where the fire occurred;
 - (4) The District Attorney responsible for prosecution in the county where the fire occurred;
 - (5) The State's Attorney responsible for the prosecution in the county where the fire occurred;
 - (6) The State Insurance Supervisory Official and, solely for the purpose of Section 2(a);
 - (7) The Federal Bureau of Investigation or any other Federal agency;
 - (8) The United States Attorney's Office when authorized or charged with investigation or prosecution of the fire in question.
- (c) "Relevant" means information having any tendency to make the existence of any fact that is of consequence to the investigation or determination of the issue more probable or less probable than it would be without the evidence (See F.R. Evid Rule 401).
- (d) Material will be "deemed important" if within the sole discretion of the "authorized agency" such material is requested by that "authorized agency".
- (e) "Action", as used in this statute, shall include non-action or the failure to take action.
- (f) "Immune", as used in Section 2(e) of this act, shall mean that neither a civil action nor a criminal prosecution may arise from

any action taken pursuant to Section 2,3 or 4 of this act where actual malice on the part of the insurance company or authorized agency against the insured is not present.

- (g) As used in this Section, "insurance company" include the _____ FAIR Plan.

Section 2. Disclosure of information

- (a) Any authorized agency may, in writing, require the insurance company at interest to release to the requesting agency any or all relevant information or evidence deemed important to the authorized agency which the company may have in its possession, relating to the fire loss in question. Relevant information may include, without limitation herein
 - (1) Pertinent insurance policy information relevant to a fire loss under investigation and any application for such a policy;
 - (2) Policy premium payment records which are available;
 - (3) History of previous claims made by the insured;
 - (4) Material relating to the investigation of the loss, including statements of any person, proof of loss, and any other evidence relevant to the investigation.
- (b) (1) When an insurance company has reason to believe that a fire loss in which it has an interest may be of other than accidental cause, then, for the purpose of notification and for having such fire loss investigated, the company shall, in writing, notify an authorized agency and provide it with any or all material developed from the company's inquiry into the fire loss.
 - (2) When an insurance company provides any one of the authorized agencies with notice of a fire loss, it shall be sufficient notice for the purpose of this act.
 - (3) Nothing in Section 2(b) of this act shall abrogate or impair the rights or powers created under Section 2(a) of this act.
- (c) The authorized agency provided with information pursuant to Section 2(a) or 2(b) of this act and in furtherance of its own purposes, may release or provide such information to any of the other authorized agencies.
- (d) Any insurance company providing information to any authorized agency or agencies pursuant to Section 2(a) or 2(b) of this act shall have the right to request relevant information and receive, within a reasonable time, not to exceed 30 days, the information requested.
- (e) Any insurance company, or person acting in its behalf; or authorized agency who releases information, whether oral or written, pursuant to Section 2(a) or 2(b) of this act shall be immune from any liability arising out of a civil action, or, penalty resulting from a criminal prosecution.

Section 3. Evidence.

- (a) Any authorized agency and insurance company described in Section 1 or 2 of this act who receives any information furnished pursuant to this act, shall hold the information in confidence until such time as its release is required pursuant to a criminal or civil proceeding.
- (b) Any authorized agency referred to in Section 1 of this act, or their personnel, may be required to testify in any litigation in which the insurance company at interest is named as a party.

(NOTE: Sections 4(a), (b) and (c) are optional and not required.)

Section 4. Enforcement.

- (a) No person or agency shall intentionally or knowingly refuse to release any information requested pursuant to Section 2(a) or 2(c) of this act.
- (b) No person shall intentionally or knowingly refuse to provide authorized agencies relevant information pursuant to Section 2(b) of this act.
- (c) No person shall fail to hold in confidence information required to be held in confidence by Section 3. of this act.
- (d) Whoever violates Section 4(a), 4(b) or 4(c) of this act is guilty of a _____ misdemeanor, and upon conviction, shall be punished by a fine not to exceed \$ _____.

Section 5. Home Rule and Common Law.

- (a) The provisions of this act shall not be construed to affect or repeal any ordinance of any municipality relating to fire prevention or the control of arson, but the jurisdiction of the State Fire Marshal and the Director of the State Department of Law Enforcement (or other similar State Police Director) in such municipality is to be concurrent with that of the municipal and county authorities.
- (b) With the exception of Section 1.(f), all other provisions of this act shall not be construed to impair any existing statutory or common law rights or powers.

BACK TAXES AND DEMOLITION EXPENSES

Another approach being considered by state legislatures is the adoption of legislation to enable municipalities to recover back taxes and/or demolition expenses on insured properties that are damaged or destroyed. These laws intend to remove some of the profit motive from arson crimes, recover lost tax revenues and public expenses and control city decay. Generally, this is accomplished by requiring owners to pay back taxes or demolition expenses before the insurer pays a claim on destroyed properties to claimant.

To date, at least seven states have adopted this kind of legislation. These states are CONNECTICUT, ILLINOIS, KENTUCKY, MASSACHUSETTS, MISSOURI, NEW JERSEY and NEW YORK. OHIO is among the other states to consider similar legislation this year. These laws differ in their procedures for filing a lien against insurance proceeds, the monetary amounts of claims subject to a lien, the type of property destroyed and the cause of destruction.

In CONNECTICUT, insurance proceeds on fire insurance policies covering real estate are subject to a tax lien when the damage or loss exceeds \$5,000 due to the peril of fire on a building or structure. Fire insurance policies on single family or two-family dwellings are exempt from the law. In order for the lien to be valid, the municipal tax collector must file a certificate of lien with the town clerk giving intention to claim against the proceeds.

Any municipality in Connecticut which has incurred demolition expenses for "the abatement of any public or private nuisance" or expenses on real estate damaged by fire, has the right to recover such expenses from the owner of the real estate. These expenses include inspection, repair and demolition removal. The municipality must file a certificate of lien and give notice within 60 days after the work is completed.

Connecticut law requires insurance companies to demand of the town clerk an account of all existing liens filed according to the law before the company pays any insurance proceeds. In order to reduce unnecessary delays in paying claims, the town clerk must respond to the insurance company within 20 days after the demand is made. If the town clerk does not respond, the lien(s) are deemed dissolved. If a lien(s) exists, the insurance company must pay the total amount of delinquent taxes and/or

demolition expenses from the insurance proceeds within 30 days. Insurance companies are not held liable to the insured for amounts paid to the municipality nor can they be found to be in violation with the state's unfair claims practices act for complying with the provisions of the law.

Insurance companies in ILLINOIS are *prohibited from paying claims on fire insurance policies* when losses exceed \$5,000 until the insured submits proof to the company that all general and special taxes and any demolition costs have been paid. If the proceeds are less than the amount of unpaid taxes and demolition expenses, unpaid taxes are paid first. The insurance company cannot be held liable for any amounts in excess of the proceeds. Further, it is not the intent of the act to insure local governments under insurance policies.

Although the procedures differ, municipalities in NEW YORK and NEW JERSEY have the *option of placing a lien* against insurance proceeds. In New Jersey, the municipality must adopt an ordinance to prohibit an insurance company from paying proceeds until the insured has submitted a certificate of search indicating that all taxes, assessments or other municipal charges have been paid. The ordinance must be filed with the State Commissioner of Insurance and applies to claims over \$2,500 involving fire insurance policies that cover real estate.

In New York, the local legislative body may adopt a resolution to make a claim against insurance proceeds. However, the resolution cannot be effective unless the tax district's legislative body has adopted a law to provide that monies be returned to the insured if the insured agrees to restore the property to the same condition. Laws in Connecticut and New Jersey have provisions to allow municipalities to enter into similar agreements with the insured to restore properties.

MISSOURI's tax lien law applies to permanent buildings and improvements that are destroyed not only by fire, but by windstorms or tornadoes. Tax liens on such properties are attached to the insurance policy that covers the property. The county tax collector may waive the tax lien on the insurance proceeds, if, in his opinion, the property destruction will not prejudice the collection of taxes.

In addition, any person making an insurance claim in the state must file a statement from the tax collector describing the status of taxes

owed on the property to the insurance company. The provisions of the act apply to losses which are over 50 percent of the face value of the insurance policy.

Opponents point out that these laws may not effectively combat arson crimes and may have other negative effects: 1) tax liens provide little incentive to municipalities to prevent properties from burning, 2) payment of claims is delayed while insurers search tax records, 3) tax liens on insurance proceeds are not always limited to fire damage making it difficult, if not impossible, for victims of other catastrophes to receive payment immediately and 4) small losses may require compliance when laws fail to include adequate threshold limits.

Further, many argue that liens for demolition expenses incurred by a municipality should not be made a part of state law. Unlike liens to recover back taxes, a demolition lien to recover costs of removal following a fire is not a true disincentive to commit arson and is burdensome on both insurance companies and policyholders. Such liens complicate and delay claim payments, often causing innocent claimants unnecessary aggravation.

See Appendix for Statute Citations.

QUESTIONS A LEGISLATOR SHOULD ASK WHEN CONSIDERING
LEGISLATION TO RECOVER BACK TAXES

1. Should the decision to file a lien be a local option?
2. Should legislation apply to back taxes or demolition expenses, or both?
3. Should the law be limited to fire insurance policies or should it apply to other kinds of policies?
4. Should the law apply to claims of any amount or should a monetary limit be set?
5. Should an exception be made for single family dwellings?
6. Who should be responsible to verify the status of taxes owed on property -- the insurance company or the tax district?

APPENDIX C

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Appendix C¹

BACK TAXES AND DEMOLITION EXPENSES

<u>State</u>	<u>Statutory Citation</u>
Connecticut	P.A. 79-342
Illinois	Ill. Rev. Stat. Ch. 73 Sect. 1009.1
Kentucky	S.B. 305, 1980
Massachusetts	Mass. Gen. Laws Ann. Ch. 139, Sect. 3B, Ch. 175, Sect. 97A and 99
Missouri	Vernons Ann. MO Stat. 139.110
New Jersey	N.J.S.A. 17:36-8 through 13
New York	McKinney's Consolidated Laws of NY, Book 23, Municipal Law 22 and Book 27, Insurance Law 33A



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NEW YORK
Regular Session

Chapter 738, Laws 1977

Senate Int. No. 5347-B, Print 5347-B

AN ACT to amend the general municipal law and the insurance law, in relation to providing that outstanding real property taxes and other municipal charges constitute a lien against the proceeds of fire insurance policies and providing for the enforcement thereof in certain cases

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. The general municipal law is hereby amended by adding thereto a
2 new section, to be section twenty-two, to read as follows:
3 § 22. *Claims against fire insurance proceeds; procedure.* 1. As used in this
4 section, any inconsistent provision of law notwithstanding, the following terms shall
5 have the following meanings:
6 (a) "Collecting officer" means the elected or appointed officer of any tax district
7 authorized by law to receive and collect taxes, special ad valorem levies, special
8 assessments or other municipal charges levied against real property located therein.
9 (b) "Tax district" means (i) a county, city, town, village, school district or special
10 district, having the power to levy, assess and enforce the collection of taxes, special ad
11 valorem levies, special assessments or other charges imposed upon real property by or
12 on behalf of a municipal corporation or special district or (ii) a city school district
13 governed by article fifty-one of the education law.
14 (c) "Real property" means property upon which there is erected any residential,
15 commercial or industrial building or structure except a one or two family residential
16 structure.
17 (d) "Lien" means any lien including liens for taxes, special ad valorem levies,
18 special assessments and municipal charges arising by operation of law against
19 property in favor of a tax district and remaining undischarged for a period of one
20 year or more.
21 (e) "Governing body" means the legislative body for the tax district.

EXPLANATION — Matter in italics is new; matter in brackets [] is old law to be omitted.

LBD7-90-553B

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- 1 2. Every tax district is hereby authorized and empowered to claim against the
2 proceeds of a policy of fire insurance insuring the interest of an owner and issued on
3 real property located therein to the extent of any lien thereon which claim, when made
4 and perfected in the manner provided in this section, shall further constitute a lien
5 against such proceeds and which shall, as to such proceeds, be prior to all other liens
6 and claims except the claim of a mortgagee of record named in such policy.
7 3. Upon the adoption of a resolution by the governing body providing therefor, the
8 collecting officer of the tax district shall cause a notice of intention to claim against
9 proceeds to be served upon the state superintendent of insurance for entry in the
10 index of liens maintained by him as provided in section thirty-three-a of the
11 insurance law. Thereafter the collecting officer shall render to any insurer the
12 certificate required and in the manner prescribed by such section and the amounts
13 stated in such certificate shall be a lien on the proceeds of the insurance policy until
14 paid.
15 4. No resolution adopted as provided for in subdivision three hereof shall be
16 effective unless prior thereto the local legislative body for the tax district shall have
17 adopted a local law providing for the release or return to the insured of any amounts
18 to which it would otherwise be entitled to claim provided that the insured agrees with
19 the tax district in writing to restore the affected premises to the same or improved
20 condition that it was in prior to the time that the lien of such district against proceeds
21 provided for in this section arose.
22 5. The provisions of this section shall not be deemed or construed to alter or impair
23 the right of a tax district to acquire or enforce any lien against property but shall be
24 in addition to any other power provided by law to acquire or enforce such right.
25 § 2. The insurance law is hereby amended by adding thereto a new section, to
26 be section thirty-three-a, to read as follows:
27 § 33-a. Superintendent to maintain index of claims and liens; insurers'
28 requirements. 1. The superintendent shall maintain a suitable index of tax districts
29 which, pursuant to the provisions of section twenty-two of the general municipal law,
30 file with him notice of intention to claim against the proceeds of a policy of fire
31 insurance insuring the interest of an owner in any premises located therein against
32 which a lien for real property taxes or other municipal charges exist.
33 2. The index provided for herein shall be kept current on a daily basis and shall be
34 available for public inspection during regular business hours. It shall contain such
35 information as the superintendent deems appropriate.
36 3. Every notice from a tax district received by the superintendent shall become
37 effective on the thirtieth day next succeeding the date of entry thereof in such index
38 and shall constitute constructive notice to each insurer of the tax district's claim
39 against any proceeds payable pursuant to the provisions of any insurance policy
40 subject to the provisions of section one hundred sixty-eight-c of this chapter.
41 4. Prior to the payment of any proceeds of a policy of insurance for damages
42 caused by fire to real property, as such term is defined in section twenty-two of the
43 general municipal law, each insurer shall notify the collecting officer of each tax
44 district in which the property is located and which is entered in the index that a loss
45 has been sustained and demand that such officer's certificate indicating the amount
46 of all liens of the district against the property, including interest and penalties to the
47 date of the certificate, be served, at a specified address, in person or by registered or
48 certified mail, upon the insurer, within twenty days from the date of mailing such
49 demand.
50 5. Upon the failure of the collecting officer to serve the certificate of lien in
51 accordance with subdivision four hereof the right of the tax district to claim against
52 any such proceeds shall terminate. Within ten days of receipt of such certificate of
53 lien and a final determination of the insurer's obligation to pay such proceeds, the
54 insurer shall pay therefrom the amounts specified in the certificate to the collecting
55 officer.

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1 § 3. Such law is hereby amended by adding thereto a new section, to be
2 section one hundred sixty-eight-c, to read as follows:
3 § 168-c. *Fire insurance contract; payment of liens on proceeds; certain cases.*
4 *Insurers issuing a fire insurance policy insuring the interest of an owner pursuant*
5 *to this article shall include therein a statement that, prior to the payment of any*
6 *proceeds thereunder otherwise payable to the insured for damages resulting to the*
7 *premises from a loss occasioned by fire, the insurer will deduct therefrom and pay the*
8 *claim of any tax district which renders a certificate of lien pursuant to the provisions*
9 *of section thirty-three-a of this chapter. Such statement shall further relate that upon*
10 *the payment of such claim the insurer shall, to the extent of such payment, be released*
11 *from any obligation to pay the same to the insured and that the payment of any such*
12 *claim within thirty days of receipt by the insurer of the certificate of lien shall, as*
13 *between the insured and the insurer, operate as a conclusive presumption that such*
14 *claim was valid and properly paid.*
15 § 4. The provisions of this act shall take effect on the ninetieth day next
16 succeeding the date on which the provisions hereof become law and shall apply
17 to all fire insurance policies issued, reissued or renewed on or after such date and
18 any such policy which fails to comply with the provisions of section one hundred
19 sixty-eight-c of the insurance law, as added by this act, shall be construed as
20 containing the statements required by such section to be contained therein.

Approved, August 5, 1977



New York
Regular Session
1977 New Laws Page 971

NEW YORK
Regular Session

Chapter 739, Laws 1977

Senate Int. No. 6902, Print 6902

AN ACT to amend the general municipal law, in relation to claims against fire insurance proceeds

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision four of section twenty-two of the general municipal
2 law, as added by a. no. 7600 and s. no. 5347, is hereby amended to read as
3 follows:
4 4. No resolution adopted as provided for in subdivision three hereof shall be
5 effective unless prior thereto the local legislative body for the tax district shall
6 have adopted a local law providing for the release or return to the insured of any
7 amounts to which it would otherwise be entitled to claim provided that the
8 insured agrees with the tax district in writing to restore the affected premises to
9 the same or improved condition that it was in prior to the time that the lien of
10 such district against proceeds provided for in this section arose, *subject to such*
11 *conditions as such resolution shall provide to guarantee performance of such*
12 *obligation.*
13 § 2. This act shall take effect on the same day as a chapter of the laws of
14 nineteen hundred seventy-seven, entitled "AN ACT to amend the general
15 municipal law and the insurance law, in relation to providing that outstanding
16 real property taxes and other municipal charges constitute a lien against the
17 proceeds of fire insurance policies and providing for the enforcement thereof in
18 certain cases".

Approved, August 5, 1977

EXPLANATION—Matter in italics is new; matter in brackets [] is old law to be omitted.

ILLINOIS
Regular Session

Public Act 81-1201, Laws 1979

House Bill No. 2467

AN ACT to amend Section 397.1 of the "Illinois Insurance Code", approved June 29, 1937, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 397.1 of the "Illinois Insurance Code", approved June 29, 1937, as amended, is amended to read as follows:

(Chapter 73, paragraph 1009.1)

Section 397.1. Certificate regarding payment of taxes and expenses on property sustaining loss.)

(a) It shall be unlawful for any company authorized to issue insurance policies in this State to pay a claim of an insured property owner for loss to a structure located in this State where the amount recoverable for loss to the structure under all policies exceeds \$5,000, until the insurance company receives the certificate required by this Section.

(b) For purposes of this Section, the following definitions are applicable:

(1) "Insured property owner" is a person named as an insured who is the owner, title-holder or mortgagee of a structure, the holder of an interest secured by the structure, the beneficiary of a land trust owning or holding title to a structure, the lessee of a structure with a contractual obligation for property taxes as defined in Section 224 of the Revenue Act of 1939, or the assignee of any such person.

(2) "Amount recoverable" is the dollar amount payable under all insurance policies for loss to the structure.

(3) "Proceeds" is the dollar amount payable for loss to the structure under an insurance policy.

(4) "Delinquent property taxes" are those property taxes on the property which are delinquent pursuant to Section 224 of the Revenue Act of 1939 as of the later of the date of acceptance of the Proof of Loss or the date of receipt of the request for the execution of the certificate required by this Section.

In determining delinquent property taxes under this Section, the amount of property taxes for which a certificate of error has been issued pursuant to Sections 45 or 122 of the Revenue Act of 1939 shall not be considered delinquent.

(5) "Incurred demolition expense" is: a. the cost of demolishing or removing a structure from property by or at the expense of a unit of local government if the demolition or removal occurs on a date preceding the later of (i) the acceptance by the insurance company of a Proof of Loss for an agreed amount of proceeds, or (ii) the date of receipt by the unit of local government of a request for execution of the certificate required by this section; or b. the amount estimated by the unit of local government when it receives a request to execute the certificate required by this Section; or c. the amount ordered to be withheld by a court within 28 days after a unit of local government receives a request for execution of the certificate required by this Section. The unit of local government must be a party to such proceeding.

Incurred demolition expense shall be determined under subparagraph a. whenever possible. In determining the incurred demolition expense under subparagraph b., the unit of local government shall make its estimate and execute the certificate within 7 days of a request for execution. A court order under subparagraph c. shall supersede an estimate under subparagraph b.

(6) "Property" is the lot on which the structure is located.

(7) "Structure" is a building.

(8) "Claim" is the demand by an insured for payment under an insurance policy or policies.

(9) "Proof of Loss" is the document on which an insured formally presents his claim to an insurance company.

(10) "Certificate" is the executed form prescribed by the Director of Insurance.

(11) "Executed" means signed by the appropriate official or unit of government.

(c) For any claim to which this Section is applicable, an insured property owner must submit one of the following to the insurance company:

(1) a certificate that with respect to the property there are:

a. no delinquent property taxes, and

b. no unpaid incurred demolition expenses;

(2) a certificate setting forth with respect to the property:

a. the amount of unpaid delinquent property taxes,

b. the amount of unpaid incurred demolition expense, and

c. a direction by an insured property owner to the insurance company to pay the unpaid delinquent property taxes and unpaid incurred demolition expenses.

(d) (1) Except as provided in subparagraph (d) (2), if a certificate is submitted pursuant to paragraph (2) of subsection (c) of this Section, the insurance company shall pay the unpaid delinquent property taxes and unpaid incurred demolition expense from the proceeds payable by issuing a draft or check payable to the appropriate tax collector or unit of local government. Any proceeds remaining shall be paid to the insured property owner.

(2) In the event incurred demolition expense is determined by estimation under Subsection (b) (5) of this Section in cities of over 2,000,000, the insurance company shall hold the amount estimated until an amended certificate executed by the appropriate local government official is submitted stating (i) that no demolition expense will be incurred or (ii) the actual unpaid incurred demolition expense. The insurance company shall then issue a draft or check payable to the unit of local government for the actual unpaid incurred demolition expense. Any proceeds remaining shall be paid to the insured property owner.

In determining the amount of proceeds remaining under this subparagraph, the insured property owner shall receive interest on the amount withheld from the date the certificate is executed as provided in Chapter 74, Paragraph 2, Illinois Revised Statutes.

(e) If, under this Section, the proceeds payable are less than the amount of the unpaid delinquent property taxes and unpaid incurred demolition expense, unpaid property taxes shall be paid first.

(f) If incurred demolition expense withheld pursuant to subparagraphs b. or c. of paragraph 5 of subsection (b) of this Section exceeds the ultimate cost of demolition, the excess shall first be applied to unpaid delinquent property taxes. Any amount of proceeds remaining shall be paid to the insured property owner.

(g) Nothing in this Section shall be construed as:

(1) making an insurance company liable for any amount in excess of the proceeds payable under its insurance policy;

(2) making a unit of local government or tax collector an insured under an insurance policy; or

(3) creating an obligation for an insurance company to pay unpaid delinquent property taxes or unpaid incurred demolition expense other than as provided in subsection (d) of this Section.

(h) An insurance company making a payment of proceeds under this Section for unpaid delinquent taxes or unpaid incurred demolition expense shall be entitled to the full benefit of such payment, including subrogation rights and other rights of assignment.

(i) Unpaid property taxes and unpaid incurred demolition expense for a claim for loss to a structure occurring after the issuance of a tax deed pursuant to Section 266 of the Revenue Act of 1939 shall not include any unpaid property tax or unpaid demolition expense arising before the issuance of the tax deed.

(j) The mayor or chief executive of each unit of local government shall designate the local official or department who shall execute the certificate required by this Act.

(k) This Section shall retroactive apply to any policy issued or renewed on or after January 1, 1978 for which a claim subject to this Section remains unpaid as of the effective date of this amendatory Act of 1978.

Section 2. This Act takes effect upon its becoming a law.

Amendatory Veto September 21, 1979

Amendatory Veto Concurrence October 31, 1979

Certified, December 3, 1979