

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 206

Introduced by McDonnell, 5.

Read first time January 08, 2021

Committee:

1 A BILL FOR AN ACT relating to the Nebraska Criminal Code; to amend
2 sections 28-501, 28-502, 28-503, 28-504, 28-505, 28-520, 28-522, and
3 28-524, Reissue Revised Statutes of Nebraska; to change provisions
4 and penalties relating to arson, trespass, and unauthorized
5 application of graffiti; to define and redefine terms; to harmonize
6 provisions; 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, the following
4 definitions apply:

5 (1) Human skeletal remains has the same meaning as in section
6 12-1204;

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

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

16 ~~As used in this article, unless the context otherwise requires,~~
17 ~~building shall mean a structure which has the capacity to contain, and is~~
18 ~~designed for the shelter of man, animals, or property, and includes~~
19 ~~ships, trailers, sleeping cars, aircraft, or other vehicles or places~~
20 ~~adapted for overnight accommodations of persons or animals, or for~~
21 ~~carrying on of business therein, whether or not a person or animal is~~
22 ~~actually present. If a building is divided into units for separate~~
23 ~~occupancy, any unit not occupied by the defendant is a building of~~
24 ~~another.~~

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

27 28-502 (1) A person commits arson in the first degree if:

28 (a) The person he or she intentionally sets fire to, maintains a
29 fire to, burns, causes to be burned, or causes damage or destruction by
30 way of an explosion, to any structure or any property contained inside a
31 structure damages a building or property contained within a building by

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

6 (b) (2) A person ~~commits arson in the first degree if~~ a fire is set,
7 a fire is maintained, ~~started~~ or an explosion is caused in the
8 perpetration of or an attempt to perpetrate any robbery, burglary, or
9 felony criminal mischief when another person or human skeletal remains
10 are ~~is~~ present in the structure building at the time and either (i) (a)
11 the actor knows that fact, ~~or~~ (ii) (b) the circumstances are such as to
12 render the presence of a person or of human skeletal remains therein a
13 reasonable probability; ~~or~~

14 (c) He or she intentionally sets fire to, maintains a fire to, or
15 burns, causes to be burned, or causes damage or destruction by way of an
16 explosion, to any structure, person, human skeletal remains, or item of
17 personal property in order to conceal the commission of a criminal
18 offense.

19 (2) A violation of this section ~~(3)~~ Arson in the first degree is a
20 Class II felony unless any public safety official suffers serious bodily
21 injury due to such violation, in which case it is a Class ID felony.

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

24 28-503 (1) A person commits arson in the second degree if such
25 person ~~he or she~~ intentionally:

26 (a) Sets fire to, maintains a fire to, burns, causes to be burned,
27 or causes to be damaged or destroyed by way of an explosion, any
28 structure;

29 (b) Damages or destroys any property contained within any structure
30 by setting a fire, maintaining a fire, burning, causing property to be
31 burned, or by causing an explosion; or

1 (c) Sets a fire, maintains a fire, or causes an explosion during the
2 perpetration of or an attempt to perpetrate any robbery, burglary, or
3 felony criminal mischief damages a building or property contained within
4 a building by starting a fire or causing an explosion or if a fire is
5 started or an explosion is caused in the perpetration of any robbery,
6 burglary, or felony criminal mischief.

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

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

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

14 (3) A violation of this section Arson in the second degree is a
15 Class IIA III felony unless any public safety official suffers serious
16 bodily injury due to such violation, in which case it is a Class II
17 felony.

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

20 28-504 (1) A person commits arson in the third degree if he or she
21 intentionally sets fire to, maintains a fire to, burns, causes to be
22 burned, or by the use of any explosive, damages or destroys, or causes to
23 be damaged or destroyed, any property of another person without such
24 other person's consent. Such property shall not be contained within a
25 structure building and shall not be a building or occupied structure.

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

30 (3) A violation of this section Arson in the third degree is a Class
31 I misdemeanor if the damages are five hundred dollars or more but less

1 than one thousand five hundred dollars unless any public safety official
2 suffers serious bodily injury due to such violation, in which case it is
3 a Class IV felony.

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

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

10 28-505 (1) ~~A~~ Any person ~~shall not who~~, with the intent to deceive
11 or harm an insurer, ~~set sets fire to, maintain a fire to, burn or burns~~
12 or ~~attempt attempts~~ so to ~~burn do~~, ~~cause or who causes~~ to be burned, or
13 ~~aid, counsel, or procure who aids, counsels or procures~~ the burning of
14 any ~~structure building~~ or personal property, of whatsoever class or
15 character, whether the ~~structure or personal property is the property of~~
16 ~~the person himself or of another person, if, which shall~~ at the time of
17 ~~the fire or burning, such structure or personal property is~~ be insured by
18 any person, company, or corporation against loss or damage by fire. ~~r~~
19 ~~commits~~

20 (2) A violation of this section is a Class IV felony unless any
21 public safety official suffers serious bodily injury due to such
22 violation, in which case it is a Class IIA felony.

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

25 28-520 (1) A person commits first degree criminal trespass if:

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

30 (b) ~~The person He or she~~ enters or remains in or on a public power
31 infrastructure facility knowing that he or she does not have the consent

1 of another a person who has the right to give consent to be in or on the
2 facility.

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

4 (3) For purposes of this section, public power infrastructure
5 facility means a power plant, an electrical station or substation, or any
6 other facility which is used by a public power supplier as defined in
7 section 70-2103 to support the generation, transmission, or distribution
8 of electricity and which is surrounded by a fence or is otherwise
9 enclosed.

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

12 28-522 It is an affirmative defense to prosecution under sections
13 28-520 and 28-521 that:

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

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

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

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

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

28 28-524 (1) Any person who knowingly and intentionally applies
29 graffiti of any type on any structure ~~building~~, public or private, or any
30 other tangible property owned by any person, firm, or corporation or any
31 public entity or instrumentality, without the express permission of the

1 owner or operator of the property, commits the offense of unauthorized
2 application of graffiti.

3 (2) Unauthorized application of graffiti is a Class III misdemeanor
4 for a first offense and a Class IV felony for a second or subsequent
5 offense.

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

9 (a) Defendant ~~the defendant~~ to clean up, repair, or replace the
10 damaged property, keep the defaced property or another specified property
11 in the community free of graffiti or other inscribed materials for up to
12 one year, or order a combination of restitution and labor; -

13 (b) Defendant ~~(4) Upon conviction of an offense under this section,~~
14 ~~the court may, in addition to any other punishment imposed, order the~~
15 ~~defendant~~ to undergo counseling; and -

16 (c) Suspension ~~(5) Upon conviction of an offense under this section,~~
17 ~~the court may, in addition to any other punishment imposed, order the~~
18 ~~suspension~~ of the defendant's motor vehicle operator's license for up to
19 one year. A copy of an abstract of the court's conviction, including an
20 adjudication of a juvenile, shall be transmitted to the director pursuant
21 to sections 60-497.01 to 60-497.04.

22 (4) ~~(6)~~ For purposes of this section, graffiti means any letter,
23 word, name, number, symbol, slogan, message, drawing, picture, writing,
24 or other mark of any kind visible to the public that is drawn, painted,
25 chiseled, scratched, or etched on a rock, tree, wall, bridge, fence,
26 gate, ~~building,~~ or other structure. Graffiti does not include advertising
27 or any other letter, word, name, number, symbol, slogan, message,
28 drawing, picture, writing, or other mark of any kind lawfully placed on
29 property by an owner of the property, a tenant of the property, or an
30 authorized agent for such owner or tenant.

31 Sec. 9. Original sections 28-501, 28-502, 28-503, 28-504, 28-505,

1 28-520, 28-522, and 28-524, Reissue Revised Statutes of Nebraska, are
2 repealed.