



LC 965 – Arson Fix Defining “Property”

Current Law:

The crimes of Arson I, Arson II, Arson Incident to Manufacture, and Reckless Burning (ORS 164.305-342) are all based on harm, or a risk of harm, to people and property.

Problem:

Rather than define “property,” current Oregon law relies on the general definition of “property” in ORS 164.005(5) and the Oregon Court of Appeals and Supreme Court have held that in order for an object to be “property,” the State must prove beyond a reasonable doubt either that the object had a market value at the time and place of the crime or the cost of replacement.¹

The *Whitley* and *Nyhuis* cases referenced in the footnote below demonstrate some of the problems when prosecuting Arson related cases. In *Whitley*, the co-defendants were charged with arson for dipping a rag in gasoline, lighting it on fire, and throwing it in front of a podium in an auditorium during a speaking event with about 1,000 people in attendance—fortunately no one was injured. The Oregon Supreme Court held that the elements of the crime of arson weren’t met because the State was not able to prove the monetary value of the rag that was set on fire. As a result of decisions like *Whitley* and *Nyhuis* the State is unable to charge very dangerous conduct with commensurate criminal offenses. For instance, during the wildfires of 2020 while Oregon City was in a Level 2 evacuation status, a person started a fire with a pile of leaves in front of a Clackamas County Community Corrections building in downtown Oregon City. The flames were large, close to the building, and lapping at nearby vegetation—had they gone unnoticed for much longer the consequences could have been disastrous. Had the person lit money, clothes, furniture, or any other item with a market value on fire instead of leaves, he could have faced an arson charge for putting a building occupied by people at risk of damage—instead he was charged with Disorderly Conduct II, a class B misdemeanor.

The risk of harm to the community is the same regardless of whether the initial object set ablaze is something of great value or something of no discernable value, but the law doesn’t recognize that fact at present.

Solution:

LC 965 solves the issue described above by redefining property for the purpose of arson and reckless burning as, “any article, substance, or tangible thing, regardless of whether the item has value.” This change would refocus the law on the harm, or risk thereof, to people and the buildings they occupy.

¹ *State v. Nyhuis*, 251 Or App 768, 770 (2012) (applying the definition of “value” from ORS 164.115(1) to the definition of “property” in the context of Reckless Burning); *see also State v. Whitley*, 295 Or 455, 459 (2012) (generally stating the rule that in the context of the arson statutes, for an object to be property it must have monetary value, not just “symbolic value or value in use.”).

D R A F T

SUMMARY

Modifies definition of “property” for purposes of arson and reckless burning crimes.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to property crimes; creating new provisions; amending ORS 164.305;
3 and prescribing an effective date.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 164.305 is amended to read:

6 164.305. As used in ORS 164.305 to [*164.377,*] **164.335, 164.338 and 164.342,**
7 except as the context requires otherwise:

8 **(1) “Property” means any article, substance or tangible thing, re-**
9 **gardless of whether the item has value.**

10 **(2) “Property of another” means property in which anyone other**
11 **than the actor has a legal or equitable interest that the actor has no**
12 **right to defeat or impair, even though the actor may also have such**
13 **an interest in the property.**

14 [*(1)*] **(3) “Protected property” means any structure, place or thing cus-**
15 **tomarily occupied by people, including “public buildings” as defined by ORS**
16 **479.168 and “forestland,” as defined by ORS 477.001.**

17 [*(2) “Property of another” means property in which anyone other than the*
18 *actor has a legal or equitable interest that the actor has no right to defeat or*
19 *impair, even though the actor may also have such an interest in the*
20 *property.*]

1 **SECTION 2.** Section 3 of this 2023 Act is added to and made a part
2 of ORS 164.345 to 164.365.

3 **SECTION 3.** As used in ORS 164.345 to 164.365, except as the context
4 requires otherwise, “property of another” means property in which
5 anyone other than the actor has a legal or equitable interest that the
6 actor has no right to defeat or impair, even though the actor may also
7 have such an interest in the property.

8 **SECTION 4.** Section 3 of this 2023 Act and the amendments to ORS
9 164.305 by section 1 of this 2023 Act apply to conduct occurring on or
10 after the effective date of this 2023 Act.

11 **SECTION 5.** This 2023 Act takes effect on the 91st day after the date
12 on which the 2023 regular session of the Eighty-second Legislative
13 Assembly adjourns sine die.

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