

APPENDIX B

STATE STATUTES RELEVANT TO FIRE INVESTIGATION

45-6-102. Negligent arson. (1) A person commits the offense of negligent arson if he purposely or knowingly starts a fire or causes an explosion, whether on his own property or property of another, and thereby negligently:

(a) places another person in danger of death or bodily injury, including a firefighter responding to or at the scene of a fire or explosion; or

(b) places property of another in danger of damage or destruction.

(2) A person convicted of the offense of negligent arson shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender places another person in danger of death or bodily injury, he shall be fined not to exceed \$50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

History: En. 94-6-103 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-103; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 590, L. 1985.

Criminal Law Commission Comments:

Source: MM.P.C. 1062, § 220.1(2).

Section 94-6-103 [now MCA, 45-6-102] differs substantially from the current Model Arson Law. First, it eliminates the grading of arson into degrees by reference to the class of property destroyed. Second, it prohibits negligent uses of fire or explosives which endanger persons or property unaccompanied by injury or damage, and third, it includes the burning of one's own property in circumstances where there is a high risk that the fire will spread to property of others or where the burning of lesser forms of property is accomplished in close proximity to occupied structures.

The provisions of subsection (1) are to be construed as pertaining to affirmative knowing and purposeful acts and are not intended to include omissions to report, control or combat a fire which has placed a person in danger of bodily injury or death, or an occupied structure in danger of damage or destruction. If a person starts a fire negligently or fails to control a fire thus placing persons or property in danger the act is made punishable by R.C.M. 1947, section 28-115 [now MCA, 76-13-123].

Compiler's Comments:

45-6-103. Arson. (1) A person commits the offense of arson when, by means of fire or explosives, the person knowingly or purposely:

(a) damages or destroys a structure, vehicle, personal property (other than a vehicle) that exceeds \$1,000 in value, crop, pasture, forest, or other real property that is property of another without consent;

(b) damages or destroys a structure, vehicle, crop, pasture, forest, or other property that the person owns or has a possessory interest in, with the purpose of obtaining a pecuniary or other gain through fraud or deception; or

(c) places another person in danger of death or bodily injury, including a firefighter responding to or at the scene of a fire or explosion.

(2) A person convicted of the offense of arson shall be imprisoned in the state prison for a term not to exceed 20 years or be fined an amount not to exceed \$50,000, or both.

History: En. 94-6-104 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 261, L. 1975; R.C.M. 1947, 94-6-104; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 2, Ch. 590, L. 1985; amd. Sec. 1, Ch. 124, L. 1995; amd. Sec. 4, Ch. 397, L. 1999.

Criminal Law Commission Comments:

Source: MNew.

This section, together with section 94-6-103 [now MCA, 45-6-102], Negligent Arson, is intended to completely replace the old Model Arson Law which classifies offenses in an illogical and arbitrary fashion. The burning of an empty isolated dwelling could result in a twenty (20) year sentence under R.C.M. 1947, section 94-502, while setting fire to a crowded church or theater or jail could yield only a maximum sentence of ten (10) years under R.C.M. 1947, section 94-503. Moreover, it makes little sense to treat the burning of miscellaneous personal property, whether out of malice or to defraud insurers a special category of crime apart from the risks associated from burning. To destroy a valuable painting or manuscript by burning it in a hearth or furnace cannot be distinguished criminologically from any other method of destruction.

CHAPTER 63
INVESTIGATION OF FIRES

Cross References:

Criminal offense of arson or negligent arson, 45-6-102, 45-6-103.

Offense of giving false alarms, 45-7-204.

Administrative Rules:

Title 23, chapter 7, ARM Fire Prevention and Investigation Bureau.

Law Review Articles:

Municipal Tort Liability: Special Duty Issues of Police, Fire, and Safety (Symposium: Municipal Liability), Robertson, 44 Syracuse L. Rev. 943 (1993).

Government Liability for Negligent Fire Inspection, Hage v. Stade, 304 N.W.2d 283 (Minn. 1981), 66 Minn. L. Rev. 1164 (1982).

Part 1. General Provisions

Part 1

General Provisions

50-63-101. Examination of premises where fire occurred authorized. In the performance of the duties imposed by the provisions of this chapter, officers of the department of justice may, as authorized by law, enter upon and examine any building or premises where a fire has occurred and other buildings and premises adjoining or near thereto.

History: En. Sec. 14, Ch. 148, L. 1911; re-en. Sec. 2751, R.C.M. 1921; re-en. Sec. 2751, R.C.M. 1935; R.C.M. 1947, 82-1217; amd. Sec. 31, Ch. 706, L. 1991.

Compiler's Comments:

1991 Amendment: Near middle substituted "officers of the department of justice" for "the state fire marshal and each of his subordinates at all times of day or night" and after "may" inserted "as authorized by law". Amendment effective April 29, 1991.

Cross References:

State fire prevention and investigation program, Title 50, ch. 3.

Collateral References:

Fires key 9.

36A C.J.S. Fires §§ 17, 18.

50-63-102. Penalty for setting or leaving fire causing damage. (1) Any person who shall upon any land within this state set or leave any fire that shall spread and damage or destroy property of any kind not his own shall upon conviction be punished by a fine of not less than \$10 or more than \$500. If such fire be set maliciously, whether on his own or on another's land, with intent to destroy property not his own, he shall be guilty of a felony and shall be punished by imprisonment in the state penitentiary for not less than 1 or more than 50 years.

(2) During the closed season, any person who shall kindle a campfire on land not his own in or dangerously near any forest material and leave same unquenched or who shall be a party thereto or who shall by throwing away any lighted cigar, cigarette, matches, or by the use of firearms or in any other manner start a fire in forest material not his own and leave same unquenched shall, upon conviction, be fined not less than \$10 or more than \$100 or be imprisoned in the county jail not exceeding 60 days.

History: En. Sec. 4, Ch. 170, L. 1919; re-en. Sec. 2766, R.C.M. 1921; re-en. Sec. 2766, R.C.M. 1935; R.C.M. 1947, 82-1236.

Cross References:

Criminal offense of arson or negligent arson, 45-6-102, 45-6-103.

Offense of giving false alarms, 45-7-204.

Failure to extinguish campfires on forest lands, 76-13-123.

Throwing lighted materials on forest lands, 76-13-124.

Collateral References:

Fires key 7.

36A C.J.S. Fires §§ 2 through 4, 9, 15.

50-63-103. Liability of offender for damages and costs. Any person who shall upon any land within this state, whether on his own or on another's land, set or leave any fire that shall spread and damage or destroy property of any kind not his own shall be liable for all damages caused thereby, and any owner of property damaged or destroyed by such fire may maintain a civil suit for the purpose of recovering such damages. Any person who shall upon any land within this state, whether on his own or on another's land, set or leave any fire which threatens to spread and damage or destroy property shall be liable for all costs and expenses incurred by the state of Montana, by any forestry association, or by any person extinguishing or preventing the spread of such fire.

History: En. Sec. 7, Ch. 170, L. 1919; re-en. Sec. 2769, R.C.M. 1921; re-en. Sec. 2769, R.C.M. 1935; R.C.M. 1947, 82-1237.

Cross References:

Failure to extinguish campfires on forest lands, 76-13-123.

Throwing lighted materials on forest lands, 76-13-124.

Case Notes:

Applicability to Private Landowners -- Not Limited to Burning of Forest Materials: This section is applicable to private landowners and is not limited exclusively to the burning of forest materials. *Whitehawk v. Clark*, 238 M 14, 776 P2d 484, 46 St. Rep. 1053 (1989).

Elements of Arson -- Presence -- Identity of Arsonist: Presence at a fire at the time it was set is not a requisite to finding someone responsible for the fire, nor is the identity of the person who set the fire. Each is a factor to be weighed by the jury. The identity of the person who set the fire is also not a requisite to proving an agreement or conspiracy to set the fire. The jury need only find that a person agreed with another that the fire be set. *Mtn. W. Farm Bureau Mut. Ins. Co. v. Girton*, 215 M 408, 697 P2d 1362, 42 St. Rep. 500 (1985).

Evidence of Absent Home Owners' Responsibility Sufficient: In insurer's action for declaratory judgment that owners of house were responsible for setting it afire, jury verdict for insurer was supported by substantial evidence and was affirmed. The record on appeal showed that several months before the fire the owners moved valuable uninsured coin and stamp collections from the house; that they stored in the house valuable insured business inventory and equipment; that the house payments were a significant expense; that the house was at one time up for sale and did not sell; that the house was heavily insured; that an unusually large amount of gasoline, some in containers compatible with the arson scheme, was stored on the premises; that some of the arson paraphernalia belonged to the insureds; and that the scheme fit the insurance arsonist profile and was incompatible with other arson profiles. *Mtn. W. Farm Bureau Mut. Ins. Co. v. Girton*, 215 M 408, 697 P2d 1362, 42 St. Rep. 500 (1985).

Prior Statement of Defendant -- Arson Suggestion: Insurer of house sought declaratory judgment that owners of house were responsible for fire that damaged it. The District Court allowed a witness to testify that several years before the fire one of the owners was interested in purchasing a building but the building's owner wanted a high price. The house owner stated in a laughing manner, "Why not torch it, maybe we could get a better price". The witness testified

that he took the statement in jest. The testimony had little bearing on the past or present motive of the house owner, but admitting the testimony was within the court's discretion. *Mtn. W. Farm Bureau Mut. Ins. Co. v. Girton*, 215 M 408, 697 P2d 1362, 42 St. Rep. 500 (1985).

Applicability: This section applies only to the intentional setting or leaving of a fire. It does not apply to a fire in a slag pile that was thought to be dead for 20 years. *Belue v. St.*, 199 M 451, 649 P2d 752, 39 St. Rep. 1516 (1982).

"Set Fire" Construed -- Mental State: Analysis of both the purpose of Act, as shown by its title, and the language of the statute indicate that this section applies only to intentional setting of fires. *Mont. Dept. of Natural Resources and Conservation v. Clark Fork Logging Co., Inc.*, 198 M 494, 646 P2d 1207, 39 St. Rep. 1146 (1982).

Limitation of Actions: Two-year Statute of Limitations, 27-2-207 or 27-2-211 (formerly 93-2607(part), R.C.M. 1947), was applicable to action under this section by the United States for damages to property caused by alleged negligence of defendants in setting forest fire. *U.S. v. Eytcheson*, 237 F. Supp. 371 (D.C. Mont. 1965).

Collateral References:

Fires key 7; Negligence key 18, 23.

36A C.J.S. Fires §§ 9 through 14, 16; 65 C.J.S. Negligence §§ 19, 68.

Part 2

Initial Investigation

50-63-201. Cause of fire to be investigated. The cause, origin, and circumstances of each fire by which property has been destroyed or damaged shall be investigated to determine the exact cause and circumstances. The department of justice may superintend and direct the investigation.

History: En. Sec. 6, Ch. 148, L. 1911; re-en. Sec. 2743, R.C.M. 1921; re-en. Sec. 2743, R.C.M. 1935; amd. Sec. 6, Ch. 229, L. 1967; amd. Sec. 1, Ch. 351, L. 1973; R.C.M. 1947, 82-1209(1); amd. Sec. 32, Ch. 706, L. 1991.

Compiler's Comments:

1991 Amendment: In second sentence substituted "department of justice" for "state fire marshal" and after "investigation" deleted "if he deems it necessary". Amendment effective April 29, 1991.

Cross References:

Criminal offense of arson or negligent arson, 45-6-102, 45-6-103.

State fire prevention and investigation program, Title 50, ch. 3.

Collateral References:

Fires key 9; States key 73.

36A C.J.S. Fires §§ 17, 18; 81A C.J.S. States § 139.

50-63-202. Fire chief or sheriff to conduct investigation. If the fire occurs within a municipality, organized fire district, or fire service area, the chief of the fire department shall make the investigation. If the fire occurs outside a municipality, organized fire district, or fire service area, the county sheriff shall make the investigation.

History: En. Sec. 6, Ch. 148, L. 1911; re-en. Sec. 2743, R.C.M. 1921; re-en. Sec. 2743, R.C.M. 1935; amd. Sec. 6, Ch. 229, L. 1967; amd. Sec. 1, Ch. 351, L. 1973; R.C.M. 1947, 82-1209(part); amd. Sec. 4, Ch. 212, L. 1995.

Compiler's Comments:

1995 Amendment: Chapter 212 in two places inserted "or fire service area"; and made minor changes in style.

Collateral References:

Fires key 9; States key 73.
36A C.J.S. Fires §§ 17, 18; 81A C.J.S. States § 139.

50-63-203. Reports to be filed with department of justice. (1) If it appears that the fire was of suspicious origin, if there was a loss of human life, or if it is determined that a criminal investigation is necessary, the official responsible for the investigation shall notify the department of justice and the appropriate law enforcement agency within 24 hours and shall file a written report of the cause with the department within 10 days.

(2) If the property was insured, as soon as any adjustment has been made, a person representing the insurance company shall notify the department of the amount of adjustment and the apparent cause and circumstances of the fire on forms furnished by the department.

(3) Each official responsible for investigating fires shall file a fire incident report on each fire with the department. Reports shall be on forms and shall contain information prescribed by the department. These reports shall be sent to the department on a monthly basis or at intervals determined necessary by the department.

History: En. Sec. 6, Ch. 148, L. 1911; re-en. Sec. 2743, R.C.M. 1921; re-en. Sec. 2743, R.C.M. 1935; amd. Sec. 6, Ch. 229, L. 1967; amd. Sec. 1, Ch. 351, L. 1973; R.C.M. 1947, 82-1209(part); amd. Sec. 33, Ch. 706, L. 1991.

Compiler's Comments:

1991 Amendment: Throughout section substituted reference to Department of Justice for reference to State Fire Marshal; in (1), near middle after "life", inserted "or if it is determined that a criminal investigation is necessary" and after "notify the" substituted "department of justice and the appropriate law enforcement agency" for "state fire marshal"; in (3), at end of third sentence, substituted "monthly basis or at intervals determined necessary by the department" for "weekly basis"; and made minor changes in style. Amendment effective April 29, 1991.

Collateral References:

Fires key 9; States key 73.
36A C.J.S. Fires §§ 17, 18; 81A C.J.S. States § 139.

50-63-204. Penalty for failure to investigate or file report. Any person who fails to comply with the requirements of this part shall be fined not less than \$25 or more than \$200.

History: En. Sec. 8, Ch. 148, L. 1911; re-en. Sec. 2745, R.C.M. 1921; re-en. Sec. 2745, R.C.M. 1935; amd. Sec. 7, Ch. 229, L. 1967; R.C.M. 1947, 82-1211.

77-5-104. Firewardens. (1) The department shall appoint firewardens in the number and localities that it considers necessary.

(2) The supervisors and rangers of the federal forest lands within this state, whenever they formally accept the duties and responsibilities of firewardens, may be appointed firewardens.

(3) The following are firewardens but may not receive any additional compensation by reason of the duties imposed:

- (a) sheriffs;
- (b) undersheriffs;
- (c) deputy sheriffs;
- (d) state fish, wildlife, and parks wardens and park rangers;
- (e) the state fish, wildlife, and parks director;
- (f) the director and employees of the department designated by the director;
- (g) officers of organized forest protection districts;
- (h) members of the Montana highway patrol;
- (i) officers of the national park service residing in Montana;
- (j) officers of the bureau of Indian affairs;
- (k) county rural fire chiefs; and
- (l) employees of the state fire prevention and investigation program provided for in 2-15-

2005.

(4) The firewardens shall promptly report all fires to the department, take immediate and active steps toward their extinguishment, report any violation of forest laws, and assist in apprehending and convicting offenders.

History: En. Sec. 11, Ch. 147, L. 1909; re-en. Sec. 1833, R.C.M. 1921; re-en. Sec. 1833, R.C.M. 1935; amd. Sec. 1, Ch. 147, L. 1955; amd. Sec. 103, Ch. 253, L. 1974; amd. Sec. 17, Ch. 17, L. 1977; R.C.M. 1947, 81-1412; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 529, L. 1981; amd. Sec. 4, Ch. 286, L. 1985; amd. Sec. 10, Ch. 662, L. 1991; amd. Sec. 1, Ch. 310, L. 1993; amd. Sec. 324, Ch. 418, L. 1995.

Compiler's Comments:

1995 Amendment: Chapter 418 in (3)(f), in two places, substituted "director" for "commissioner"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

1993 Amendment: Chapter 310 inserted (3)(k) to include county rural fire chiefs; inserted (3)(1) to include employees of the state fire program; and made minor changes in style.

1991 Amendment: In (3)(d) inserted reference to park rangers; and made minor change in style. Amendment effective April 26, 1991.

1985 Amendment: Deleted former (3)(f) that read: "members of the board of natural resources and conservation"; and in (3)(f) substituted "commissioner" for "director of the department".

1981 Amendment: Changed the department of natural resources and conservation to the department of state lands (now abolished) in three places. "Department" means department of state lands (now department of natural resources and conservation). See 77-1-101.

Severability: Section 9, Ch. 529, L. 1981, was a severability section.

Cross References:

Protection of forest resources, Title 76, ch. 13, part 1.

Forest fire season, 76-13-102(7), 76-13-203.

Burning permits, 76-13-121.
Provision of fire protection services, Title 76, ch. 13, part 2.
Department defined, 77-1-101.

77-5-105. Powers of firewardens. (1) All firewardens have the power of peace officers to make arrests without warrants for violations in their presence of any state or federal forest laws, and a firewarden is not liable for civil action for trespass committed in the discharge of his duties. A firewarden who has information which shows, with reasonable certainty, that a person has violated any provision of those forest laws shall immediately take action against the offender by making complaint before the proper magistrate, or by information to the proper county attorney and shall obtain all possible evidence pertaining thereto.

(2) All firewardens shall have authority to call upon any able-bodied citizen between the ages of 18 and 50 years, resident in the vicinity, for assistance in putting out fires; and any such person who refuses to obey such summons, except for good and sufficient reason, is guilty of a misdemeanor and upon conviction shall be fined in a sum not less than \$15 or more than \$50 or imprisonment in the county jail not less than 1 or more than 30 days or both such fine and imprisonment. No citizen shall be called upon to fight fire a total of more than 5 days in one year.

History: (1)En. Sec. 12, Ch. 147, L. 1909; re-en. Sec. 1834, R.C.M. 1921; re-en. Sec. 1834, R.C.M. 1935; amd. Sec. 104, Ch. 253, L. 1974; Sec. 81-1413, R.C.M. 1947; (2)En. Sec. 13, Ch. 147, L. 1909; re-en. Sec. 1835, R.C.M. 1921; re-en. Sec. 1835; R.C.M. 1935; Sec. 81-1414, R.C.M. 1947; R.C.M. 1947, 81-1413(part), 81-1414.

Cross References:

Rural fire protection -- county or district, Title 7, ch. 33, part 22.
State may recover fire suppression costs, 50-63-103.
Provisions for fire protection on private lands, Title 76, ch. 13, part 2.

Case Notes:

Negligence in Fighting Fire: Where plaintiff's property was damaged by fire retardant dropped from defendant's airplane which was hired to aid in fighting a forest fire and plaintiff could not show the lack of proper care under the circumstances, the cause failed under the doctrine of "damnum absque injuria" (injury without redressable breach of duty). *Stocking v. Johnson Flying Serv.*, 143 M 61, 387 P2d 312 (1963).

Collateral References:

86 C.J.S. Torts § 11.
Restatement of Torts § 196.

77-5-106. Misconduct by paid firewarden. Failure on the part of a paid firewarden to comply with the duties prescribed in this chapter is a misdemeanor, punishable by a fine of not less than \$20 or more than \$1,000 or imprisonment in the county jail for not less than 10 days or more than 12 months or by both such fine and imprisonment. Upon his conviction, the district court wherein he is convicted shall immediately declare his office vacant and notify the proper appointing power thereof.

History: En. Sec. 12, Ch. 147, L. 1909; re-en. Sec. 1834, R.C.M. 1921; re-en. Sec. 1834, R.C.M. 1935; amd. Sec. 104, Ch. 253, L. 1974; R.C.M. 1947, 81-1413(part).

Cross References:

Vacancy for violation of official duties, 2-16-501.
Official misconduct -- forfeiture of office, 45-7-401.