HOUSE BILL No. 5693

May 29, 2012, Introduced by Reps. Cotter, Heise, Zorn, MacGregor, LeBlanc, Horn and Lyons and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled

"The Michigan penal code,"

by amending sections 74, 75, and 76 (MCL 750.74, 750.75, and 750.76), section 74 as amended by 1998 PA 312.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 74. ~~(1) A person who willfully and maliciously burns any personal property, other than personal property specified in section 72 or 73, owned by himself or herself or another person is guilty of a crime as follows:~~

~~(a) If the value of the personal property burned or intended to be burned is 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 value of the personal property burned or intended to be burned, whichever is greater, or both imprisonment and a fine.~~

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~~(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 value of the personal property burned or intended to be burned, whichever is greater, or both imprisonment and a fine:~~

~~(*i*) The value of the personal property burned or intended to be burned is $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 value of the personal property burned or intended to be burned, whichever is greater, or both imprisonment and a fine:~~

~~(*i*) The value of the personal property burned or intended to be burned is $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)(*ii*).~~

~~(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 value of the personal property burned or intended to be burned, whichever is~~

~~greater, or both imprisonment and a fine:~~

~~(*i*) The personal property burned or intended to be burned has a 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 a violation or attempted violation of subdivision (a) or (b)(*ii*).~~

~~(2) The values of personal property burned or 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 personal property burned or intended to be burned.~~

~~(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) A copy of the judgment of conviction.~~

~~(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 pursuant to 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.~~

(1) EXCEPT AS PROVIDED IN SECTIONS 72 AND 73, A PERSON WHO DOES ANY OF THE FOLLOWING IS GUILTY OF THIRD DEGREE ARSON:

(A) WILLFULLY OR MALICIOUSLY BURNS, DAMAGES, OR DESTROYS BY FIRE OR EXPLOSIVE ANY BUILDING OR STRUCTURE, OR ITS CONTENTS, REGARDLESS OF WHETHER IT IS OCCUPIED, UNOCCUPIED, OR VACANT AT THE TIME OF THE FIRE OR EXPLOSION.

(B) WILLFULLY AND MALICIOUSLY BURNS, DAMAGES, OR DESTROYS BY FIRE OR EXPLOSIVE ANY OF THE FOLLOWING OR ITS CONTENTS:

(*i*) ANY PERSONAL PROPERTY HAVING A VALUE OF $20,000.00 OR MORE.

(*ii*) ANY PERSONAL PROPERTY HAVING A VALUE OF $1,000.00 OR MORE IF THE PERSON HAS 1 OR MORE PRIOR CONVICTIONS.

(2) SUBSECTION (1) APPLIES REGARDLESS OF WHETHER THE PERSON OWNS THE BUILDING, STRUCTURE, OTHER REAL PROPERTY OR ITS CONTENTS, OR THE PERSONAL PROPERTY.

(3) THIRD DEGREE ARSON IS A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 10 YEARS OR A FINE OF NOT MORE THAN $20,000.00 OR 3 TIMES THE VALUE OF THE PROPERTY DAMAGED OR DESTROYED, WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A FINE.

Sec. 75. ~~Burning of insured property Any person who shall wilfully burn any building or personal property which shall be at the time insured against loss or damage by fire with intent to~~

~~injure and defraud the insurer, whether such person be the owner of the property or not, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 10 years.~~

(1) EXCEPT AS PROVIDED IN SECTIONS 72, 73, AND 74, A PERSON WHO DOES ANY OF THE FOLLOWING IS GUILTY OF FOURTH DEGREE ARSON:

(A) WILLFULLY AND MALICIOUSLY BURNS, DAMAGES, OR DESTROYS BY FIRE OR EXPLOSIVE ANY OF THE FOLLOWING OR ITS CONTENTS:

(*i*) ANY PERSONAL PROPERTY HAVING A VALUE OF $1,000.00 OR MORE, BUT LESS THAN $20,000.00.

(*ii*) ANY PERSONAL PROPERTY HAVING A VALUE OF $200.00 OR MORE IF THE PERSON HAS 1 OR MORE PRIOR CONVICTIONS.

(B) WILLFULLY OR NEGLIGENTLY SETS FIRE TO A WOODS, PRAIRIE, OR GROUNDS OF ANOTHER PERSON OR PERMITS 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.

(2) SUBSECTION (1)(A) APPLIES REGARDLESS OF WHETHER THE PERSON OWNS THE PERSONAL PROPERTY.

(3) FOURTH DEGREE ARSON IS 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 VALUE OF THE PROPERTY DAMAGED OR DESTROYED, WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A FINE.

Sec. 76. ~~Applicability of preceding sections The preceding sections of this chapter shall apply to a married woman who may commit any of the offenses herein described although the property burnt may belong partly or wholly to her husband; and said preceding sections shall also apply to a married man although the property burnt may belong partly or wholly to his wife; and~~

~~although said property may be occupied by such married man or married woman, or by such married man and wife as a residence.~~

(1) A PERSON WHO WILLFULLY OR MALICIOUSLY BURNS, DAMAGES, OR DESTROYS BY FIRE OR EXPLOSIVE ANY OF THE FOLLOWING OR THE CONTENTS OF ANY OF THE FOLLOWING IS GUILTY OF ARSON OF INSURED PROPERTY:

(A) ANY DWELLING THAT IS INSURED AGAINST LOSS FROM FIRE OR EXPLOSION IF THE PERSON CAUSED THE FIRE OR EXPLOSION WITH THE INTENT TO DEFRAUD THE INSURER.

(B) EXCEPT AS PROVIDED IN SUBDIVISION (A), ANY BUILDING, STRUCTURE, OR OTHER REAL PROPERTY THAT IS INSURED AGAINST LOSS FROM FIRE OR EXPLOSION IF THE PERSON CAUSED THE FIRE OR EXPLOSION WITH THE INTENT TO DEFRAUD THE INSURER.

(C) ANY PERSONAL PROPERTY THAT IS INSURED AGAINST LOSS BY FIRE OR EXPLOSION IF THE PERSON CAUSED THE FIRE OR EXPLOSION WITH THE INTENT TO DEFRAUD THE INSURER.

(2) SUBSECTION (1) APPLIES REGARDLESS OF WHETHER THE PERSON OWNS THE DWELLING, BUILDING, STRUCTURE, OTHER REAL PROPERTY, OR PERSONAL PROPERTY.

(3) ARSON OF INSURED PROPERTY IS A FELONY PUNISHABLE AS FOLLOWS:

(A) IF THE PERSON VIOLATES SUBSECTION (1)(A), IMPRISONMENT FOR LIFE OR ANY TERM OF YEARS OR A FINE OF NOT MORE THAN $20,000.00 OR 3 TIMES THE VALUE OF THE PROPERTY DAMAGED OR DESTROYED, WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A FINE.

(B) IF THE PERSON VIOLATES SUBSECTION (1)(B), IMPRISONMENT FOR NOT MORE THAN 20 YEARS OR A FINE OF NOT MORE THAN $20,000.00 OR 3 TIMES THE VALUE OF THE PROPERTY DAMAGED OR DESTROYED, WHICHEVER IS

GREATER, OR BOTH IMPRISONMENT AND A FINE.

(C) IF THE PERSON VIOLATES SUBSECTION (1)(C), IMPRISONMENT FOR NOT MORE THAN 10 YEARS OR A FINE OF NOT MORE THAN $20,000.00 OR 3 TIMES THE VALUE OF THE PROPERTY DAMAGED OR DESTROYED, WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A FINE.

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) Senate Bill No. _____ or House Bill No. 5692(request no. 03575'11).

(b) Senate Bill No. _____ or House Bill No. 5694(request no. 05787'12).