

**STATE OF MICHIGAN  
96TH LEGISLATURE  
REGULAR SESSION OF 2012**

Introduced by Reps. Graves, Heise, Zorn, MacGregor, LeBlanc, Horn and Lyons

# **ENROLLED HOUSE BILL No. 5694**

AN ACT to amend 1931 PA 328, entitled "An act to revise, consolidate, codify, and add to the statutes relating to crimes; to define crimes and prescribe the penalties and remedies; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at criminal trials; to provide for liability for damages; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending sections 77, 78, and 79 (MCL 750.77, 750.78, and 750.79), section 77 as amended by 1998 PA 312.

*The People of the State of Michigan enact:*

Sec. 77. (1) Except as provided in sections 72 to 76, a person who intentionally damages or destroys by fire or explosive any personal property having a value of \$1,000.00 or less and who has 1 or more prior convictions is guilty of fifth degree arson.

(2) Subsection (1) applies regardless of whether the person owns the personal property.

(3) Fifth degree arson is a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$2,000.00 or 3 times the value of the property damaged or destroyed, whichever is greater, or both imprisonment and a fine.

(4) As used in this section:

(a) "Personal property" includes an automobile, van, truck, motorcycle, trailer, and other personally owned property.

(b) "Prior conviction" means a prior conviction for a violation of this chapter that arises out of a separate transaction from the violation of this section.

Sec. 78. (1) Except as provided in sections 72 to 77, a person shall not intentionally do any of the following:

(a) Willfully and maliciously burn, damage, or destroy by fire or explosive any of the following or its contents:

(i) Any personal property having a value of \$200.00 or more but less than \$1,000.00.

(ii) Any personal property having a value of less than \$200.00, if the person has 1 or more prior convictions.

(iii) Any personal property having a value of less than \$200.00.

(b) Negligently, carelessly, or recklessly set fire to a hotel or motel or its contents, and, by setting that fire, endanger the life or property of another person.

(2) Subsection (1) applies regardless of whether the person owns the building, structure, hotel, motel, or its contents, or the personal property.

(3) A violation of this section is a misdemeanor punishable as follows:

(a) If the person violates subsection (1)(a)(i) or (ii), imprisonment for not more than 1 year and a fine of not more than \$2,000.00 or 3 times the value of the property damaged, whichever is greater.

(b) If the person violates subsection (1)(a)(iii) or (b), imprisonment for not more than 93 days and a fine of not more than \$500.00 or 3 times the value of the property damaged, whichever is greater.

Sec. 79. (1) A person who uses, arranges, places, devises, or distributes an inflammable, combustible, or explosive material, liquid, or substance or any device in or near a building, structure, other real property, or personal property with the intent to commit arson in any degree or who aids, counsels, induces, persuades, or procures another to do so is guilty of a crime as follows:

(a) If the property has a combined value of less than \$200.00, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00 or 3 times the combined value of the property damaged or destroyed, whichever is greater, or both imprisonment and a fine.

(b) If any of the following apply, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$2,000.00 or 3 times the combined value of the property damaged or destroyed, whichever is greater, or both imprisonment and a fine:

(i) The property has a combined value of \$200.00 or more but less than \$1,000.00.

(ii) The person violates subdivision (a) and has 1 or more prior convictions for committing or attempting to commit an offense under this section or a local ordinance substantially corresponding to this section.

(c) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00 or 3 times the combined value of the property damaged or destroyed, whichever is greater, or both imprisonment and a fine:

(i) The property has a combined value of \$1,000.00 or more but less than \$20,000.00.

(ii) The person violates subdivision (b)(i) and has 1 or more prior convictions for violating or attempting to violate this section. For purposes of this subparagraph, however, a prior conviction does not include a conviction for a violation or attempted violation of subdivision (a) or (b)(i).

(iii) Except as provided in subdivisions (d) and (e), the property is a building, structure, or real property. This subparagraph applies regardless of whether the person owns the building, structure, or other real property.

(d) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$15,000.00 or 3 times the combined value of the property damaged or destroyed, whichever is greater, or both imprisonment and a fine:

(i) The property has a combined value of \$20,000.00 or more.

(ii) The person violates subdivision (c)(i) and has 2 or more prior convictions for committing or attempting to commit an offense under this section. For purposes of this subparagraph, however, a prior conviction does not include a conviction for committing or attempting to commit an offense for a violation or attempted violation of subdivision (a) or (b)(ii).

(iii) The property has a value of more than \$2,000.00 and is insured against loss by fire or explosion and the person caused the fire or explosion with the intent to defraud the insurer.

(iv) Except as provided in subdivisions (c)(iii) and (e) and subparagraphs (v) and (vi), the property is a building, structure, or other real property, and the fire or explosion results in injury to any individual. This subparagraph applies regardless of whether the person owns the building, structure, or other real property.

(v) Except as provided in subdivisions (c)(iii) and (e) and subparagraph (vi), the property is a building, structure, or other real property and insured against loss from fire or explosion, and the person caused the fire or explosion with the intent to defraud the insurer. This subparagraph applies regardless of whether the person owns the building, structure, or other real property.

(vi) The property is a dwelling. This subparagraph applies regardless of whether the person owns the dwelling.

(e) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$20,000.00 or 3 times the combined value of the property intended to be burned or destroyed, whichever is greater, or both imprisonment and a fine:

(i) The property is a dwelling and is insured against loss by fire or explosion if the person caused the fire or explosion with the intent to defraud the insurer. This subparagraph applies regardless of whether the person owns the property.

(ii) The property is a dwelling and the fire or explosion results in physical injury to any individual.

(2) The combined value of property intended to be burned in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total value of property damaged or destroyed.

(3) If the prosecuting attorney intends to seek an enhanced sentence based upon the defendant having 1 or more prior convictions, the prosecuting attorney shall include on the complaint and information a statement listing the prior conviction or convictions. The existence of the defendant's prior conviction or convictions shall be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. The existence of a prior conviction may be established by any evidence relevant for that purpose, including, but not limited to, 1 or more of the following:

(a) The total value of property damaged or destroyed.

(b) A transcript of a prior trial, plea-taking, or sentencing.

(c) Information contained in a presentence report.

(d) The defendant's statement.

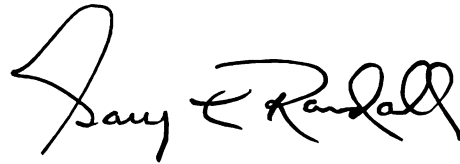
(4) If the sentence for a conviction under this section is enhanced by 1 or more prior convictions, those prior convictions shall not be used to further enhance the sentence for the conviction under section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

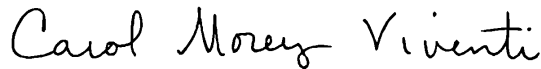
Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 96th Legislature are enacted into law:

(a) House Bill No. 5692.

(b) House Bill No. 5693.



Clerk of the House of Representatives



Secretary of the Senate

Approved .....

.....  
Governor