

**SUBJECT:** Fire insurance coverage for churches affected by arson

**COMMITTEE:** Insurance — favorable, without amendment

**VOTE:** 9 ayes — Smithee, Van de Putte, Averitt, Bonnen, Burnam, Eiland, G. Lewis, Olivo, Wise

0 nays

**SENATE VOTE:** On final passage, March 13 — voice vote

**WITNESSES:** (*On House companion, HB 396*)  
For — Frank Garrett; B. W. McClendon

Against — Jay Thompson, Association of Fire and Casualty Companies of Texas

**BACKGROUND :** The Insurance Code prohibits unfair competition and unfair practices. The code allows affected parties to file civil suits and recover actual damages, court costs and attorney's fees and treble damages for knowing violations. It also provides for injunctive relief and administrative sanctions imposed by the Department of Insurance and allows the attorney general to pursue injunctive relief and civil penalties.

**DIGEST:** SB 79 would prohibit an insurer from cancelling or declining to renew fire insurance coverage of a church solely because there had been a previous occurrence of arson committed against the church, provided that the church had cooperated with authorities in their investigation and prosecution efforts.

The bill would also prohibit cancellation or non-renewal resulting from a written or verbal arson threat against a church or other primarily religious association so long as an official reported the threat to the appropriate law enforcement agency within a reasonable amount of time.

Violations of these provisions would be unfair acts or practices in the business of insurance, punishable by the sanctions imposed by Insurance Code.

The bill would take effect September 1, 1997, and would apply only to a policy issued, delivered, or renewed on or after January 1, 1998.

**SUPPORTERS  
SAY:**

SB 79 would respond to a serious repercussion to a tragic syndrome occurring in Texas as in the rest of the country — the outbreak of church fires caused by arson. In most cases fire insurance companies have acted honorably, providing replacement costs for the damaged structures and subsequently maintaining coverage. However, in a few instances, insurers have cancelled or failed to renew fire coverage following an occurrence of arson.

Under current statutes, an insurer is not required to give a reason for declining to renew a church's commercial multi-peril policy. SB 79 would offer needed safeguards to ensure that places of worship, especially the smaller ones that are more often victims of such arson incidents, are provided continued protection and reassurance that they will not be victimized twice: once by an arsonist and yet again by nervous insurer who abandons coverage.

SB 79 would only prohibit insurer cancellations or non-renewals where the sole basis of that company action was the occurrence of arson or a threat of arson. Insurers would still have the power to terminate coverage for a wide range of other lawful reasons, as long as they demonstrated a reasonable basis for that decision and did not otherwise breach their duty of good faith and fair dealing in making that decision. Insurers would retain all their investigative tools and techniques to prove that certain fires were not caused by arson in order to avoid paying fraudulent or unfounded claims. The portion of the bill prohibiting the use of verbal or written threats of arson as a basis for cancellation by insurers would act as an incentive to churches to promptly report such threats to local or state law enforcement, since the fear that their insurer would cancel their policy often deters church personnel from even reporting these threats.

SB 79 would offer the same sanctions to deal with insurers acting in bad faith as applied to other bad faith or deceptive practices by insurance companies. Companies acting in good faith would have nothing to fear from this legislation.

OPPONENTS  
SAY:

This bill is an overreaction to an admittedly tragic situation, since the number of actual cancellations or non-renewals that have occurred in response to the arson incidents is actually quite low. The language of the bill is confusing and ambiguous and could be difficult to administer. The wide range of sanctions authorized could be misused against insurers who were only exercising a business judgment on whether to cancel or renew a given policy.

This legislation could lead to higher premiums for all Texans, since the possible risk of sanctions and increased potential of paying on policies would be passed on to other customers. The severity of sanctions involved for cancellation or non-renewal of coverage could cause some insurers to simply refuse to offer coverage to churches.

Some of the church fires have been accidental, and even those where arson has occurred often have been older structures at greater risk of both fire and substantial damage. The costs of rebuilding such structures are higher because of the expense of retrofitting to comply with modern fire codes. These expenses would be the compelling factors in a decision not to renew coverage. These are sound business judgments, not prima facie evidence of bad faith by the insurer.

NOTES:

SB 78 by Ellis, which passed the Senate and has been placed on the House General State Calendar, would increase the penalty for arson to a first degree felony if the arsonist intended to damage a place of worship.