

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1181 Session of 2010

INTRODUCED BY WARD, D. WHITE, VANCE, TARTAGLIONE, WAUGH, ORIE, PICCOLA, BROWNE, STACK, EARLL AND MENSCH, JANUARY 8, 2010

SENATOR D. WHITE, BANKING AND INSURANCE, AS AMENDED, JUNE 8, 2010

AN ACT

1 Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An
2 act relating to insurance; amending, revising, and
3 consolidating the law providing for the incorporation of
4 insurance companies, and the regulation, supervision, and
5 protection of home and foreign insurance companies, Lloyds
6 associations, reciprocal and inter-insurance exchanges, and
7 fire insurance rating bureaus, and the regulation and
8 supervision of insurance carried by such companies,
9 associations, and exchanges, including insurance carried by
10 the State Workmen's Insurance Fund; providing penalties; and
11 repealing existing laws," further providing for immunity from
12 liability; AND MAKING A RELATED REPEAL.



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

15 Section 1. Section 349.1 of the act of May 17, 1921
16 (P.L.682, No.284), known as The Insurance Company Law of 1921,
17 added June 11, 1986 (P.L.226, No.64) is amended to read:

18 Section 349.1. Immunity from Liability.--(a) In the
19 absence of fraud or bad faith, no INDIVIDUAL, person or his
20 employes or agents shall be subject to civil liability and no
21 civil cause of action shall arise against any of them for any of
22 the following:



1 (1) Information relating to suspected fraudulent insurance
2 acts OR PERSONS SUSPECTED OF ENGAGING IN SUCH ACTS furnished by
3 them to or received from FEDERAL, STATE OR LOCAL law enforcement
4 officials, their agents and employes AND DESIGNEES.

5 (2) Information relating to suspected fraudulent insurance
6 acts OR PERSONS SUSPECTED OF ENGAGING IN SUCH ACTS furnished by
7 them to or received from other persons subject to the provisions
8 of this act.

9 (3) Information furnished by them [in reports to the
10 Insurance Department,] OR RECEIVED FROM A FEDERAL, STATE OR
11 LOCAL AGENCY, THE National Association of Insurance
12 Commissioners or another organization established to detect and
13 prevent fraudulent insurance acts, their agents, employes or
14 designees OR A RECOGNIZED COMPREHENSIVE DATABASE SYSTEM APPROVED
15 BY THE INSURANCE DEPARTMENT.

16 (A.1) IN THE ABSENCE OF FRAUD OR BAD FAITH, THE IMMUNITY
17 GRANTED IN SUBSECTION (A) SHALL ALSO APPLY TO PERSONS IDENTIFIED
18 AS DESIGNATED EMPLOYES OF INSURERS, SELF-INSURERS OR INSURANCE
19 LICENSEES WHOSE RESPONSIBILITIES INCLUDE THE INVESTIGATION AND
20 DISPOSITION OF CLAIMS RELATING TO SUSPECTED FRAUDULENT INSURANCE
21 ACTS WHEN SHARING INFORMATION ON SUCH ACTS OR PERSONS SUSPECTED
22 OF ENGAGING IN SUCH ACTS WITH OTHER DESIGNATED EMPLOYES OF THE
23 SAME OR OTHER INSURERS, SELF-INSURERS OR INSURANCE LICENSEES
24 WHOSE RESPONSIBILITIES INCLUDE THE INVESTIGATION OR DISPOSITION
25 OF CLAIMS RELATING TO SUSPECTED FRAUDULENT INSURANCE ACTS.

26 (b) [The Insurance Commissioner and employes of the
27 Insurance Department] STATE AGENCIES AND THEIR EMPLOYES AND
28 DESIGNEES, in the absence of fraud or bad faith, shall not be
29 subject to civil liability FOR SHARING INFORMATION IDENTIFIED IN
30 SUBSECTION (A). No civil cause of action shall arise against any

1 of them by virtue of the publication of a report or bulletin
2 related to the official activities of the [Insurance Department] ←
3 STATE AGENCY.

4 (c) Nothing in this section is intended to abrogate or
5 modify a common law or statutory immunity heretofore enjoyed by
6 any person.

7 (d) As used in this section the following words and phrases
8 shall have the meanings given to them in this subsection:

9 "Absence of bad faith" means without serious doubt that the
10 information furnished or received, or the report or bulletin
11 published, is not true.

12 "Absence of fraud" means without knowledge that the
13 information furnished or received, or the report or bulletin
14 published, is not true.

15 "Fraudulent insurance act" means an act committed by a person
16 who, knowingly and with intent to defraud, presents, causes to
17 be presented or prepares with knowledge or belief that it will
18 be presented to or by an insurer, purported insurer or broker,
19 or an agent of an insurer, purported insurer or broker, [a ←
20 written statement] INFORMATION as part or in support of an ←
21 application for the issuance or rating of an insurance policy
22 for commercial OR PERSONAL insurance, or a claim for payment or ←
23 other benefit pursuant to an insurance policy for commercial or
24 personal insurance which he knows to contain materially false
25 information concerning a fact material to the statement or claim
26 or to conceal, for the purpose of misleading, information
27 concerning a fact material to the statement or claim.† ←

28 ~~(a) In the absence of actual malice, a person is not subject~~
29 ~~to civil liability for libel, slander, bad faith or any other~~
30 ~~civil cause of action, and no civil cause of action of any~~

1 ~~nature shall arise against the person:~~

2 ~~(1) For any information furnished to or received from~~
3 ~~Federal, State or local law enforcement officials, their agents~~
4 ~~or employes relating to suspected fraudulent insurance acts or~~
5 ~~persons suspected of engaging in such acts.~~

6 ~~(2) For any information furnished to or received from the~~
7 ~~Insurance Department, the Department of Health, the Department~~
8 ~~of Labor and Industry, the Insurance Fraud Prevention Authority,~~
9 ~~the Automobile Theft Prevention Authority, the National~~
10 ~~Insurance Crime Bureau, the National Association of Insurance~~
11 ~~Commissioners or a recognized comprehensive database system~~
12 ~~relating to suspected fraudulent insurance acts or persons~~
13 ~~suspected of engaging in such acts.~~

14 ~~(3) For other actions taken in cooperation with any of the~~
15 ~~agencies or individuals identified in this subsection in the~~
16 ~~lawful investigation of suspected fraudulent insurance acts.~~

17 ~~(b) (1) In addition to the immunity granted in subsection~~
18 ~~(a), persons identified as designated employes of insurers,~~
19 ~~self insurers or insurance licensees whose responsibilities~~
20 ~~include the investigation and disposition of claims relating to~~
21 ~~suspected fraudulent insurance acts may share information on~~
22 ~~such acts and persons suspected of engaging in them with other~~
23 ~~designated employes employed by the same or other insurers,~~
24 ~~self insurers or insurance licensees whose responsibilities~~
25 ~~include the investigation and disposition of claims relating to~~
26 ~~suspected fraudulent insurance acts. Unless such persons act~~
27 ~~with actual malice or in reckless disregard for the rights of~~
28 ~~any insured, the insurers, self insurers or insurance licensees~~
29 ~~and their employes shall not be subject to libel, slander, bad~~
30 ~~faith or any other civil cause of action, and such causes of~~

1 ~~action shall not arise against them.~~

2 ~~(2) Notwithstanding the provisions of this subsection, the~~
3 ~~qualified immunity against civil liability conferred under this~~
4 ~~subsection shall be forfeited with respect to the exchange or~~
5 ~~publication of any defamatory information with third persons not~~
6 ~~expressly authorized by this subsection to share in the~~
7 ~~information.~~

8 ~~(c) The Insurance commissioner and employees of the Insurance~~
9 ~~Department when acting without malice and in the absence of~~
10 ~~fraud or bad faith are not subject to civil liability for libel,~~
11 ~~slander or any other relevant tort, and no civil cause of action~~
12 ~~of any nature exists against such person by virtue of the~~
13 ~~execution of official activities or duties of the Insurance~~
14 ~~Department under this act or by virtue of the publication of any~~
15 ~~report or bulletin related to the official activities or duties~~
16 ~~of the Insurance Department under this act.~~

17 ~~(d) Nothing in this section is intended to abrogate or~~
18 ~~modify a common law or statutory immunity enjoyed by any person~~
19 ~~prior to the effective date of this subsection or to prohibit a~~
20 ~~bad faith or any other civil action based upon actions other~~
21 ~~than those described in this section.~~

22 Section 2. Repeals are as follows:

23 (1) The General Assembly declares that the ~~repeals~~ ←
24 REPEAL under paragraph (2) ~~are~~ IS necessary to effectuate the ←
25 provisions of this act.

26 (2) ~~(i) The provisions of 75 Pa.C.S. § 1795(b) and (c)~~ ←
27 ~~are repealed.~~

28 ~~(ii)~~ Section 3(c) of the act of July 2, 1980 (P.L.340,
29 No.85), known as the Arson Reporting Immunity Act, is
30 repealed.

1 Section 3. This act shall take effect in 60 days.