
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 896 **Hearing Date:** March 13, 2018
Author: McGuire
Version: January 12, 2018
Urgency: No **Fiscal:** Yes
Consultant: EC

Subject: *Aggravated Arson*

HISTORY

Source: California District Attorneys Association

Prior Legislation: SB 930 (Berryhill), Chaptered 96, Statutes of 2014
AB 27 (Jeffries), Chaptered 71, Statutes of 2009
SB 1907 (Pacheco), Chaptered 135, Statutes of 2004
SB 555 (Karnette), Chaptered 518, Statutes of 1999
SB 1309 (Craven), Chapter 421, Statutes of 1994

Support: California Police Chiefs Association; California State Sheriffs' Association;
Lake County District Attorney; Sonoma County Board of Supervisors

Opposition: None known

PURPOSE

The purpose of this bill is to extend the former aggravated arson offense until January 1, 2024, and increase the threshold of property damage and other losses constituting an aggravating factor for aggravated arson from \$7,000,000 to \$7,300,000.

Existing law states that any person is guilty of arson when they willfully and maliciously set fire to or burn or cause to be burned or aid, counsel, or procure the burning of, any structure, forest land, or property (Pen. Code § 451).

Existing law states that any person is guilty of aggravated arson when they willfully, maliciously deliberately, with premeditation, and with intent to cause injury to one or more person, or to cause damage to property under circumstances likely to produce injury to one or more persons, or to cause damage to one or more structures or inhabited dwellings, set fire to, burn, or cause to be burned, or aid, counsel, or procure the burning of any residence, structure, forest land, or property, if one or more of the following aggravating factors exists (Pen. Code § 451.5, subd. (a).):

- The defendant has been previously convicted of arson within the past 10 years.
- The fire caused property damage and other losses in excess of \$7,000,000.
- The court shall consider the cost of fire suppression in calculating the total amount of property damage and other losses.
- The fire caused damage to, or the destruction of, five or more inhabited structures.

Existing law states that any person who is convicted under aggravating arson shall be punished by imprisonment in the state prison for 10 years to life (Pen. Code § 451.5 subd. (b).)

Existing law states that any person who is sentenced under aggravating arson shall not be eligible for release on parole until 10 calendar years have elapsed (Pen. Code § 451.5 subd (c).)

Existing law shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later statute, that is enacted before January 1, 2019, deletes or extends that date (Pen. Code § 451.5 subd. (d).)

This bill extends the former aggravated arson offense until January 1, 2024, and increases the threshold of property damage and other losses to \$7,300,000.

COMMENTS

1. Need for This Bill

The author states:

The size and scope of wildland fire events are getting worse and more destructive. The unprecedented devastation that occurred during the October firestorm in Northern California is now ranked as the most deadly and destructive in America, and the Thomas Fire in Southern California is now ranked as the largest wildland fire in our state's history. These massive blazes, exacerbated by climate change, present a real and lasting threat to every corner of the Golden State.

In 2016, Lake County suffered through the Clayton Fire that burned tens of thousands of acres south of Lower Lake and destroyed 300 structures, which included about 189 single-family homes. A Clearlake resident was arrested and has been charged with 17 counts of arson, including aggravated arson, for igniting the Clayton Fire and could be facing over 20 years in prison.

SB 896 will ensure law enforcement maintain a valuable deterrent and a necessary penalty to arson-caused wildland fires.

2. Origin of Aggravated Arson in California

In the wake of the 1993 Southern California Firestorms, Senator Craven introduced SB 1309 (1994) and created the crime of aggravated arson. According to the State Fire Marshal, the Firestorms burned a total of 200,000 acres in Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura County.

According to the sponsor at the time:

[SB 1309] would increase the penalties for the worst arsonists who exhibit a specific intent to inflict damage or who in fact inflict serious damage or who commit a repeat offense and pose a continuing threat to society.

In 1994, the analysis by Senate Judiciary was most concerned with whether the aggravated arson penalty was proportional to sentences of other crimes. In SB 1309, aggravated arson required a penalty of 15 years to life without a possibility of probation. In contrast, a person who assaults another person with a deadly weapon would most likely be sentenced to 10 years or less. Currently, the aggravated arson penalty is imprisonment in the state prison for 10 years to life without eligibility of release on parole until 10 calendar years have elapsed (Pen. Code § 451.5, subd. b.)

3. Recalculation of Monetary Threshold for Aggravated Arson

When the aggravated arson offense was enacted in 1995, the total amount of property damage and other losses was set at \$5 million. Penal Code section 451.5 is provided below:

It is the intent of the Legislature that this paragraph be reviewed within five years to consider the effects of inflation on the dollar amount stated herein. For that reason, this paragraph shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

The statute must be reviewed within five years and the property and other losses adjusted for inflation. Since 1995, the aggravated arson statute's sunset has been extended and the threshold of damages has been increased four times. In its most recent sunset extension, the threshold was increased in 2009 from \$6.5 million to \$7 million in 2014 to account for inflation. This bill requires the threshold to be raised from \$7 million to \$7.3 million. According to the United States Department of Labor inflation calculator, \$7 million in 2014 equates to \$7.4 million in 2018.¹

Even where the cost of fire suppression is not considered, fires can cause commercial and residential damages exceeding the aggravated arson threshold. For example, the Showcase.com real estate website lists a total of 3,617 commercial properties offered between \$7.3 and \$8 million.² These commercial properties include 237 in the Sacramento, 50 in San Francisco, 215 in San Diego, 543 in Los Angeles, 6 in Marin counties offered between \$7.3 and \$8 million. Zillow.com listed a total of 182 homes in California offered between \$7.3 and \$8 million.³ These homes include 5 in San Francisco, 8 homes in San Diego, 39 in Los Angeles, 1 in Marin county.⁴

3. California Fires

The 2017 California wildfires caused historic levels of destruction with a total of 9,000 fires burning 1.2 million acres of land. Five of California's top 20 most destructive fires occurred in 2017.⁵ The Thomas Fire was the state's largest fire in terms of acres burned. It started in Santa

¹ "CPI Inflation Calculator," accessed February 27, 2018, <http://146.142.4.24/cgi-bin/cpicalc.pl?cost1=7%2C000%2C000.00&year1=201401&year2=201801>.

² "Commercial Real Estate For Sale or Lease Properties on SHOWCASE.COM," accessed March 1, 2018, <http://www.showcase.com/#&&/wEXAQURV29ya2Zsb3dlaXN0b3J5SUQFJGNjMWFIMDQ5LTcxMzItNDdlZC04YWU0LTQyNWM3Y2RkZThmY6CLYKgUiMyGthvJtYuorxJfuQwo>.

³ Zillow Inc, "CA Real Estate - California Homes For Sale," Zillow, accessed March 1, 2018, https://www.zillow.com:443/homes/California_rb/.

⁴ "Commercial Real Estate For Sale or Lease Properties on SHOWCASE.COM."

⁵ "Top Most Destructive California Wildfires" (CALFIRE, January 12, 2018), 20, http://www.fire.ca.gov/communications/downloads/fact_sheets/Top20_Destruction.pdf.

Barbara and Ventura County burning a total of 280,000 acres, destroying 1,063 structures, and damaging 280 structures.⁶ Furthermore, these massive fires stripped Montecito, Ventura, and Santa Barbara of vegetation allowing rain and mud to accumulate. Heavy rains caused flash floods and debris-filled mudslides causing more property damage and resulting in 17 confirmed fatalities.

The Tubbs Fire, the most destructive fire in California's history, began in October 2017 in Napa and Sonoma County.⁷ The fire burned a total of 36,807 acres, destroyed 5,643 structures, damaged 319 structures, and resulted in 22 deaths.⁸ According to the U.S. Forest Services, the cumulative cost of 2017 wildland fire suppression exceeded \$2.4 billion, the most expensive in the state's history.

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⁶ "2018 Statewide Incidents Map," My Maps, accessed February 27, 2018, <https://www.google.com/maps/d/viewer?mid=1HacmM5E2ueL-FT2c6QMVzoAmE5M19GAf&hl=en>.

⁷ "2018 Statewide Incidents Map."

⁸ "Top Most Destructive California Wildfires."