

**As Reported by the House Judiciary Committee**

**131st General Assembly**

**Regular Session**

**2015-2016**

**Sub. H. B. No. 185**

**Representative Koehler**

**Cosponsors: Representatives Grossman, Becker, Amstutz, Buchy, Rezabek**

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**A BILL**

To amend sections 2909.03 and 2909.11 of the 1  
Revised Code to eliminate lack of the property 2  
owner's consent as an element of arson when the 3  
property is an unoccupied structure and to make 4  
the consent of the owner of an unoccupied 5  
structure an affirmative defense. 6

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 2909.03 and 2909.11 of the 7  
Revised Code be amended to read as follows: 8

**Sec. 2909.03.** (A) No person, by means of fire or 9  
explosion, shall knowingly do any of the following: 10

(1) Cause, or create a substantial risk of, physical harm 11  
to any property of another without the other person's consent; 12

(2) Cause, or create a substantial risk of, physical harm 13  
to any property of the offender or another, with purpose to 14  
defraud; 15

(3) Cause, or create a substantial risk of, physical harm 16  
to the statehouse or a courthouse, school building, or other 17

building or structure that is owned or controlled by the state, 18  
any political subdivision, or any department, agency, or 19  
instrumentality of the state or a political subdivision, and 20  
that is used for public purposes; 21

(4) Cause, or create a substantial risk of, physical harm, 22  
through the offer or the acceptance of an agreement for hire or 23  
other consideration, to any property of another without the 24  
other person's consent or to any property of the offender or 25  
another with purpose to defraud; 26

(5) Cause, or create a substantial risk of, physical harm 27  
to any park, preserve, wildlands, brush-covered land, cut-over 28  
land, forest, timberland, greenlands, woods, or similar real 29  
property that is owned or controlled by another person, the 30  
state, or a political subdivision without the consent of the 31  
other person, the state, or the political subdivision; 32

(6) With purpose to defraud, cause, or create a 33  
substantial risk of, physical harm to any park, preserve, 34  
wildlands, brush-covered land, cut-over land, forest, 35  
timberland, greenlands, woods, or similar real property that is 36  
owned or controlled by the offender, another person, the state, 37  
or a political subdivision. 38

(B) No person, by means of fire or explosion, shall 39  
knowingly do any of the following: 40

(1) Cause, or create a substantial risk of, physical harm 41  
to any unoccupied structure of another; 42

(2) Cause, or create a substantial risk of, physical harm, 43  
through the offer or the acceptance of an agreement for hire or 44  
other consideration, to any unoccupied structure of another; 45

(3) Cause, or create a substantial risk of, physical harm 46

to any unoccupied structure that is in or on any park, preserve, 47  
wildlands, brush-covered land, cut-over land, forest, 48  
timberland, greenlands, woods, or similar real property that is 49  
owned or controlled by another person, the state, or a political 50  
subdivision. 51

(C) (1) It is an affirmative defense to a charge under 52  
division (B) (1) or (2) of this section that the defendant acted 53  
with the consent of the other person. 54

(2) It is an affirmative defense to a charge under 55  
division (B) (3) of this section that the defendant acted with 56  
the consent of the other person, the state, or the political 57  
subdivision. 58

(D) (1) Whoever violates this section is guilty of arson. 59

(2) A violation of division (A) (1) or (B) (1) of this 60  
section is one of the following: 61

(a) Except as otherwise provided in division ~~(B)~~ (D) (2) (b) 62  
of this section, a misdemeanor of the first degree; 63

(b) If the value of the property or the amount of the 64  
physical harm involved is one thousand dollars or more, a felony 65  
of the fourth degree. 66

(3) A violation of division (A) (2), (3), (5), or (6) or 67  
(B) (3) of this section is a felony of the fourth degree. 68

(4) A violation of division (A) (4) or (B) (2) of this 69  
section is a felony of the third degree. 70

**Sec. 2909.11.** (A) When a person is charged with a 71  
violation of division (A) (1) or (B) (1) of section 2909.03 of the 72  
Revised Code involving property value or an amount of physical 73  
harm of one thousand dollars or more or with a violation of 74

section 2909.05 of the Revised Code involving property value or 75  
an amount of physical harm of one thousand dollars or more, the 76  
jury or court trying the accused shall determine the value of 77  
the property or amount of physical harm and, if a guilty verdict 78  
is returned, shall return the finding as part of the verdict. In 79  
any such case, it is unnecessary to find or return the exact 80  
value or amount of physical harm, section 2945.75 of the Revised 81  
Code applies, and it is sufficient if either of the following 82  
applies, as appropriate, relative to the finding and return of 83  
the value or amount of physical harm: 84

(1) If the finding and return relate to a violation of 85  
division (A) (1) or (B) (1) of section 2909.03 of the Revised Code 86  
and are that the value or amount of the physical harm was one 87  
thousand dollars or more, the finding and return shall include a 88  
statement that the value or amount was one thousand dollars or 89  
more. 90

(2) If the finding and return relate to a violation of 91  
section 2909.05 of the Revised Code and are that the value or 92  
amount of the physical harm was in any of the following 93  
categories, the finding and return shall include one of the 94  
following statements, as appropriate: 95

(a) If the finding and return are that the value or amount 96  
was one hundred fifty thousand dollars or more, a statement that 97  
the value or amount was one hundred fifty thousand dollars or 98  
more; 99

(b) If the finding and return are that the value or amount 100  
was seven thousand five hundred dollars or more but less than 101  
one hundred fifty thousand dollars a statement that the value or 102  
amount was seven thousand five hundred dollars or more but less 103  
than one hundred fifty thousand dollars; 104

(c) If the finding and return are that the value or amount 105  
was one thousand dollars or more but less than seven thousand 106  
five hundred dollars, a statement that the value or amount was 107  
one thousand dollars or more but less than seven thousand five 108  
hundred dollars. 109

(B) The following criteria shall be used in determining 110  
the value of property or amount of physical harm involved in a 111  
violation of division (A) (1) or (B) (1) of section 2909.03 or 112  
section 2909.05 of the Revised Code: 113

(1) If the property is an heirloom, memento, collector's 114  
item, antique, museum piece, manuscript, document, record, or 115  
other thing that is either irreplaceable or is replaceable only 116  
on the expenditure of substantial time, effort, or money, the 117  
value of the property or the amount of physical harm involved is 118  
the amount that would compensate the owner for its loss. 119

(2) If the property is not covered under division (B) (1) 120  
of this section and the physical harm is such that the property 121  
can be restored substantially to its former condition, the 122  
amount of physical harm involved is the reasonable cost of 123  
restoring the property. 124

(3) If the property is not covered under division (B) (1) 125  
of this section and the physical harm is such that the property 126  
cannot be restored substantially to its former condition, the 127  
value of the property, in the case of personal property, is the 128  
cost of replacing the property with new property of like kind 129  
and quality, and, in the case of real property or real property 130  
fixtures, is the difference in the fair market value of the 131  
property immediately before and immediately after the offense. 132

(C) As used in this section, "fair market value" has the 133

same meaning as in section 2913.61 of the Revised Code. 134

(D) Prima-facie evidence of the value of property, as 135  
provided in division (E) of section 2913.61 of the Revised Code, 136  
may be used to establish the value of property pursuant to this 137  
section. 138

**Section 2.** That existing sections 2909.03 and 2909.11 of 139  
the Revised Code are hereby repealed. 140