

HOUSE BILL No. 5694

May 29, 2012, Introduced by Reps. Graves, 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 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:

1 Sec. 77. ~~(1) A person who uses, arranges, places, devises, or~~
2 ~~distributes an inflammable, combustible, or explosive material,~~
3 ~~liquid, or substance or any device in or near a building or~~
4 ~~property described in section 72, 73, 74, or 75 with intent to~~
5 ~~willfully and maliciously set fire to or burn the building or~~
6 ~~property or who aids, counsels, induces, persuades, or procures~~
7 ~~another to do so is guilty of a crime as follows:~~

8 ~~— (a) If the property intended to be burned is personal or real~~
9 ~~property, or both, with a combined value less than \$200.00, the~~
10 ~~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 intended to be burned, 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 intended to be burned, whichever is greater, or both imprisonment and a fine.~~

~~—— (i) The property intended to be burned is personal or real property, or both, with 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 intended to be burned, whichever is greater, or both imprisonment and a fine.~~

~~—— (i) The property intended to be burned is personal or real property, or both, with 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) (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 combined value of the property intended to be burned, whichever is greater, or both imprisonment and a fine.~~

~~—— (i) The property is personal or real property, or both, with 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).~~

~~—— (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 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~~

House Bill No. 5694 as amended December 13, 2012

~~limited to, 1 or more of the following:~~

~~— (a) The total value of property intended to be burned.~~

~~— (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 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.

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(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.

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(4) AS USED IN THIS SECTION:

1 (A) "PERSONAL PROPERTY" INCLUDES AN AUTOMOBILE, VAN, TRUCK,
2 MOTORCYCLE, TRAILER, AND OTHER PERSONALLY OWNED PROPERTY.

3 (B) "PRIOR CONVICTION" MEANS A PRIOR CONVICTION FOR A
4 VIOLATION OF THIS CHAPTER THAT ARISES OUT OF A SEPARATE TRANSACTION
5 FROM THE VIOLATION OF THIS SECTION.

6 ~~Sec. 78. Wilfully setting fire to woods, etc. Any person who~~
7 ~~shall wilfully or negligently set fire to any woods, prairies or~~
8 ~~grounds, not his property, or shall wilfully permit any fire to~~
9 ~~pass from his own woods, prairies or grounds, to the injury or~~
10 ~~destruction of the property of any other person, shall be guilty of~~
11 ~~a felony.~~

12 (1) EXCEPT AS PROVIDED IN SECTIONS 72 TO 77, A PERSON SHALL
13 NOT INTENTIONALLY DO ANY OF THE FOLLOWING:

14 (A) WILLFULLY AND MALICIOUSLY BURN, DAMAGE, OR DESTROY BY FIRE
15 OR EXPLOSIVE ANY OF THE FOLLOWING OR ITS CONTENTS:

16 (i) ANY PERSONAL PROPERTY HAVING A VALUE OF \$200.00 OR MORE BUT
17 LESS THAN \$1,000.00.

18 (ii) ANY PERSONAL PROPERTY HAVING A VALUE OF LESS THAN \$200.00,
19 IF THE PERSON HAS 1 OR MORE PRIOR CONVICTIONS.

20 (iii) ANY PERSONAL PROPERTY HAVING A VALUE OF LESS THAN \$200.00.

21 (B) NEGLIGENTLY, CARELESSLY, OR RECKLESSLY SET FIRE TO A HOTEL
22 OR MOTEL OR ITS CONTENTS, AND, BY SETTING THAT FIRE, ENDANGER THE
23 LIFE OR PROPERTY OF ANOTHER PERSON.

24 (2) SUBSECTION (1) APPLIES REGARDLESS OF WHETHER THE PERSON
25 OWNS THE BUILDING, STRUCTURE, HOTEL, MOTEL, OR ITS CONTENTS, OR THE
26 PERSONAL PROPERTY.

27 (3) A VIOLATION OF THIS SECTION IS A MISDEMEANOR PUNISHABLE AS

1 FOLLOWS:

2 (A) IF THE PERSON VIOLATES SUBSECTION (1) (A) (i) OR (ii) ,
3 IMPRISONMENT FOR NOT MORE THAN 1 YEAR AND A FINE OF NOT MORE THAN
4 \$2,000.00 OR 3 TIMES THE VALUE OF THE PROPERTY DAMAGED, WHICHEVER
5 IS GREATER.

6 (B) IF THE PERSON VIOLATES SUBSECTION (1) (A) (iii) OR (B) ,
7 IMPRISONMENT FOR NOT MORE THAN 93 DAYS AND A FINE OF NOT MORE THAN
8 \$500.00 OR 3 TIMES THE VALUE OF THE PROPERTY DAMAGED, WHICHEVER IS
9 GREATER.

10 ~~Sec. 79. Clearing land by fire and disposing of refuse~~
11 ~~materials in townships Whenever in pursuance of the authority given~~
12 ~~by law, any township board shall, by order, rule or regulation,~~
13 ~~designate a period during which it shall be unlawful to set forest~~
14 ~~fires or fires for the purpose of clearing lands, and disposing by~~
15 ~~burning of refuse material and waste matter within its respective~~
16 ~~jurisdiction or any part thereof, any person who shall be found~~
17 ~~guilty of violating the orders, rules and regulations of such board~~
18 ~~by setting any such fire in such township contrary to the~~
19 ~~provisions thereof shall be guilty of a felony: Provided, That any~~
20 ~~person desiring to dispose of refuse material by burning the same~~
21 ~~during the time prohibited by the board of such township, may do so~~
22 ~~after first procuring permission in writing, signed by the~~
23 ~~supervisor and township clerk, or by a majority of such township~~
24 ~~board, and the said supervisor and township clerk, or a majority of~~
25 ~~the said board are hereby authorized to grant such permission in~~
26 ~~their discretion, under such conditions as they may prescribe, upon~~
27 ~~application made in writing for such purpose: Provided further,~~

~~That said board is hereby authorized at any time to repeal by resolution any order, rule or regulation herein mentioned.~~

(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

1 FINE OF NOT MORE THAN \$10,000.00 OR 3 TIMES THE COMBINED VALUE OF
2 THE PROPERTY DAMAGED OR DESTROYED, WHICHEVER IS GREATER, OR BOTH
3 IMPRISONMENT AND A FINE:

4 (i) THE PROPERTY HAS A COMBINED VALUE OF \$1,000.00 OR MORE BUT
5 LESS THAN \$20,000.00.

6 (ii) THE PERSON VIOLATES SUBDIVISION (B) (i) AND HAS 1 OR MORE
7 PRIOR CONVICTIONS FOR VIOLATING OR ATTEMPTING TO VIOLATE THIS
8 SECTION. FOR PURPOSES OF THIS SUBPARAGRAPH, HOWEVER, A PRIOR
9 CONVICTION DOES NOT INCLUDE A CONVICTION FOR A VIOLATION OR
10 ATTEMPTED VIOLATION OF SUBDIVISION (A) OR (B) (ii) .

11 (iii) EXCEPT AS PROVIDED IN SUBDIVISIONS (D) AND (E) , THE
12 PROPERTY IS A BUILDING, STRUCTURE, OR REAL PROPERTY. THIS
13 SUBPARAGRAPH APPLIES REGARDLESS OF WHETHER THE PERSON OWNS THE
14 BUILDING, STRUCTURE, OR OTHER REAL PROPERTY.

15 (D) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
16 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 10 YEARS OR A
17 FINE OF NOT MORE THAN \$15,000.00 OR 3 TIMES THE COMBINED VALUE OF
18 THE PROPERTY DAMAGED OR DESTROYED, WHICHEVER IS GREATER, OR BOTH
19 IMPRISONMENT AND A FINE:

20 (i) THE PROPERTY HAS A COMBINED VALUE OF \$20,000.00 OR MORE.

21 (ii) THE PERSON VIOLATES SUBDIVISION (C) (i) AND HAS 2 OR MORE
22 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE
23 UNDER THIS SECTION. FOR PURPOSES OF THIS SUBPARAGRAPH, HOWEVER, A
24 PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR COMMITTING OR
25 ATTEMPTING TO COMMIT AN OFFENSE FOR A VIOLATION OR ATTEMPTED
26 VIOLATION OF SUBDIVISION (A) OR (B) (ii) .

27 (iii) THE PROPERTY HAS A VALUE OF MORE THAN \$2,000.00 AND IS

1 INSURED AGAINST LOSS BY FIRE OR EXPLOSION AND THE PERSON CAUSED THE
2 FIRE OR EXPLOSION WITH THE INTENT TO DEFRAUD THE INSURER.

3 (iv) EXCEPT AS PROVIDED IN SUBDIVISIONS (C) (iii) AND (E) AND
4 SUBPARAGRAPHS (v) AND (vi), THE PROPERTY IS A BUILDING, STRUCTURE,
5 OR OTHER REAL PROPERTY, AND THE FIRE OR EXPLOSION RESULTS IN INJURY
6 TO ANY INDIVIDUAL. THIS SUBPARAGRAPH APPLIES REGARDLESS OF WHETHER
7 THE PERSON OWNS THE BUILDING, STRUCTURE, OR OTHER REAL PROPERTY.

8 (v) EXCEPT AS PROVIDED IN SUBDIVISIONS (C) (iii) AND (E) AND
9 SUBPARAGRAPH (vi), THE PROPERTY IS A BUILDING, STRUCTURE, OR OTHER
10 REAL PROPERTY AND INSURED AGAINST LOSS FROM FIRE OR EXPLOSION, AND
11 THE PERSON CAUSED THE FIRE OR EXPLOSION WITH THE INTENT TO DEFRAUD
12 THE INSURER. THIS SUBPARAGRAPH APPLIES REGARDLESS OF WHETHER THE
13 PERSON OWNS THE BUILDING, STRUCTURE, OR OTHER REAL PROPERTY.

14 (vi) THE PROPERTY IS A DWELLING. THIS SUBPARAGRAPH APPLIES
15 REGARDLESS OF WHETHER THE PERSON OWNS THE DWELLING.

16 (E) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
17 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 15 YEARS OR A
18 FINE OF NOT MORE THAN \$20,000.00 OR 3 TIMES THE COMBINED VALUE OF
19 THE PROPERTY INTENDED TO BE BURNED OR DESTROYED, WHICHEVER IS
20 GREATER, OR BOTH IMPRISONMENT AND A FINE:

21 (i) THE PROPERTY IS A DWELLING AND IS INSURED AGAINST LOSS BY
22 FIRE OR EXPLOSION IF THE PERSON CAUSED THE FIRE OR EXPLOSION WITH
23 THE INTENT TO DEFRAUD THE INSURER. THIS SUBPARAGRAPH APPLIES
24 REGARDLESS OF WHETHER THE PERSON OWNS THE PROPERTY.

25 (ii) THE PROPERTY IS A DWELLING AND THE FIRE OR EXPLOSION
26 RESULTS IN PHYSICAL INJURY TO ANY INDIVIDUAL.

27 (2) THE COMBINED VALUE OF PROPERTY INTENDED TO BE BURNED IN

1 SEPARATE INCIDENTS PURSUANT TO A SCHEME OR COURSE OF CONDUCT WITHIN
2 ANY 12-MONTH PERIOD MAY BE AGGREGATED TO DETERMINE THE TOTAL VALUE
3 OF PROPERTY DAMAGED OR DESTROYED.

4 (3) IF THE PROSECUTING ATTORNEY INTENDS TO SEEK AN ENHANCED
5 SENTENCE BASED UPON THE DEFENDANT HAVING 1 OR MORE PRIOR
6 CONVICTIONS, THE PROSECUTING ATTORNEY SHALL INCLUDE ON THE
7 COMPLAINT AND INFORMATION A STATEMENT LISTING THE PRIOR CONVICTION
8 OR CONVICTIONS. THE EXISTENCE OF THE DEFENDANT'S PRIOR CONVICTION
9 OR CONVICTIONS SHALL BE DETERMINED BY THE COURT, WITHOUT A JURY, AT
10 SENTENCING OR AT A SEPARATE HEARING FOR THAT PURPOSE BEFORE
11 SENTENCING. THE EXISTENCE OF A PRIOR CONVICTION MAY BE ESTABLISHED
12 BY ANY EVIDENCE RELEVANT FOR THAT PURPOSE, INCLUDING, BUT NOT
13 LIMITED TO, 1 OR MORE OF THE FOLLOWING:

14 (A) THE TOTAL VALUE OF PROPERTY DAMAGED OR DESTROYED.

15 (B) A TRANSCRIPT OF A PRIOR TRIAL, PLEA-TAKING, OR SENTENCING.

16 (C) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

17 (D) THE DEFENDANT'S STATEMENT.

18 (4) IF THE SENTENCE FOR A CONVICTION UNDER THIS SECTION IS
19 ENHANCED BY 1 OR MORE PRIOR CONVICTIONS, THOSE PRIOR CONVICTIONS
20 SHALL NOT BE USED TO FURTHER ENHANCE THE SENTENCE FOR THE
21 CONVICTION UNDER SECTION 10, 11, OR 12 OF CHAPTER IX OF THE CODE OF
22 CRIMINAL PROCEDURE, 1927 PA 175, MCL 769.10, 769.11, AND 769.12.

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

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

1 (a) Senate Bill No. _____ or House Bill No. 5692 (request no.
2 03575'11).

3 (b) Senate Bill No. _____ or House Bill No. 5693 (request no.
4 05786'12).