



# Ohio Legislative Service Commission

## Bill Analysis

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### Sub. H.B. 185

131st General Assembly  
(As Passed by the House)

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

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## BILL SUMMARY

- Expands the offense of arson by prohibiting damage by fire or explosion to an unoccupied structure without requiring proof that the owner did not consent.
- Creates an affirmative defense that the owner consented to the damage.

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## CONTENT AND OPERATION

### Arson expansion overview

The bill expands the offense of arson by prohibiting certain acts with respect to unoccupied structures and eliminating the requirement that the prosecution prove the lack of the property owner's consent in those instances.

### Lack of owner's consent

Under current law, there are three situations in which the lack of the owner's consent to damaging the property is an element of the offense of arson:<sup>1</sup>

- When the offender causes or creates a substantial risk of physical harm to the property of another;

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<sup>1</sup> R.C. 2909.03(A)(1), (4), and (5).

- When the offender causes or creates a substantial risk of physical harm to the property of another through the offer or the acceptance of an agreement for hire or other consideration, with the purpose to defraud;
- When the offender causes or creates a substantial risk of physical harm to a park, preserve, wildlands, brush-covered land, cut-over land, forest, timberland, greenlands, woods, or similar real property that is owned or controlled by another person, the state, or a political subdivision.

The bill retains the existing prohibitions, but it also creates a new prohibition in the offense of arson in the first situation if the property involved is an unoccupied structure of another, in the second situation if the property involved is an unoccupied structure of another and regardless of whether there is a purpose to defraud, and in the third situation if the property involved is an unoccupied structure in or on any park or preserve, etc. In the new prohibition, the lack of the owner's consent is not an element of the offense.<sup>2</sup>

Current law specifies three other situations, not relevant to the bill, in which a person's conduct constitutes the offense of arson.<sup>3</sup>

### **Consent as an affirmative defense**

Under the bill, a person who is charged under the bill's new prohibition with arson that damages an unoccupied structure may assert as an affirmative defense that the person acted with the consent of the owner or, in the case of a structure in or on a park or preserve, etc., the consent of the person, state, or political subdivision that owns or controls the land.<sup>4</sup>

### **Penalties**

Under the bill, knowingly causing or creating a substantial risk of physical harm to an unoccupied structure of another by means of fire or explosion under the bill's new prohibition is either a first degree misdemeanor or, if the value of the property or the amount of physical harm involved is \$1,000 or more, a fourth degree felony. If the act is done through the offer or acceptance of an agreement for hire or for other consideration, the offense is a third degree felony. Knowingly causing or creating a substantial risk of physical harm, by means of fire or explosion, to an unoccupied structure that is in or on

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<sup>2</sup> R.C. 2909.03(B).

<sup>3</sup> R.C. 2909.03(A)(2), (3), and (6).

<sup>4</sup> R.C. 2909.03(C).

a park or preserve, etc., under the bill's new prohibition is a fourth degree felony.<sup>5</sup> The existing provision for determining property value when relevant to the penalty for an arson violation applies with respect to the bill's new prohibition.<sup>6</sup>

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## HISTORY

ACTION	DATE
Introduced	05-05-15
Reported, H. Judiciary	01-27-16
Passed by House (95-0)	02-10-16

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<sup>5</sup> R.C. 2909.03(D).

<sup>6</sup> R.C. 2909.11.

