

ARSON

## TITLE 7. OFFENSES AGAINST PROPERTY

## CHAPTER 28. ARSON, CRIMINAL MISCHIEF, AND OTHER PROPERTY DAMAGE OR DESTRUCTION

Sec. 28.01. DEFINITIONS. In this chapter:

- (1) "Habitation" means a structure or vehicle that is adapted for the overnight accommodation of persons and includes:
  - (A) each separately secured or occupied portion of the structure or vehicle; and
  - (B) each structure appurtenant to or connected with the structure or vehicle.
- (2) "Building" means any structure or enclosure intended for use or occupation as a habitation for some purpose of trade, manufacture, ornament, or use.
- (3) "Property" means:
  - (A) real property;
  - (B) tangible or intangible personal property, including anything severed from land; or
  - (C) a document, including money, that represents or embodies anything of value.
- (4) "Vehicle" includes any device in, on, or by which any person or property is or may be propelled, moved, or drawn in the normal course of commerce or transportation.
- (5) "Open-space land" means real property that is undeveloped for the purpose of human habitation.
- (6) "Controlled burning" means the burning of unwanted vegetation with the consent of the owner of the property on which the vegetation is located and in such a manner that the fire is controlled and limited to a designated area.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1979, 66th Leg., p. 116, ch. 588, Sec. 1, eff. Sept. 1, 1979; Acts 1989, 71st Leg., ch. 31, Sec. 1, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 28.02. ARSON. (a) A person commits an offense if the person starts a fire, regardless of whether the fire continues after ignition, or causes an explosion with intent to destroy or damage:

- (1) any vegetation, fence, or structure on open-space land; or
- (2) any building, habitation, or vehicle:
  - (A) knowing that it is within the limits of an incorporated city or town;
  - (B) knowing that it is insured against damage or destruction;
  - (C) knowing that it is subject to a mortgage or other security interest;
  - (D) knowing that it is located on property belonging to another;
  - (E) knowing that it has located within it property belonging to another; or
  - (F) when the person is reckless about whether the burning or explosion will endanger the life of some individual or the safety of the property of another.

(a-1) A person commits an offense if the person recklessly starts a fire or causes an explosion while manufacturing or attempting to manufacture a controlled substance and the fire or explosion damages any building, habitation, or vehicle.

(a-2) A person commits an offense if the person intentionally starts a fire or causes an explosion and in so doing:

- (1) recklessly damages or destroys a building belonging to another; or
- (2) recklessly causes another person to suffer bodily injury or death.

(b) It is an exception to the application of Subsection (a)(1) that the fire or explosion was a part of the controlled burning of open-space land.

(c) It is a defense to prosecution under Subsection (a)(2)(A) that prior to starting the fire or causing the explosion, the actor obtained a permit or other written authorization granted in accordance with a city ordinance, if any, regulating fires and explosions.

(d) An offense under Subsection (a) is a felony of the second degree, except that the offense is a felony of the first degree if it is shown on the trial of the offense that:

offense; or

(2) the property intended to be damaged or destroyed by the actor was a habitation or a place of assembly or worship.

(e) An offense under Subsection (a-1) is a state jail felony, except that the offense is a felony of the third degree if it is shown on the trial of the offense that bodily injury or death was suffered by any person by reason of the commission of the offense.

(f) An offense under Subsection (a-2) is a state jail felony.

(g) If conduct that constitutes an offense under Subsection (a-1) or that constitutes an offense under Subsection (a-2) also constitutes an offense under another subsection of this section or another section of this code, the actor may be prosecuted under Subsection (a-1) or Subsection (a-2), under the other subsection of this section, or under the other section of this code.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1979, 66th Leg., p. 116, ch. 588, Sec. 2, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 1837, ch. 425, Sec. 1, eff. Sept. 1, 1981; Acts 1989, 71st Leg., ch. 31, Sec. 2, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 1006, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 976, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 960 (H.B. 1634), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1168 (H.B. 3224), Sec. 1, eff. September 1, 2009.

**Sec. 28.03. CRIMINAL MISCHIEF.** (a) A person commits an offense if, without the effective consent of the owner:

(1) he intentionally or knowingly damages or destroys the tangible property of the owner;

(2) he intentionally or knowingly tampers with the tangible property of the owner and causes pecuniary loss or substantial inconvenience to the owner or a third person; or

(3) he intentionally or knowingly makes markings, including inscriptions, slogans, drawings, or paintings, on the tangible property of the owner.

(b) Except as provided by Subsections (f) and (h), an offense under this section is:

(1) a Class C misdemeanor if:

(A) the amount of pecuniary loss is less than \$100; or

(B) except as provided in Subdivision (3)(A) or (3)(B), it causes substantial

inconvenience to others;

(2) a Class B misdemeanor if the amount of pecuniary loss is \$100 or more but less than \$750;

(3) a Class A misdemeanor if:

(A) the amount of pecuniary loss is \$750 or more but less than \$2,500; or

(B) the actor causes in whole or in part impairment or interruption of any public water supply, or causes to be diverted in whole, in part, or in any manner, including installation or removal of any device for any such purpose, any public water supply, regardless of the amount of the pecuniary loss;

(4) a state jail felony if the amount of pecuniary loss is:

(A) \$2,500 or more but less than \$30,000;

(B) less than \$2,500, if the property damaged or destroyed is a habitation and if the damage or destruction is caused by a firearm or explosive weapon;

(C) less than \$2,500, if the property was a fence used for the production or containment

(i) cattle, bison, horses, sheep, swine, goats, exotic livestock, or exotic poultry;

(ii) game animals as that term is defined by Section 63.001, Parks and Wildlife Code

(D) less than \$30,000 and the actor:

(i) causes wholly or partly impairment or interruption of property used for flood control purposes or a dam or of public communications, public transportation, public gas or power

removal of any device for any such purpose, any public communications or public gas or power supply;

(5) a felony of the third degree if:

(A) the amount of the pecuniary loss is \$30,000 or more but less than \$150,000;

(B) the actor, by discharging a firearm or other weapon or by any other means, causes the death of one or more head of cattle or bison or one or more horses; or

(C) the actor causes wholly or partly impairment or interruption of access to an automated teller machine, regardless of the amount of the pecuniary loss;

(6) a felony of the second degree if the amount of pecuniary loss is \$150,000 or more but less than \$300,000; or

(7) a felony of the first degree if the amount of pecuniary loss is \$300,000 or more.

(c) For the purposes of this section, it shall be presumed that a person who is receiving the economic benefit of public communications, public water, gas, or power supply, has knowingly tampered with the tangible property of the owner if the communication or supply has been:

(1) diverted from passing through a metering device; or

(2) prevented from being correctly registered by a metering device; or

(3) activated by any device installed to obtain public communications, public water, gas, or power supply without a metering device.

(d) The terms "public communication, public transportation, public gas or power supply, or other public service" and "public water supply" shall mean, refer to, and include any such services subject to regulation by the Public Utility Commission of Texas, the Railroad Commission of Texas, or the Texas Natural Resource Conservation Commission or any such services enfranchised by the State of Texas or any political subdivision thereof.

(e) When more than one item of tangible property, belonging to one or more owners, is damaged, destroyed, or tampered with in violation of this section pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense, and the amounts of pecuniary loss to property resulting from the damage to, destruction of, or tampering with the property may be aggregated in determining the grade of the offense.

(f) An offense under this section is a state jail felony if the damage or destruction is inflicted on a place of worship or human burial, a public monument, or a community center that provides medical, social, or educational programs and the amount of the pecuniary loss to real property or to tangible personal property is \$750 or more but less than \$30,000.

(g) In this section:

(1) "Explosive weapon" means any explosive or incendiary device that is designed, made, or adapted for the purpose of inflicting serious bodily injury, death, or substantial property damage, or for the principal purpose of causing such a loud report as to cause undue public alarm or terror, and includes:

(A) an explosive or incendiary bomb, grenade, rocket, and mine;

(B) a device designed, made, or adapted for delivering or shooting an explosive weapon;

(C) a device designed, made, or adapted to start a fire in a time-delayed manner.

(2) "Firearm" has the meaning assigned by Section 46.01.

(3) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(4) "Aluminum wiring" means insulated or noninsulated wire or cable that consists of at least 90 percent aluminum, including any tubing or conduit attached to the wire or cable.

(5) "Bronze wiring" means insulated or noninsulated wire or cable that consists of at least 5 percent bronze, including any tubing or conduit attached to the wire or cable.

(6) "Copper wiring" means insulated or noninsulated wire or cable that consists of at least 5 percent copper, including any tubing or conduit attached to the wire or cable.

(7) "Transportation communications equipment" means:

(A) an official traffic-control device, railroad sign or signal, or traffic-control signal, as those terms are defined by Section 541.304, Transportation Code; or

(B) a sign, signal, or device erected by a railroad, public body, or public officer to