

2C:17-1

LEGISLATIVE HISTORY CHECKLIST

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(Arson--Crime)

NJSA: 2C:17-1

LAWS OF: 1997 CHAPTER: 109

BILL NO: A1846

SPONSOR(S): Holzapfel & Wolfe

DATE INTRODUCED: May 2, 1996

COMMITTEE: ASSEMBLY: Judiciary

SENATE: Judiciary

AMENDED DURING PASSAGE: No Assembly Committee Substitute enacted

DATE OF PASSAGE: ASSEMBLY: October 21, 1996

SENATE: April 21, 1997

DATE OF APPROVAL: June 3, 1997

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: Yes

FOLLOWING WERE PRINTED:  
REPORTS: No

HEARINGS: No

KBP:pp

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
ASSEMBLY, Nos. 1846 and 1942

STATE OF NEW JERSEY

ADOPTED SEPTEMBER 19, 1996

Sponsored by Assemblymen HOLZAPFEL, WOLFE,  
MORAN, CONNORS, Assemblywoman Heck, Senators  
Connors, Bassano and Singer

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

2

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

5

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  
18 order to exempt the structure, completely or partially, from the  
19 provisions of any State, county or local zoning, planning or building  
20 law, 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  
30 in danger of damage or destruction; or

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

Matter underlined thus is new matter.

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

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

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

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

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

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

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

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

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

41 As used in this section, "forest" means and includes any forest,  
42 brush land, grass land, salt marsh, wooded area and any combination  
43 thereof, including but not limited to, an open space area, public lands,  
44 wetlands, park lands, natural habitats, a State conservation area, a  
45 wildlife refuge area or any other designated undeveloped open space  
46 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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10       Makes various changes to the statute concerning the crime of arson.

ASSEMBLY, No. 1846

STATE OF NEW JERSEY

INTRODUCED MAY 2, 1996

By Assemblymen HOLZAPFEL and WOLFE

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

2

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

5

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

7 2C:17-1. Arson and related offenses.

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

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

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

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

18 (4) With the purpose of destroying any forest.

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

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

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

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

28 (4) Thereby recklessly placing a forest in danger of damage or  
29 destruction.

30 c. Failure to control or report dangerous fire. A person who  
31 knows that a fire is endangering life or a substantial amount of  
32 property of another and either fails to take reasonable measures to put  
33 out or control the fire, when he can do so without substantial risk to  
34 himself, or to give prompt fire alarm, commits a crime of the fourth

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 degree if:

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

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

6 d. Any person who, directly or indirectly, pays or accepts any form  
7 of consideration including, but not limited to, money or any other  
8 pecuniary benefit, for the purpose of starting a fire or causing an  
9 explosion in violation of this section commits a crime of the first  
10 degree.

11 e. Notwithstanding the provisions of any section of this Title to the  
12 contrary, if a person is convicted of aggravated arson pursuant to the  
13 provisions of subsection a. of this section and the structure which was  
14 the target of the offense was a health care facility or a physician's  
15 office, the sentence imposed shall include a term of imprisonment.  
16 The court may not suspend or make any other noncustodial disposition  
17 of a person sentenced pursuant to the provisions of this subsection.

18 f. Definitions. "Structure" is defined in section 2C:18-1. Property  
19 is that of another, for the purpose of this section, if any one other than  
20 the actor has a possessory proprietary interest therein. If a building or  
21 structure is divided into separately occupied units, any unit not  
22 occupied by the actor is an occupied structure of another.

23 As used in this section, "forest" means and includes any forest,  
24 brush land, grass land, salt marsh, wooded area and any combination  
25 thereof.

26 As used in this section, "health care facility" means health care  
27 facility as defined in section 2 of P.L.1971, c.136 (C.26:2H-2).  
28 (cf: P.L.1991, c.498, s.1.)

29

30 2. This act shall take effect immediately .

31

32

33

#### STATEMENT

34

35 This bill amends the arson statute, N.J.S.2C:17-1 to provide a  
36 criminal sanction for setting so-called "brush fires". While  
37 N.J.S.2C:17-2, the crime of causing or risking widespread injury or  
38 damage may have applicability in certain situations, it is limited  
39 because that statute requires that a risk of serious bodily injury be  
40 posed to a minimum number of persons or habitations or to a building  
41 which would normally contain 50 or more people at the time of the  
42 offense. Given those requirements, that statute may not address the  
43 problem of brush fires depending on the circumstances.

44 The bill amends the second degree crime of arson to include starting  
45 a fire or causing an explosion with the purpose of destroying a forest.

1 It makes a similar change in subsection b. by adding a new paragraph  
2 (4) concerning the third degree crime of arson.

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7 Specifically includes brush fires in the crime of arson.

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.

2

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

5

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.)  
4

5 2. This act shall take effect immediately .  
6  
7

## 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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22

23

24 \_\_\_\_\_  
Makes various changes to the statute concerning the crime of arson.

# ASSEMBLY JUDICIARY COMMITTEE

## STATEMENT TO

### ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, Nos. 1846 and 1942

# STATE OF NEW JERSEY

DATED: SEPTEMBER 19, 1996

The Assembly Judiciary Committee reports favorably Assembly Committee Substitute for Assembly Bill Nos. 1846 and 1942.

This substitute amends the arson statute, N.J.S.2C:17-1, to address several specific ways in which to strengthen that statute and its applicability.

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

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

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

The substitute makes parallel changes in subsection b. by adding new paragraphs (4) and (5) to that subsection concerning the third

degree crime of arson.

The substitute makes a change to subsection d. of N.J.S.2C:17-1 concerning the first degree crime of arson committed by a person who accepts consideration for starting a fire or causing an explosion. The change is intended to codify the rule of State v. Chiarulli 234 N.J. Super. 192 (App. Div. 1989) by clarifying that in a case where the arsonist is unable to collect his fee, he may nevertheless be convicted of this first degree offense.

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

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, Nos. 1846 and 1942**

**STATE OF NEW JERSEY**

DATED: DECEMBER 16, 1996

The Senate Judiciary Committee reports favorably Assembly Committee Substitute for Assembly Bill Nos. 1846 and 1942.

This bill proposes a series of amendments to New Jersey's arson statute (N.J.S.2C:17-1).

The bill would add a new paragraph (4) to subsection a. of that statute to address the problem of property owners who burn a commercial or residential structure for the purpose of avoiding zoning regulations, wetlands restrictions or shoreline development regulations. Arson investigators have encountered situations where property owners have either completely or partially destroyed their buildings by fire in order to exempt the buildings from lot size requirements for additions, renovations and remodeling. Investigators have also encountered commercial property owners who have burned their buildings, not for the purpose of collecting insurance money, but to exempt themselves from zoning approvals they cannot obtain for expansion, renovation or remodeling.

The bill would also add a new paragraph (5) to subsection a. to provide a criminal sanction for the setting of "brush fires in forest areas." While N.J.S.2C:17-2, the crime of causing or risking widespread injury or damage, may have applicability in certain situations, its scope is limited because that statute requires that a risk of serious bodily injury be posed to a least 10 or more people or damage to 10 or more habitations or to at building which would normally contain 50 or more people for the offense to be committed. Given these requirements, N.J.S.2C:17-2 may not address the problem of brush fires in wooded areas.

In addition to the two new paragraphs, the bill makes a change to subsection d. of N.J.S.2C:17-1 which classifies aggravated arson as a crime of the first degree if the crime is committed by a person who accepts consideration for starting the fire or explosion. The change is intended to codify the ruling in State v. Chiarulli, 234 N.J.Super. 192 (App. Div. 1989) by clarifying that in a case where the arsonist is unable to collect his fee, the arsonist may nevertheless be convicted of aggravated arson under subsection d. The bill also adds clarifying language to subsection f. which defines "property of another" for

purposes of the arson statute. This language recognizes the various legal and equitable interests which other persons may have in buildings which appear to be "owned" by another. The language is intended to protect the rights of mortgage holders, joint tenants in common and lien holders. An example of the type of conduct the amendment seeks to cover is the intentional setting of a fire to a private residence by the titled owner because the home is subject to foreclosure and the owner would rather burn it down than lose it to the bank.

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## OFFICE OF THE GOVERNOR NEWS RELEASE

CN-004

CONTACT: PETE McDONOUGH  
609-777-2600

TRENTON, NJ 08625

RELEASE: TUESDAY  
JUNE 3, 1997

Gov. Christie Whitman has signed legislation that amends and clarifies the arson statute to strengthen its applicability.

The amendments to the arson law include three main provisions:

- First, arson would include fires set for the purpose of exempting a structure from any zoning, planning or building regulation. If the fire placed another person in danger of death or bodily injury, it would be a crime of the second-degree. Otherwise, it would be a crime of the third-degree. A second-degree crime can carry a sentence of from five to ten years in prison and a crime of the third-degree can carry a sentence of from three to five years in prison.
- Second, arson would include fires set for the purpose of destroying or damaging a forest as a crime of the second-degree. The crime would be one of the third-degree if the person recklessly, rather than purposely, placed a forest in danger of damage.
- Third, the bill would clarify that first-degree arson for monetary gain occurs whether or not payment is actually exchanged. A crime of the first-degree can carry a prison sentence of between 10 and 20 years.

**ACS 1846/1942** was sponsored by Assembly Members James Holzapfel (R-Monmouth/Ocean), David Wolfe (R-Monmouth/Ocean), Jeffrey Moran (R-Atlantic/Burlington/Ocean) and Senators Leonard Connors (R-Atlantic/Burlington/Ocean) and Louis Bassano (R-Essex/Union).

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