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Representative Koehler

Cosponsors: Representatives Grossman, Becker, Amstutz, Buchy, Rezabek, Anielski, Antonio, Arndt, Ashford, Baker, Boose, Brown, Burkley, Celebrezze, Cera, Cupp, Fedor, Green, Hackett, Hambley, Hayes, Henne, Johnson, G., Kuhns, Kunze, Landis, Leland, Lepore-Hagan, Manning, O'Brien, M., Pelanda, Perales, Rogers, Ruhl, Schaffer, Sheehy, Smith, R., Sprague, Strahorn, Sweeney, Thompson

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 an unoccupied structure and to make the consent of the owner of an unoccupied structure 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) No person, by means of fire or explosion, shall knowingly do any of the following:

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

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

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