



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383  
Fax: (517) 373-1986

House Bills 5692 through 5695 (as passed by the House)  
Sponsor: Representative John Walsh (H.B. 5692)  
Representative Kevin Cotter (H.B. 5693)  
Representative Joseph Graves (H.B. 5694)  
Representative Stacy Erwin Oakes (H.B. 5695)

House Committee: Judiciary  
Senate Committee: Judiciary

Date Completed: 12-4-12

### **CONTENT**

**House Bills 5692, 5693, and 5694 would amend Chapter 10 (Arson and Burning) of the Michigan Penal Code to delete and replace various arson prohibitions and penalties.**

**House Bill 5695 would amend the Code of Criminal Procedure to revise the sentencing guidelines for arson felonies to make them consistent with the changes proposed by House Bills 5692, 5693, and 5694.**

House Bills 5692, 5693, and 5694 are tie-barred and would take effect 90 days after their enactment. House Bill 5695 is tie-barred to House Bills 5692, 5693, and 5694.

#### **House Bill 5692**

##### **First- & Second-Degree Arson**

Currently, burning of an occupied or unoccupied dwelling house or its contents, or any building within the curtilage of a dwelling house or the contents of such a building, is a felony punishable by up to 20 years' imprisonment regardless of whether the person who committed the violation owns the building. In addition, willfully or maliciously burning any building or other real property, or its contents, except as otherwise specified in Chapter 10, is a felony punishable by up to 10 years' imprisonment. The bill would delete those prohibitions.

Under the bill, a person who willfully or maliciously burned, damaged, or destroyed

any of the following buildings, by fire or explosive, or the contents of any of those buildings, would be guilty of first-degree arson:

- A multiunit building or structure in which one or more units were a dwelling, regardless of whether any of the units were occupied, unoccupied, or vacant at the time of the fire or explosion.
- Any building or structure or other real property if the fire or explosion resulted in physical injury to any individual.
- A mine.

Except as provided for first-degree arson, a person who willfully or maliciously burned, damaged, or destroyed a dwelling or its contents by fire or explosive, regardless of whether it was occupied, unoccupied, or vacant at the time of the fire or explosion, would be guilty of second-degree arson.

The prohibitions against first- and second-degree arson would apply regardless of whether the offender owned the dwelling, building, structure, or mine or its contents.

First-degree arson would be a felony punishable by imprisonment for life or any term of years; a maximum fine of \$20,000 or three times the value of the property damaged or destroyed, whichever was greater; or both imprisonment and a fine.

Second-degree arson would be a felony punishable by up to 20 years' imprisonment; a maximum fine of \$20,000 or three times

the value of the property damaged or destroyed, whichever was greater; or both imprisonment and a fine.

### **House Bill 5693**

#### **Third- & Fourth-Degree Arson**

The Penal Code prohibits willfully and maliciously burning any personal property, and prescribes a schedule of graduated penalties based on the value of the property and prior convictions. The Code also prohibits willfully burning insured property with the intent to injure and defraud the insurer, and prescribes a felony penalty of up to 10 years' imprisonment for a violation. The bill would delete those provisions.

Under the bill, except as provided for first- and second-degree arson, a person who willfully or maliciously burned, damaged, or destroyed any of the following would be guilty of third-degree arson:

- A building or structure, or its contents, by fire or explosive regardless of whether the building was occupied, unoccupied, or vacant at the time of the fire or explosion.
- Personal property having a value of \$20,000 or more, or having a value of \$1,000 or more if the person had one or more prior convictions.

In addition, except as provided for first-, second-, and third-degree arson, a person who did any of the following would be guilty of fourth-degree arson:

- Willfully and maliciously burned, damaged, or destroyed any personal property having a value of \$1,000 or more but less than \$20,000, or, if the person had one or more prior convictions, any personal property having a value of \$200 or more.
- Willfully or negligently set fire to another person's woods, prairie, or grounds or permitted fire to pass from his or her own woods, prairie, or grounds to another person's property causing damage or destruction to that other property.

The prohibition against third- and fourth-degree arson would apply regardless of whether the offender owned the personal property.

Third-degree arson would be a felony punishable by up to 10 years' imprisonment; a maximum fine of \$20,000 or three times the value of the property damaged or destroyed, whichever was greater; or both imprisonment and a fine.

Fourth-degree arson would be a felony punishable by up to five years' imprisonment; a maximum fine of \$10,000 or three times the value of the property damaged or destroyed, whichever was greater; or both imprisonment and a fine.

#### **Arson of Insured Property**

Under the bill, a person who willfully or maliciously burned, damaged, or destroyed any of the following or the contents of any of the following by fire or explosive would be guilty of arson of insured property, if the person caused the fire or explosion with the intent to defraud the insurer:

- Any dwelling that was insured against loss from fire or explosion.
- Any other building, structure, or other real property that was insured against loss from fire or explosion.
- Any personal property that was insured against loss by fire or explosion.

The prohibition against arson of insured property would apply regardless of whether the offender owned the dwelling, building, structure, other real property, or personal property.

Arson of insured property would be a felony punishable as follows:

- For a dwelling, imprisonment for life or any term of years; a maximum fine of \$20,000 or three times the value of the property damaged or destroyed, whichever was greater; or both imprisonment and a fine.
- For any other building, structure, or other real property, up to 20 years' imprisonment; a maximum fine of \$20,000 or three times the value of the property damaged or destroyed, whichever was greater; or both imprisonment and a fine.
- For personal property, up to 10 years' imprisonment; a maximum fine of \$20,000 or three times the value of the property damaged or destroyed, whichever was greater; or both imprisonment and a fine.

The bill also would delete a provision under which the current arson prohibitions apply to a married woman who commits any of the offenses although the property burned belongs to her husband, and to a married man who commits any of the offenses although the property burned belongs to his wife, even though the property may be occupied as a residence by the man or woman or by the man and the woman.

### **House Bill 5694**

#### **Current Provisions**

The Code prohibits a person from using, arranging, placing, devising, or distributing an inflammable, combustible, or explosive material, liquid, or substance or any device in or near a building or property with willful or malicious intent to set fire to or burn the building or property. The Code prescribes a graduated schedule of penalties based on the value of the property and prior convictions. The Code also prohibits willfully or negligently setting fire to woods or other grounds and designates the violation as a felony, which is punishable by up to four years' imprisonment and/or a maximum fine of \$5,000. The bill would delete those provisions.

#### **Sixth-Degree Arson**

Under the bill, except as provided for first-, second-, third-, or fourth-degree arson or arson of insured property, a person who intentionally damaged or destroyed any of the following, or its contents, by fire or explosive would be guilty of sixth-degree arson:

- Any personal property having a value of \$200 or more but less than \$1,000, if the person had one or more prior convictions.
- Any personal property having a value of less than \$200, if the person had one or more prior convictions.

The prohibition against sixth-degree arson would apply regardless of whether the offender owned the personal property or its contents.

Sixth-degree arson would be a misdemeanor punishable by up to one year's imprisonment; a maximum fine of \$2,000 or three times the value of the property

damaged or destroyed, whichever was greater; or both imprisonment and a fine.

#### **Other Arson Offenses**

Under the bill, except as provided for first-, second-, third-, fourth-, or sixth-degree arson or arson of insured property, a person could not intentionally do any of the following:

- Willfully and maliciously burn, damage, or destroy by fire or explosive any personal property having a value of \$200 or more but less than \$1,000; having a value of less than \$200 if the person had one or more prior convictions; or having a value of less than \$200.
- Negligently, carelessly, or recklessly set fire to a hotel or motel or its contents, and, by setting that fire, endanger another person's life or property

Those prohibitions would apply regardless of whether the person owned the building, structure, hotel, motel, or its contents, or the personal property.

A violation would be a misdemeanor punishable as follows:

- For personal property having a value of \$200 or more but less than \$1,000, or having a value of less than \$200 if the person had one or more prior convictions, by up to one year's imprisonment and/or a maximum fine of \$2,000 or three times the value of the property damaged, whichever was greater.
- For personal property having a value of less than \$200, or for a hotel or motel or its contents, up to 93 days' imprisonment and/or a maximum fine of \$500 or three times the value of the property damaged, whichever was greater.

#### **Placing Explosive or Combustible Device or Material**

Under the bill, a person who used, arranged, placed, devised, or distributed 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 aided, counseled, induced, persuaded,

or procured another to do so, would be guilty of a crime as described below.

If the property had a combined value of less than \$200, the violation would be a misdemeanor punishable by up to 93 days' imprisonment and/or a maximum fine of \$500 or three times the combined value of the property damaged or destroyed, whichever was greater.

The violation would be a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$2,000 or three times the combined value of the property damaged or destroyed, whichever was greater, if any of the following applied:

- The property had a combined value of \$200 or more but less than \$1,000.
- The property had a combined value of less than \$200, and the person had one or more prior convictions.

The violation would be a felony punishable by up to five years' imprisonment and/or a maximum fine of \$10,000 or three times the combined value of the property damaged or destroyed, whichever was greater, if any of the following applied:

- The property had a combined value of \$1,000 or more but less than \$20,000.
- The property had a combined value of \$200 or more but less than \$1,000 and the person had one or more prior convictions involving property valued at \$200 or more.
- The property was a building, structure, or real property, regardless of whether the person owned the property, except as described below.

The violation would be a felony punishable by up to 10 years' imprisonment and/or a maximum fine of \$15,000 or three times the combined value of the property damaged or destroyed, whichever was greater, if any of the following applied:

- The property had a combined value of \$20,000 or more.
- The property had a combined value of \$1,000 or more but less than \$20,000, and the person had two or more prior convictions involving property valued at \$200 or more.
- The property had a value of more than \$2,000 and was insured against loss by

fire or explosion and the person caused the fire or explosion with the intent to defraud the insurer.

- Except as otherwise provided, the property was a building, structure, or other real property and the fire or explosion resulted in injury to any individual, regardless of whether the person owned the building, structure, or other real property.
- Except as otherwise provided, the property was 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, regardless of whether the person owned the building, structure, or other real property.
- The property was dwelling, regardless of whether the person owned it.

The person would be guilty of a felony punishable by up to 15 years' imprisonment and/or a maximum fine of \$20,000 or three times the combined value of the property intended to be burned or destroyed, whichever was greater, if any of the following applied:

- The property was a dwelling and was insured against loss by fire or explosion, if the person caused the fire or explosion with the intent to defraud the insurer, regardless of whether the person owned the property.
- The property was a dwelling and the fire or explosion resulted in physical injury to any individual.

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 could be aggregated to determine the total value of property damaged or destroyed.

If the prosecuting attorney intended to seek an enhanced sentence based upon the defendant's having one or more prior convictions, he or she would have to include on the complaint and information a statement listing the prior conviction or convictions. The existence of the defendant's prior conviction or convictions would have to be determined by the court, without a jury, at sentencing. The existence of a prior conviction could be established by any evidence relevant for that purpose, including one or more of the following:

- The total value of property damaged or destroyed.
- A transcript of a prior trial, plea-taking, or sentencing.
- Information contained in a presentence report.
- The defendant's statement.

If the sentence for a conviction were enhanced by one or more prior convictions, those prior convictions could not be used to enhance the sentence under Section 10, 11, or 12 of Chapter 9 of the Code of Criminal Procedure. (Those sections provide for enhanced sentencing for certain habitual criminals.)

### **House Bill 5695**

The bill would delete sentencing guidelines designations for arson violations deleted by House Bills 5692, 5693, and 5694, and would add sentencing guidelines designations for arson violations proposed by those bills. Under House Bill 5695, arson violations would be designated in the sentencing guidelines as shown in Table 1.

**Table 1**

Felony	Class & Category	Stat. Max. Sentence
First-degree Arson	B - Person	Life
Second-degree Arson	D - Property	20 years
Third-degree Arson	E - Person	10 years
Arson of Insured Dwelling	A - Property	Life
Arson if Insured Building or Structure	B - Property	20 years
Arson of Insured Personal Property	D - Property	10 years
Placing Incendiary Device - \$1,000 or more but less than \$20,000, or with priors	E - Property	5 years
Placing Incendiary Device - \$20,000 or more, or with priors, or with intent for insurance fraud or causing injury	D - Property	10 years
Placing Incendiary Device with intent for insurance fraud or causing injury	C - Property	15 years

The bill would retain sentencing guidelines designations for both of the following:

- Arson of insured property (a Class D property felony with a statutory maximum sentence of 10 years' imprisonment).
- Arson of mines (a Class D property felony with a statutory maximum sentence of imprisonment for life).

MCL 750.71-750.73 (H.B. 5692)  
 750.74-750.76 (H.B. 5693)  
 750.77-750.79 (H.B. 5694)  
 777.16c (H.B. 5695)

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bills would both delete and create a variety of felonies and misdemeanors related to arson. The ways that the proposed laws would punish various offenses relative to the status quo could result in longer sentence in some instances but shorter sentences in other cases. Therefore, the proposed bills' impact on State and local costs of incarceration and community supervision is indeterminate. In 2010, there were 185 felony dispositions for the 10 felonies currently in statute related to arson, so there is potential for a non-negligible fiscal impact.

Fiscal Analyst: Dan O'Connor

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.