

As Introduced

131st General Assembly

Regular Session

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H. B. No. 185

Representative Koehler

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

A BILL

To amend sections 2909.03 and 2909.11 of the
Revised Code to eliminate lack of the property
owner's consent as an element of arson when the
property is abandoned real property and to make
the consent of the owner of abandoned real
property an affirmative defense.

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

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

Sec. 2909.03. (A) As used in this section, "abandoned
property" means a parcel of real property that meets either of
the following criteria:

(1) The parcel has on it a structure that is dilapidated,
unsanitary, unsafe, or vermin-infested and that because of its
condition has been designated by an agency that is responsible
for the enforcement of housing, building, or fire codes as unfit
for human habitation or use;

(2) Tax or special assessment delinquencies exceeding the
fair value of the parcel remain unpaid thirty-five days after

<u>notice to pay has been mailed.</u>	19
(B) No person, by means of fire or explosion, shall	20
knowingly do any of the following:	21
(1) Cause, or create a substantial risk of, physical harm	22
to any property of another without the other person's consent;	23
(2) Cause, or create a substantial risk of, physical harm	24
to any property of the offender or another, with purpose to	25
defraud;	26
(3) Cause, or create a substantial risk of, physical harm	27
to the statehouse or a courthouse, school building, or other	28
building or structure that is owned or controlled by the state,	29
any political subdivision, or any department, agency, or	30
instrumentality of the state or a political subdivision, and	31
that is used for public purposes;	32
(4) Cause, or create a substantial risk of, physical harm,	33
through the offer or the acceptance of an agreement for hire or	34
other consideration, to any property of another without the	35
other person's consent or to any property of the offender or	36
another with purpose to defraud;	37
(5) Cause, or create a substantial risk of, physical harm	38
to any park, preserve, wildlands, brush-covered land, cut-over	39
land, forest, timberland, greenlands, woods, or similar real	40
property that is owned or controlled by another person, the	41
state, or a political subdivision without the consent of the	42
other person, the state, or the political subdivision;	43
(6) With purpose to defraud, cause, or create a	44
substantial risk of, physical harm to any park, preserve,	45
wildlands, brush-covered land, cut-over land, forest,	46
timberland, greenlands, woods, or similar real property that is	47

owned or controlled by the offender, another person, the state, 48
or a political subdivision. 49

~~(B)~~(C) No person, by means of fire or explosion, shall 50
knowingly do any of the following: 51

(1) Cause, or create a substantial risk of, physical harm 52
to any abandoned property of another; 53

(2) Cause, or create a substantial risk of, physical harm, 54
through the offer or the acceptance of an agreement for hire or 55
other consideration, to any abandoned property of another; 56

(3) Cause, or create a substantial risk of, physical harm 57
to any park, preserve, wildlands, brush-covered land, cut-over 58
land, forest, timberland, greenlands, woods, or similar real 59
property that is abandoned property and that is owned or 60
controlled by another person, the state, or a political 61
subdivision. 62

(D) (1) It is an affirmative defense to a charge under 63
division (C) (1) of this section that the defendant acted with 64
the consent of the other person. 65

(2) It is an affirmative defense to a charge under 66
division (C) (2) of this section that the defendant acted with 67
the consent of the other person, the state, or the political 68
subdivision. 69

(E) (1) Whoever violates this section is guilty of arson. 70

(2) A violation of division ~~(A)~~(B) (1) or (C) (1) of this 71
section is one of the following: 72

(a) Except as otherwise provided in division ~~(B)~~(E) (2) (b) 73
of this section, a misdemeanor of the first degree; 74

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

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

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

Sec. 2909.11. (A) When a person is charged with a violation of division ~~(A)~~(B)(1) or (C)(1) of section 2909.03 of the Revised Code involving property value or an amount of physical harm of one thousand dollars or more or with a violation of section 2909.05 of the Revised Code involving property value or an amount of physical harm of one thousand dollars or more, the jury or court trying the accused shall determine the value of the property or amount of physical harm and, if a guilty verdict is returned, shall return the finding as part of the verdict. In any such case, it is unnecessary to find or return the exact value or amount of physical harm, section 2945.75 of the Revised Code applies, and it is sufficient if either of the following applies, as appropriate, relative to the finding and return of the value or amount of physical harm:

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

(2) If the finding and return relate to a violation of

section 2909.05 of the Revised Code and are that the value or amount of the physical harm was in any of the following categories, the finding and return shall include one of the following statements, as appropriate:

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

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

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

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

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

(2) If the property is not covered under division (B) (1)

of this section and the physical harm is such that the property 133
can be restored substantially to its former condition, the 134
amount of physical harm involved is the reasonable cost of 135
restoring the property. 136

(3) If the property is not covered under division (B) (1) 137
of this section and the physical harm is such that the property 138
cannot be restored substantially to its former condition, the 139
value of the property, in the case of personal property, is the 140
cost of replacing the property with new property of like kind 141
and quality, and, in the case of real property or real property 142
fixtures, is the difference in the fair market value of the 143
property immediately before and immediately after the offense. 144

(C) As used in this section, "fair market value" has the 145
same meaning as in section 2913.61 of the Revised Code. 146

(D) Prima-facie evidence of the value of property, as 147
provided in division (E) of section 2913.61 of the Revised Code, 148
may be used to establish the value of property pursuant to this 149
section. 150

Section 2. That existing sections 2909.03 and 2909.11 of 151
the Revised Code are hereby repealed. 152