

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 649

Introduced by McDonnell, 5.

Read first time January 18, 2023

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to crimes and offenses; to amend sections
2 28-501, 28-502, 28-503, 28-504, 28-505, 28-520, 28-522, and 28-524,
3 Reissue Revised Statutes of Nebraska; to change provisions and
4 penalties relating to arson, trespass, and unauthorized application
5 of graffiti; to define and redefine terms; to harmonize provisions;
6 and to repeal the original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-501, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 28-501 For purposes of sections 28-501 to 28-524: As used in this
4 article, unless the context otherwise requires, building shall mean a
5 structure which has the capacity to contain, and is designed for the
6 shelter of man, animals, or property, and includes ships, trailers,
7 sleeping cars, aircraft, or other vehicles or places adapted for
8 overnight accommodations of persons or animals, or for carrying on of
9 business therein, whether or not a person or animal is actually present.
10 If a building is divided into units for separate occupancy, any unit not
11 occupied by the defendant is a building of another.

12 (1) Human skeletal remains has the same meaning as in section
13 12-1204;

14 (2) Public safety official means an individual serving a public or
15 governmental agency or political subdivision in an official capacity,
16 with or without compensation, as either a peace officer, a firefighter,
17 an arson investigator, an investigatory regulator, or a member of a
18 rescue squad or ambulance crew; and

19 (3) Structure means any building of any kind, any enclosed area with
20 a roof, any real property and appurtenances to which the building or
21 enclosed area is attached, any tent or other portable building, and any
22 vehicle, vessel, watercraft, or aircraft.

23 Sec. 2. Section 28-502, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 28-502 (1) A person commits arson in the first degree if:

26 (a) The person he or she intentionally sets fire to any structure or
27 property contained inside a structure; maintains such a fire; or burns,
28 causes to be burned, or causes damage or destruction by way of an
29 explosion to any structure or any property contained inside a structure
30 damages a building or property contained within a building by starting a
31 fire or causing an explosion when another person or human skeletal

1 ~~remains are is~~ present in the ~~structure building~~ at the time and either
2 ~~(i) (a)~~ the actor knows that fact, or ~~(ii) (b)~~ the circumstances are such
3 as to render the presence of a person or human skeletal remains therein a
4 reasonable probability; ~~or -~~

5 (b)(i) The person sets fire to any structure or property contained
6 inside a structure; maintains such a fire; or burns, causes to be burned,
7 or causes damage or destruction by way of an explosion to, any structure
8 or any property contained inside a structure; (ii) such conduct occurs
9 ~~(2) A person commits arson in the first degree if a fire is started or an~~
10 ~~explosion is caused~~ in the perpetration or attempt of any robbery,
11 burglary, or felony criminal mischief when another person or human
12 skeletal remains are is present in the ~~structure building~~ at the time;
13 and (iii) either (A) (a) the actor knows that fact, or (B) (b) the
14 circumstances are such as to render the presence of a person or human
15 skeletal remains therein a reasonable probability.

16 (2) A violation of this section (3) Arson in the first degree is a
17 Class II felony, except that it is a Class ID felony if a public safety
18 official suffers serious bodily injury due to such violation.

19 Sec. 3. Section 28-503, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 28-503 (1) A person commits arson in the second degree if such
22 person he or she intentionally:

23 (a) Sets fire to any structure; maintains such a fire; or burns,
24 causes to be burned, or causes damage or destruction by way of an
25 explosion to, any structure;

26 (b) Damages or destroys any property contained within any structure
27 by setting a fire, maintaining such fire, burning, causing property to be
28 burned, or causing an explosion; or

29 (c) Sets a fire, maintains a fire, or causes an explosion in the
30 perpetration or attempt of any robbery, burglary, or felony criminal
31 mischief damages a building or property contained within a building by

1 ~~starting a fire or causing an explosion or if a fire is started or an~~
2 ~~explosion is caused in the perpetration of any robbery, burglary, or~~
3 ~~felony criminal mischief.~~

4 (2) The following affirmative defenses may be introduced into
5 evidence upon prosecution for a violation of this section:

6 (a) No person other than the accused has a security or proprietary
7 interest in the damaged structure building, or, if other persons have
8 such interests, all of them consented to his or her conduct; or

9 (b) The accused's sole intent was to destroy or damage the structure
10 building for a lawful and proper purpose.

11 (3) A violation of this section is a Class IIA felony, except that
12 it is a Class II felony if a public safety official suffers serious
13 bodily injury due to such violation ~~Arson in the second degree is a Class~~
14 ~~III felony.~~

15 Sec. 4. Section 28-504, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 28-504 (1) A person commits arson in the third degree if such
18 person: he or she

19 (a) Intentionally intentionally sets fire to, any property of
20 another; maintains such a fire; or burns, causes to be burned, or by the
21 use of any explosive, damages or destroys, or causes to be damaged or
22 destroyed, any property of another person;

23 (b) The conduct described in subdivision (1)(a) of this section is
24 done; and

25 (c) Such property is not a structure or contained within a structure
26 without such other person's consent. Such property shall not be contained
27 within a building and shall not be a building or occupied structure.

28 (2) A violation of this section ~~Arson in the third degree~~ is a Class
29 IV felony if the damages amount to one thousand five hundred dollars or
30 more, except that it is a Class IIIA felony if a public safety official
31 suffers serious bodily injury due to such violation.

1 (3) A violation of this section Arson in the third degree is a Class
2 I misdemeanor if the damages are five hundred dollars or more but less
3 than one thousand five hundred dollars, except that it is a Class IV
4 felony if a public safety official suffers serious bodily injury due to
5 such violation.

6 (4) A violation of this section Arson in the third degree is a Class
7 II misdemeanor if the damages are less than five hundred dollars, except
8 that it is a Class I misdemeanor if a public safety official suffers
9 serious bodily injury due to such violation.

10 Sec. 5. Section 28-505, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 28-505 (1) A person commits the offense of burning to defraud an
13 insurer if: Any person who, with the intent to deceive or harm an
14 insurer, sets fire to or burns or attempts so to do, or who causes to be
15 burned, or who aids, counsels or procures the burning of any building or
16 personal property, of whatsoever class or character, whether the property
17 of himself or of another, which shall at the time be insured by any
18 person, company or corporation against loss or damage by fire, commits a
19 Class IV felony.

20 (a) With the intent to deceive or harm an insurer, such person sets
21 fire to any structure or personal property; maintains such a fire; or
22 burns, attempts to burn, causes to be burned, or aids, counsels, or
23 procures the burning of any structure or personal property; and

24 (b) At the time of the fire or burning, such structure or personal
25 property is insured by any person, company, or corporation against loss
26 or damage by fire.

27 (2) This section applies to a structure or personal property of any
28 class or character and applies regardless of whether the structure or
29 personal property is the property of the person or of another person.

30 (3) A violation of this section is a Class IV felony, except that it
31 is a Class IIA felony if a public safety official suffers serious bodily

1 injury due to such violation.

2 Sec. 6. Section 28-520, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 28-520 (1) A person commits first degree criminal trespass if:

5 (a) The person ~~He or she~~ enters or secretly remains in any ~~building~~
6 ~~or occupied~~ structure, or any separately secured or occupied portion
7 thereof, knowing that he or she is not licensed or privileged to do so;
8 or

9 (b) The person ~~He or she~~ enters or remains in or on a public power
10 infrastructure facility knowing that he or she does not have the consent
11 of another a person who has the right to give consent to be in or on the
12 facility.

13 (2) First degree criminal trespass is a Class I misdemeanor.

14 (3) For purposes of this section, public power infrastructure
15 facility means a power plant, an electrical station or substation, or any
16 other facility which is used by a public power supplier as defined in
17 section 70-2103 to support the generation, transmission, or distribution
18 of electricity and which is surrounded by a fence or is otherwise
19 enclosed.

20 Sec. 7. Section 28-522, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 28-522 It is an affirmative defense to prosecution under sections
23 28-520 and 28-521 that:

24 (1) A ~~building or occupied~~ structure involved in an offense under
25 section 28-520 was abandoned; ~~or~~

26 (2) The premises were at the time open to members of the public and
27 the actor complied with all lawful conditions imposed on access to or
28 remaining in the premises; ~~or~~

29 (3) The actor reasonably believed that the owner of the premises or
30 other person empowered to license access thereto would have licensed the
31 actor ~~him~~ to enter or remain; or

1 (4) The actor was in the process of navigating or attempting to
2 navigate with a nonpowered vessel any stream or river in this state and
3 found it necessary to portage or otherwise transport the vessel around
4 any fence or obstructions in such stream or river.

5 Sec. 8. Section 28-524, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 28-524 (1) Any person who knowingly and intentionally applies
8 graffiti of any type on any structure building, public or private, or any
9 other tangible property owned by any person, firm, or corporation or any
10 public entity or instrumentality, without the express permission of the
11 owner or operator of the property, commits the offense of unauthorized
12 application of graffiti.

13 (2) Unauthorized application of graffiti is a Class III misdemeanor
14 for a first offense and a Class IV felony for a second or subsequent
15 offense.

16 (3) Upon conviction of an offense under this section, the court may,
17 in addition to any other punishment imposed, order any or all of the
18 following:

19 (a) That the defendant to clean up, repair, or replace the damaged
20 property, or keep the defaced property or another specified property in
21 the community free of graffiti or other inscribed materials for up to one
22 year; , or order a combination of

23 (b) That the defendant pay restitution; and labor.

24 (c) That (4) Upon conviction of an offense under this section, the
25 court may, in addition to any other punishment imposed, order the
26 defendant to undergo counseling; and -

27 (d) That (5) Upon conviction of an offense under this section, the
28 court may, in addition to any other punishment imposed, order the
29 suspension of the defendant's motor vehicle operator's license be
30 suspended for up to one year. A copy of an abstract of the court's
31 conviction, including an adjudication of a juvenile, shall be transmitted

1 to the director pursuant to sections 60-497.01 to 60-497.04.

2 (4) (6) For purposes of this section, graffiti means any letter,
3 word, name, number, symbol, slogan, message, drawing, picture, writing,
4 or other mark of any kind visible to the public that is drawn, painted,
5 chiseled, scratched, or etched on a rock, tree, wall, bridge, fence,
6 gate, ~~building,~~ or other structure. Graffiti does not include advertising
7 or any other letter, word, name, number, symbol, slogan, message,
8 drawing, picture, writing, or other mark of any kind lawfully placed on
9 property by an owner of the property, a tenant of the property, or an
10 authorized agent for such owner or tenant.

11 Sec. 9. Original sections 28-501, 28-502, 28-503, 28-504, 28-505,
12 28-520, 28-522, and 28-524, Reissue Revised Statutes of Nebraska, are
13 repealed.