

2018 Regular Session

SENATE BILL NO. 54

BY SENATOR MARTINY

ARSON. Creates the crime of negligent arson. (gov sig)

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AN ACT

To enact R.S. 14:52.2, relative to arson; to create the crime of negligent arson; to provide definitions; to provide penalties; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 14:52.2 is hereby enacted to read as follows:

§52.2. Negligent arson

A. Negligent arson is the damaging of any property of another, movable or immovable, by the setting of fire or causing an explosion, without consent of the owner or custodian of the property, under any of the following circumstances:

(1) The offender knowingly enters into or onto the property and causes the setting of a fire or an explosion by either criminal conduct not requiring either specific or general criminal intent, or by the offender's criminal negligence. If the offender knows or should have known that he has no possessory right to the property or other interest therein, or had not previously established a right of entry into or onto the property, then the entry into or onto the property shall be deemed without consent.

1 (2) The offender is engaged in the manufacturing or attempted
2 manufacturing of a controlled dangerous substance.

3 (3) The offender is engaged in the manufacturing or attempted
4 manufacturing of a bomb, as prohibited by R.S. 14:54.3.

5 (4) The offender causes the setting of a fire or an explosion and fails to
6 immediately report the fire or explosion to the proper authorities, including any
7 law enforcement agency, fire department, emergency services, or government
8 agency within the jurisdiction in which the property is located.

9 B. If the owner or custodian of the property is absent and cannot be
10 located, the absence of the owner or custodian shall not prohibit the institution
11 of criminal charges or the prosecution of the offender pursuant to this Section.

12 C. This Section shall not apply:

13 (1) When the cause of the fire or explosion is classified as either
14 "accidental" or "natural" in accordance with Chapter 20 of NFPA 921 of the
15 National Fire Protection Association.

16 (2) When the fire or explosion was part of a permissible controlled
17 burning of open space land or other property by the owner or custodian of the
18 property. For purposes of this Paragraph, "open space land" means any real
19 property that is undeveloped for the purpose of human habitation.

20 D. It shall be a defense to prosecution under this Section that, prior to
21 starting the fire or explosion, the person obtained a permit or other written
22 authorization granted in accordance with applicable state, municipal, or
23 parochial statute or ordinance.

24 E.(1) Whoever commits the crime of negligent arson, where the damage
25 done amounts to five thousand dollars or less, and where there was no
26 immediate threat to human life:

27 (a) On a first conviction shall be fined not more than one thousand
28 dollars, or imprisoned for not more than one year, or both. In addition, the
29 offender shall be ordered to pay restitution for damages sustained.

1 **(b) On a second and subsequent conviction, shall be fined not more than**
2 **two thousand five hundred dollars and imprisoned, with or without hard labor,**
3 **for not less than six months nor more than two years. In addition, the offender**
4 **shall be ordered to pay restitution for damages sustained.**

5 **(2) Whoever commits the crime of negligent arson, where the damage**
6 **done amounts to more than five thousand dollars, and where there was no**
7 **immediate threat to human life, shall be fined not more than five thousand**
8 **dollars, or imprisoned, with or without hard labor, for not more than two years,**
9 **or both. In addition, the offender shall be ordered to pay restitution for**
10 **damages sustained.**

11 **(3) Whoever commits the crime of negligent arson, where there was an**
12 **immediate threat to human life or where bodily injury was sustained, shall be**
13 **fined not less than ten thousand dollars nor more than fifteen thousand dollars,**
14 **or imprisoned, with or without hard labor, for not more than five years, or**
15 **both. In addition, the offender shall be ordered to pay restitution for damages**
16 **and injuries sustained.**

17 **(4) Whoever commits the crime of negligent arson resulting in the death**
18 **of a person shall be fined not less than twenty thousand dollars nor more than**
19 **fifty thousand dollars, or imprisoned, with or without hard labor, for not less**
20 **than five years nor more than twenty years, or both. In addition, the offender**
21 **shall be ordered to pay restitution for damages and injuries sustained.**

22 **F. Any person convicted of a violation of this Section shall register with**
23 **the state fire marshal in accordance with R.S. 15:562.3.**

24 Section 2. This Act shall become effective upon signature by the governor or, if not
25 signed by the governor, upon expiration of the time for bills to become law without signature
26 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
27 vetoed by the governor and subsequently approved by the legislature, this Act shall become
28 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Alden A. Clement Jr.

DIGEST

SB 54 Original

2018 Regular Session

Martiny

Proposed law creates the crime of negligent arson. Proposed law defines negligent arson as the damaging of any property of another, movable or immovable, by the setting of fire or causing an explosion, without consent of the owner or custodian of the property, under any of the following circumstances:

- (1) The offender knowingly enters into or onto the property and causes the setting of a fire or an explosion by either criminal conduct not requiring either specific or general criminal intent, or by the offender's criminal negligence. (Present law defines "specific criminal intent" as that state of mind existing when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act. Present law defines "general criminal intent" as being present whenever there is specific intent, and also when the circumstances indicate that the offender, in the ordinary course of human experience, must have adverted to the prescribed criminal consequences as reasonably certain to result from his act or failure to act. Present law defines "criminal negligence" as existing when, although neither specific nor general criminal intent is present, there is such disregard of the interest of others that the offender's conduct amounts to a gross deviation below the standard of care expected to be maintained by a reasonably careful man under like circumstances.) If the offender knows or should have known that he has no possessory right to the property or other interest therein, or had not previously established a right of entry into or onto the property, then the entry into or onto the property is deemed to have been without consent.
- (2) The offender is engaged in the manufacturing or attempted manufacturing of a controlled dangerous substance.
- (3) The offender is engaged in the manufacturing or attempted manufacturing of a bomb, as prohibited by present law.
- (4) The offender causes the setting of a fire or an explosion and fails to immediately report the fire or explosion to the proper authorities, including any law enforcement agency, fire department, emergency services, or government agency within the jurisdiction in which the property is located.

Proposed law provides that if the owner or custodian of the property is absent and cannot be located, the absence of the owner or custodian does not prohibit the institution of criminal charges or the prosecution of the offender.

Proposed law provides that proposed law does not apply:

- (1) When the cause of the fire or explosion is classified as either "accidental" or "natural" in accordance with Chapter 20 of NFPA 921 of the National Fire Protection Association.
- (2) When the fire or explosion was part of a permissible controlled burning of open space land or other property by the owner or custodian of the property. For purposes of proposed law, "open space land" means any real property that is undeveloped for the purpose of human habitation.

Proposed law provides that it is a defense to prosecution under proposed law that, prior to starting the fire or explosion, the person obtained a permit or other written authorization

granted in accordance with applicable state, municipal, or parochial statute or ordinance.

Proposed law provides that whoever commits the crime of negligent arson, where the damage done amounts to \$5,000 or less, and where there was no immediate threat to human life:

- (1) On a first conviction is to be fined not more than \$1,000, imprisoned for not more than one year, or both, and in addition must pay restitution.
- (2) On a second and subsequent conviction, is to be fined not more than \$2,500 and imprisoned, with or without hard labor, for between six months and two years, and in addition must pay restitution.

Proposed law provides that whoever commits the crime of negligent arson, where the damage done amounts to more than \$5,000, and where there was no immediate threat to human life, is to be fined not more than \$5,000 or imprisoned, with or without hard labor, for not more than two years, or both, and in addition must pay restitution.

- (3) Whoever commits the crime of negligent arson, where there was an immediate threat to human life or where bodily injury was sustained, is to be fined between \$10,000 and \$15,000, or imprisoned, with or without hard labor, for up to five years, or both, and in addition must pay restitution.
- (4) Whoever commits the crime of negligent arson resulting in the death of a person is to be fined between \$20,000 and \$50,000, or imprisoned, with or without hard labor, for between five years and 20 years, or both, and in addition must pay restitution.

Proposed law further provides that any person convicted of a violation of proposed law must register with the state fire marshal in accordance with present law requiring the registration of certain arson offenders.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 14:52.2)