

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 913**

Introduced by McDonnell, 5.

Read first time January 10, 2020

Committee: Judiciary

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; to define terms; to redefine a term  
5 relating to trespass and graffiti; to harmonize provisions; and to  
6 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, firefighter,  
10 arson investigator, investigatory regulator, or a member of a rescue  
11 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. As used in this article, unless  
16 the context otherwise requires, building shall mean a structure which has  
17 the capacity to contain, and is designed for the shelter of man, animals,  
18 or property, and includes ships, trailers, sleeping cars, aircraft, or  
19 other vehicles or places adapted for overnight accommodations of persons  
20 or animals, or for carrying on of business therein, whether or not a  
21 person or animal is actually present. If a building is divided into units  
22 for separate occupancy, any unit not occupied by the defendant is a  
23 building of another.

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

26 28-502 (1) A person commits arson in the first degree if:

27 (a) He he or she intentionally sets fire to, maintains a fire to,  
28 burns, 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 when 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 of human skeletal remains  
4 therein a reasonable probability; -

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

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

18 (2) (3) Arson in the first degree is a Class II felony unless any  
19 public safety official suffers serious bodily injury due to a violation  
20 of this section, in which case arson in the first degree is a Class ID  
21 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 he or she  
25 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 or an attempt to perpetrate any robbery, burglary, or felony  
3 criminal mischief. damages a building or property contained within a  
4 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 building, or, if other persons have such  
11 interests, all of them consented to his or her conduct; or

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

14        (3) Arson in the second degree is a Class ~~IIA~~ ~~III~~ felony unless any  
15 public safety official suffers serious bodily injury due to a violation  
16 of this section, in which case arson in the second degree 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) Arson in the third degree is a Class IV felony if the damages  
27 amount to one thousand five hundred dollars or more unless any public  
28 safety official suffers serious bodily injury due to a violation of this  
29 section, in which case arson in the third degree is a Class IIIA felony.

30        (3) Arson in the third degree is a Class I misdemeanor if the  
31 damages are five hundred dollars or more but less than one thousand five

1 hundred dollars unless any public safety official suffers serious bodily  
2 injury due to a violation of this section, in which case arson in the  
3 third degree is a Class IV felony.

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

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

11 28-505 Any person who, with the intent to deceive or harm an  
12 insurer, sets fire to, maintains a fire to, or burns or attempts to do  
13 so, or who causes to be burned, or who aids, counsels, or procures the  
14 burning of any structure building or personal property, of whatsoever  
15 class or character, whether the property of himself, herself, or of  
16 another, which shall at the time be insured by any person, company, or  
17 corporation against loss or damage by fire, commits a Class IV felony  
18 unless any public safety official suffers serious bodily injury due to a  
19 violation of this section, in which case a violation of this section is a  
20 Class IIA felony.

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

23 28-520 (1) A person commits first degree criminal trespass if:

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

27 (b) He or she enters or remains in or on a public power  
28 infrastructure facility knowing that he or she does not have the consent  
29 of a person who has the right to give consent to be in or on the  
30 facility.

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

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

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

9 28-522 It is an affirmative defense to prosecution under sections  
10 28-520 and 28-521 that:

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

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

16 (3) The actor reasonably believed that the owner of the premises or  
17 other person empowered to license access thereto would have licensed him  
18 or her to enter or remain; or

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

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

25 28-524 (1) Any person who knowingly and intentionally applies  
26 graffiti of any type on any structure ~~building~~, public or private, or any  
27 other tangible property owned by any person, firm, or corporation or any  
28 public entity or instrumentality, without the express permission of the  
29 owner or operator of the property, commits the offense of unauthorized  
30 application of graffiti.

31 (2) Unauthorized application of graffiti is a Class III misdemeanor

1 for a first offense and a Class IV felony for a second or subsequent  
2 offense.

3 (3) Upon conviction of an offense under this section, the court may,  
4 in addition to any other punishment imposed, order the defendant to clean  
5 up, repair, or replace the damaged property, keep the defaced property or  
6 another specified property in the community free of graffiti or other  
7 inscribed materials for up to one year, or order a combination of  
8 restitution and labor.

9 (4) Upon conviction of an offense under this section, the court may,  
10 in addition to any other punishment imposed, order the defendant to  
11 undergo counseling.

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

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

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