

ASSEMBLY, No. 1942

STATE OF NEW JERSEY

INTRODUCED MAY 6, 1996

By Assemblymen MORAN, CONNORS, Assemblywoman J. Smith, Assemblymen Corodemus, T. Smith, Assemblywoman Farragher, Assemblymen Arnone, Wolfe, Cottrell and Malone

1 AN ACT concerning the crime of arson and amending NJ.S.2C:17-1.

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3 **BE IT ENACTED** by the Senate and General Assembly of the State
4 of New Jersey:

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6 1. N.J.S.2C:17-1 is amended to read as follows:

7 2C:17-1. a. Aggravated arson. A person is guilty of aggravated
8 arson, a crime of the second degree, if he starts a fire or causes an
9 explosion, whether on his own property or another's:

10 (1) Thereby purposely or knowingly placing another person in
11 danger of death or bodily injury; or

12 (2) With the purpose of destroying a building or structure of
13 another; or

14 (3) With the purpose of collecting insurance for the destruction or
15 damage to such property under circumstances which recklessly place
16 any other person in danger of death or bodily injury; or

17 (4) With the purpose of destroying or damaging a structure in order
18 to exempt the structure, completely or partially, from the provisions
19 of any State, county or local zoning, planning or building law,
20 regulation, ordinance or enactment under circumstances which
21 recklessly place any other person in danger of death or bodily injury;
22 or

23 (5) With the purpose of destroying or damaging any forest.

24 b. Arson. A person is guilty of arson, a crime of the third degree,
25 if he purposely starts a fire or causes an explosion, whether on his own
26 property or another's:

27 (1) Thereby recklessly placing another person in danger of death
28 or bodily injury; or

29 (2) Thereby recklessly placing a building or structure of another in
30 danger of damage or destruction; or

31 (3) With the purpose of collecting insurance for the destruction or
32 damage to such property; or

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 (4) With the purpose of destroying or damaging a structure in order
2 to exempt the structure, completely or partially, from the provisions
3 of any State, county or local zoning, planning or building law,
4 regulation, ordinance or enactment ; or

5 (5) Thereby recklessly placing a forest in danger of damage or
6 destruction.

7 c. Failure to control or report dangerous fire. A person who
8 knows that a fire is endangering life or a substantial amount of
9 property of another and either fails to take reasonable measures to put
10 out or control the fire, when he can do so without substantial risk to
11 himself, or to give prompt fire alarm, commits a crime of the fourth
12 degree if:

13 (1) He knows that he is under an official, contractual, or other
14 legal duty to prevent or combat the fire; or

15 (2) The fire was started, albeit lawfully, by him or with his assent,
16 or on property in his custody or control.

17 d. Any person who, directly or indirectly, pays or accepts or offers
18 to pay or accept any form of consideration including, but not limited
19 to, money or any other pecuniary benefit, regardless of whether any
20 consideration is actually exchanged for the purpose of starting a fire
21 or causing an explosion in violation of this section commits a crime of
22 the first degree.

23 e. Notwithstanding the provisions of any section of this Title to
24 the contrary, if a person is convicted of aggravated arson pursuant to
25 the provisions of subsection a. of this section and the structure which
26 was the target of the offense was a health care facility or a physician's
27 office, the sentence imposed shall include a term of imprisonment.
28 The court may not suspend or make any other noncustodial disposition
29 of a person sentenced pursuant to the provisions of this subsection.

30 f. Definitions. "Structure" is defined in section 2C:18-1. Property
31 is that of another, for the purpose of this section, if any one other than
32 the actor has a possessory [or], or other legal or equitable proprietary
33 interest therein. Property is that of another for the purpose of this
34 section, if anyone other than the actor has a legal or equitable interest
35 in the property including, but not limited to, a mortgage, pledge, lien
36 or security interest therein. If a building or structure is divided into
37 separately occupied units, any unit not occupied by the actor is an
38 occupied structure of another.

39 As used in this section, "forest" means and includes any forest,
40 brush land, grass land, salt marsh, wooded area and any combination
41 thereof, including but not limited to, an open space area, public lands,
42 wetlands, park lands, natural habitats, a State conservation area, and
43 a wildlife refuge area or any other designated undeveloped open space
44 whether or not it is subject to specific protection under law.

1 As used in this section, "health care facility" means health care
2 facility as defined in section 2 of P.L.1971, c.136 (C.26:2H-2).
3 (cf: P.L.1991, c.498, s.1.)
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5 2. This act shall take effect immediately .
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8 STATEMENT 9

10 This bill amends the arson statute, N.J.S.2C:17-1, to address
11 several specific ways in which to strengthen that statute and its
12 applicability to forms of this dangerous behavior.

13 The bill adds two new definitions to aggravated arson. The
14 addition of new paragraph (4) in subsection a. of N.J.S.2C:17-1 is
15 intended to address the problem of property owners who burn their
16 commercial or residential structure for the purpose of avoiding zoning
17 regulations, wetlands restrictions and shoreline development
18 regulations. Arson investigators have encountered situations where
19 property owners have either completely or partially destroyed their
20 building by fire in order to exempt the building from lot size
21 requirements for additions, renovations and remodeling or commercial
22 property owners have burned their buildings, not for the purpose of
23 collecting insurance money, but to exempt themselves from zoning
24 approvals they cannot obtain for expansion, renovation or remodeling.

25 The proposed addition to the arson statute is intended to eliminate
26 any possibility that arson may provide a less expensive means of
27 avoiding planning board approval for renovations which may be
28 unacceptable as violating local zoning and planning ordinances.

29 The addition of new paragraph (5) to subsection a. is intended to
30 provide a criminal sanction for setting so-called "brush fires". While
31 N.J.S.2C:17-2, the crime of causing or risking widespread injury or
32 damage may have applicability in certain situations, it is limited
33 because that statute requires that a risk of serious bodily injury be
34 posed to a least 10 or more people or damage to 10 or more
35 habitations or to a building which would normally contain 50 or more
36 people at the time of the offense. Given these requirements,
37 N.J.S.2C:17-2 may not address the problem of brush fires. This
38 proposed addition to the arson statute is needed to address the serious
39 environmental, ecological and economic consequences of the type of
40 fire which occurred in the Pinelands Reserve in 1995.

41 The bill makes parallel changes in subsection b. by adding new
42 paragraphs (4) and (5) to that subsection concerning the third degree
43 crime of arson.

44 The bill makes a change to subsection d. of N.J.S.2C:17-1
45 concerning the first degree crime of arson committed by a person who
46 accepts consideration for starting a fire or causing an explosion. The

1 change is intended to codify the rule of State v. Chiarulli 234 N.J.
2 Super. 192 (App. Div. 1989) by clarifying that in a case where the
3 arsonist is unable to collect his fee, he may nevertheless be convicted
4 of this first degree offense.

5 The bill adds language in subsection f. concerning the definition of
6 "structure" and is intended to eliminate any question which may arise
7 where a person burns a building for which that person is listed as the
8 "owner". The amendment recognizes the various legal and equitable
9 interests which others have in buildings which appear to be "owned"
10 by another. It is intended to protect the rights of mortgage holders
11 (i.e. lending institutions), joint tenants, tenants in common and lien
12 holders. An example of the type of conduct the amendment seeks to
13 criminalize is the intentional setting of a fire to a private residence by
14 the titled owner because the home is subject to foreclosure and the
15 owner would rather burn it down than lose it to the bank. The bill also
16 adds a definition of "forest."

17 This bill is one of a package of three bills introduced as a result of
18 efforts of the Ocean County Prosecutor's Special Arson Investigation
19 Task Force.

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Makes various changes to the statute concerning the crime of arson.