
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)