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BILL

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO CRIMINAL LAW; AMENDING AND CLARIFYING THE CRIMES OF  
BURGLARY AND AGGRAVATED BURGLARY; DECREASING PENALTIES FOR  
CRIMINAL TRESPASS, BREAKING AND ENTERING AND NONRESIDENTIAL  
AGGRAVATED BURGLARY; RECOMPILING SECTIONS OF THE CRIMINAL CODE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 30-14-1 NMSA 1978 (being Laws 1963,  
Chapter 303, Section 14-1, as amended) is amended to read:

"30-14-1. CRIMINAL TRESPASS.--

A. Criminal trespass consists of knowingly entering  
or remaining upon posted private property without possessing  
written permission from the owner or person in control of the  
land. The provisions of this subsection do not apply if:

(1) the owner or person in control of the land  
has entered into an agreement with the department of game and

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1 fish granting access to the land to the general public for the  
2 purpose of taking any game animals, birds or fish by hunting or  
3 fishing; or

4 (2) a person is in possession of a landowner  
5 license given to ~~him~~ the person by the owner or person in  
6 control of the land that grants access to that particular  
7 private land for the purpose of taking any game animals, birds  
8 or fish by hunting or fishing.

9 B. Criminal trespass also consists of knowingly  
10 entering or remaining upon the unposted lands of another  
11 knowing that such consent to enter or remain is denied or  
12 withdrawn by the owner or occupant ~~thereof~~ of the lands.  
13 Notice of no consent to enter shall be deemed sufficient notice  
14 to the public and evidence to the courts, by the posting of the  
15 property at all vehicular access entry ways.

16 C. Criminal trespass also consists of knowingly  
17 entering or remaining upon lands owned, operated or controlled  
18 by the state or any of its political subdivisions knowing that  
19 consent to enter or remain is denied or withdrawn by the  
20 custodian ~~thereof~~ of the lands.

21 D. Any person who enters upon the lands of another  
22 without prior permission and injures, damages or destroys any  
23 part of the realty or its improvements, including buildings,  
24 structures, trees, shrubs or other natural features, is guilty  
25 of a petty misdemeanor and ~~he~~ shall be liable to the owner,

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1 lessee or person in lawful possession for civil damages in an  
2 amount equal to double the value of the damage to the property  
3 injured or destroyed.

4 E. ~~[Whoever]~~ A person who commits criminal trespass  
5 is guilty of a petty misdemeanor. Additionally, any person who  
6 violates the provisions of Subsection A, B or C of this  
7 section, when in connection with hunting, fishing or trapping  
8 activity, shall have ~~[his]~~ the person's hunting or fishing  
9 license revoked by the state game commission for a period of  
10 not less than three years, pursuant to the provisions of  
11 Section 17-3-34 NMSA 1978.

12 F. ~~[Whoever]~~ A person who knowingly removes,  
13 tampers with or destroys any "no trespass" sign is guilty of a  
14 petty misdemeanor; except when the damage to the sign amounts  
15 to more than one thousand dollars (\$1,000), ~~[he or she]~~ the  
16 person is guilty of a misdemeanor and shall be subject to  
17 imprisonment in the county jail for a definite term less than  
18 one year or a fine not more than one thousand dollars (\$1,000)  
19 or to both such imprisonment and fine in the discretion of the  
20 judge.

21 G. This section, as amended, shall be published in  
22 all issues of "Big Game Hunt Proclamation" as published by the  
23 department of game and fish."

24 SECTION 2. Section 30-14-8 NMSA 1978 (being Laws 1981,  
25 Chapter 34, Section 2) is amended to read:

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1 "30-14-8. BREAKING AND ENTERING.--

2 A. Breaking and entering consists of the  
3 unauthorized entry of any vehicle, watercraft, aircraft,  
4 dwelling or other structure, movable or immovable, where entry  
5 is obtained by fraud or deception, or by the breaking or  
6 dismantling of any part of the vehicle, watercraft, aircraft,  
7 dwelling or other structure, or by the breaking or dismantling  
8 of any device used to secure the vehicle, watercraft, aircraft,  
9 dwelling or other structure.

10 B. Whoever commits breaking and entering is guilty  
11 of a [~~fourth degree felony~~] misdemeanor."

12 SECTION 3. Section 30-16-3 NMSA 1978 (being Laws 1963,  
13 Chapter 303, Section 16-3, as amended) is recompiled as Section  
14 30-14-9 NMSA 1978 and is amended to read:

15 "30-16-3. BURGLARY--RESIDENTIAL BURGLARY.--

16 A. Burglary consists of the unauthorized entry of a  
17 structure that is not a residence or of a passenger compartment  
18 or permanent storage compartment of any vehicle, watercraft or  
19 aircraft [~~dwelling or other structure, movable or immovable~~]  
20 with the intent to commit any felony or theft therein. A  
21 person who commits burglary is guilty of a fourth degree  
22 felony.

23 [~~A. Any person who, without authorization, enters a~~  
24 ~~dwelling house with intent to commit any felony or theft~~  
25 ~~therein is guilty of a third degree felony.~~

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1           ~~B. Any person who, without authorization, enters~~  
2 ~~any vehicle, watercraft, aircraft or other structure, movable~~  
3 ~~or immovable, with intent to commit any felony or theft therein~~  
4 ~~is guilty of a fourth degree felony.]~~

5           B. Residential burglary consists of the  
6 unauthorized entry of a residence with the intent to commit a  
7 felony or theft therein. A person who commits residential  
8 burglary is guilty of a third degree felony.

9           C. As used in this section, "residence" means a  
10 structure used for or intended to be used for permanent or  
11 long-term human habitation, including a house, an apartment, a  
12 townhouse, a condominium, a cooperatively owned unit, a mobile  
13 home or trailer or any other structure used or intended to be  
14 used for permanent or long-term human habitation."

15           SECTION 4. Section 30-16-4 NMSA 1978 (being Laws 1963,  
16 Chapter 303, Section 16-4) is recompiled as Section 30-14-10  
17 NMSA 1978 and is amended to read:

18           "30-16-4. AGGRAVATED BURGLARY--AGGRAVATED RESIDENTIAL  
19 BURGLARY.--~~[Aggravated burglary consists of the unauthorized~~  
20 ~~entry of any vehicle, watercraft, aircraft, dwelling or other~~  
21 ~~structure, movable or immovable, with intent to commit any~~  
22 ~~felony or theft therein and the person either:~~

23           ~~A. is armed with a deadly weapon;~~

24           ~~B. after entering, arms himself armed with a deadly~~  
25 ~~weapon; or~~

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1           ~~C. commits a battery upon any person while in such~~  
2 ~~place or in entering or leaving such place.~~

3           ~~Whoever commits aggravated burglary is guilty of a second~~  
4 ~~degree felony.]~~

5           A. Aggravated burglary consists of the unauthorized  
6 entry of a structure that is not a residence or of a passenger  
7 compartment of a vehicle, watercraft or aircraft with the  
8 intent to commit a felony or theft therein and the person who  
9 enters:

10                   (1) possesses a deadly weapon;

11                   (2) takes possession of a deadly weapon after  
12 entering; or

13                   (3) commits a battery upon another person  
14 while entering, leaving or being within such place, and the  
15 victim was lawfully present.

16           B. A person who commits aggravated burglary is  
17 guilty of a third degree felony.

18           C. Aggravated residential burglary consists of the  
19 unauthorized entry of a residence with the intent to commit a  
20 felony or theft therein and the person who enters:

21                   (1) possesses a deadly weapon;

22                   (2) takes possession of a deadly weapon after  
23 entering; or

24                   (3) commits a battery upon another person  
25 while entering, leaving or being within such place, and the

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1 victim was lawfully present.

2 D. A person who commits aggravated residential  
3 burglary is guilty of a second degree felony.

4 E. As used in this section, "residence" means a  
5 structure used for or intended to be used for permanent or  
6 long-term human habitation, including a house, an apartment, a  
7 townhouse, a condominium, a cooperatively owned unit, a mobile  
8 home or trailer or any other structure used or intended to be  
9 used for permanent or long-term human habitation."

10 SECTION 5. TEMPORARY PROVISION--RECOMPILATION.--Section  
11 30-16-5 NMSA 1978 (being Laws 1963, Chapter 303, Section 16-5)  
12 is recompiled as Section 30-14-11 NMSA 1978.

13 SECTION 6. EFFECTIVE DATE.--The effective date of the  
14 provisions of this act is July 1, 2013.