

## LEGISLATIVE BILL 83

Approved by the Governor March 16, 1981

Introduced by Stoney, 4

AN ACT to amend sections 28-502 and 28-503, Reissue Revised Statutes of Nebraska, 1943, relating to the Nebraska Criminal Code; to change provisions relating to arson as prescribed; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 28-502, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-502. (1) A person commits arson in the first degree if he or she intentionally damages a building by starting a fire or causing an explosion, when another person is present in the building at the time and either (a) the actor knows that fact, or (b) the circumstances are such as to render the presence of a person therein a reasonable probability.

(2) A person commits arson in the first degree if a fire is started or an explosion is caused in the perpetration of any robbery, burglary, or felony criminal mischief when another person is present in the building at the time and either (a) the actor knows that fact, or (b) the circumstances are such as to render the presence of a person therein a reasonable probability.

~~(3)~~ (2) Arson in the first degree is a Class II felony.

Sec. 2. That section 28-503, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-503. (1) A person commits arson in the second degree if he or she intentionally damages a building by starting a fire or causing an explosion or if a fire is started or an explosion is caused in the perpetration of any robbery, burglary, or felony criminal mischief.

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

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

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

(3) Arson in the second degree is a Class III felony.

Sec. 3. That original sections 28-502 and 28-503, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 4. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.