

HOUSE BILL No. 4907

July 18, 2013, Introduced by Rep. Walsh and referred to the Committee on Criminal Justice.

A bill to amend 1931 PA 328, entitled "The Michigan penal code," by amending sections 78 and 79 (MCL 750.78 and 750.79), as amended by 2012 PA 533.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

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

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

10 (b) Negligently, carelessly, or recklessly set fire to a hotel

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1 or motel or its contents, and, by setting that fire, endanger the
2 life or property of another person.

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

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

8 (a) If the person violates subsection (1) (a) (i) or (ii),
9 imprisonment for not more than 1 year and a fine of not more than
10 \$2,000.00 or 3 times the value of the property damaged **OR**
11 **DESTROYED**, whichever is greater.

12 (b) If the person violates subsection (1) (a) (iii) or (b),
13 imprisonment for not more than 93 days and a fine of not more than
14 \$500.00 or 3 times the value of the property damaged [**OR DESTROYED**],
15 whichever is
16 greater.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (a) The total value of property damaged or destroyed.
 - 2 (b) A transcript of a prior trial, plea-taking, or sentencing.
 - 3 (c) Information contained in a presentence report.
 - 4 (d) The defendant's statement.
- 5 (4) If the sentence for a conviction under this section is
6 enhanced by 1 or more prior convictions, those prior convictions
7 shall not be used to further enhance the sentence for the
8 conviction under section 10, 11, or 12 of chapter IX of the code of
9 criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.