STATE OF NEW YORK

5359

2021-2022 Regular Sessions

IN SENATE

March 3, 2021

Introduced by Sen. OBERACKER -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to the causation of a fire or explosion during the course of committing or attempting to commit a controlled substance felony

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 150.05 of the penal law, as amended by chapter 225 of the laws of 1979, is amended to read as follows:

§ 150.05 Arson in the fourth degree.

1. A person is guilty of arson in the fourth degree when he**:**

(a) recklessly damages a building or motor vehicle by intentionally starting a fire or causing an explosion[~~.~~]**; or**

(b) damages a building or motor vehicle by fire or by explosion in the course of the commission or attempted commission of a felony as defined in article two hundred twenty of this chapter.

2. In any prosecution under this section, it is an affirmative defense that no person other than the defendant had a possessory or proprietary interest in the building or motor vehicle.

Arson in the fourth degree is a class E felony.

§ 2. Section 150.10 of the penal law, as amended by chapter 225 of the laws of 1979, is amended to read as follows:

§ 150.10 Arson in the third degree.

1. A person is guilty of arson in the third degree when he**:**

(a) intentionally damages a building or motor vehicle by starting a fire or causing an explosion[~~.~~]**; or**

(b) recklessly damages a building or motor vehicle by fire or by explosion in the course of the commission or attempted commission of a felony as defined in article two hundred twenty of this chapter.

2. In any prosecution under this section, it is an affirmative defense that (a) no person other than the defendant had a possessory or proprie-

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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tary interest in the building or motor vehicle, or if other persons had such interests, all of them consented to the defendant's conduct, and (b) the defendant's sole intent was to destroy or damage the building or motor vehicle for a lawful and proper purpose, and (c) the defendant had no reasonable ground to believe that his conduct might endanger the life or safety of another person or damage another building or motor vehicle.

Arson in the third degree is a class C felony.

§ 3. This act shall take effect immediately.