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Code: Section:

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HEALTH AND SAFETY CODE - HSC

DIVISION 12. FIRES AND FIRE PROTECTION [13000 - 14959] (*Division 12 enacted by Stats. 1939, Ch. 60.*)

PART 1. GENERAL PROVISIONS [13000 - 13083] (*Part 1 enacted by Stats. 1939, Ch. 60.*)

CHAPTER 1. Liability in Relation to Fires [13000 - 13011] (*Chapter 1 enacted by Stats. 1939, Ch. 60.*)

13000. Every person is guilty of a misdemeanor who allows a fire kindled or attended by him to escape from his control or to spread to the lands of any person other than the builder of the fire without using every reasonable and proper precaution to prevent the fire from escaping.

(Enacted by Stats. 1939, Ch. 60.)

13001. Every person is guilty of a misdemeanor who, through careless or negligent action, throws or places any lighted cigarette, cigar, ashes, or other flaming or glowing substance, or any substance or thing which may cause a fire, in any place where it may directly or indirectly start a fire, or who uses or operates a welding torch, tar pot or any other device which may cause a fire, who does not clear the inflammable material surrounding the operation or take such other reasonable precautions necessary to insure against the starting and spreading of fire.

(Amended by Stats. 1965, Ch. 732.)

13002. (a) Every person is guilty of a misdemeanor who throws or discharges any lighted or nonlighted cigarette, cigar, match, or any flaming or glowing substance, or any substance or thing which may cause a fire upon any highway, including any portion of the right-of-way of any highway, upon any sidewalk, or upon any public or private property. This subdivision does not restrict a private owner in the use of his or her own private property, unless the placing, depositing, or dumping of the waste matter on the property creates a public health and safety hazard, a public nuisance, or a fire hazard, as determined by a local health department, local fire department or fire district, or the Department of Forestry and Fire Protection, in which case this section applies.

(b) Every person convicted of a violation of this section shall be punished by a mandatory fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) upon a first conviction, by a mandatory fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) upon a second conviction, and by a mandatory fine of not less than seven hundred fifty dollars (\$750) nor more than one thousand dollars (\$1,000) upon a third or subsequent conviction.

The court may, in addition to the fine imposed upon a conviction, require as a condition of probation, in addition to any other condition, that any person convicted of a violation of this section pick up litter at a time and place within the jurisdiction of the court for not less than eight hours.

(Amended by Stats. 1987, Ch. 133, Sec. 1.)

13003. Every person is guilty of a misdemeanor who uses any steam-powered logging locomotive, donkey, or threshing engine, or any other steam engine or steam boiler, in or near any forest, brush, grass, grain, or stubble land, unless the steam engine or steam boiler is provided with adequate devices to prevent the escape of fire or sparks and unless he uses every reasonable precaution to prevent the causing of fire thereby.

(Amended by Stats. 1971, Ch. 445.)

13004. Every person is guilty of a misdemeanor who harvests grain or causes it to be harvested by means of a combined harvester, header, or stationary threshing machine, or who bales hay by means of a hay press, or harvests by means of a mechanical harvester other agricultural crops which are flammable at the time of harvest, unless he keeps at all times in a convenient place upon each machine or press, one backpack or pump-type water extinguisher of not less than four-gallon capacity fully equipped, filled with water and ready for immediate use.

(Amended by Stats. 1968, Ch. 900.)

13005. Every person is guilty of a misdemeanor who:

(a) Sells, offers for sale, leases, or rents to any person any tractor, engine, machine, or truck equipped with an internal combustion engine that uses hydrocarbon fuels, if either:

(1) It is specifically designed for use in harvesting or moving grain or hay or for use on land covered with any other flammable agricultural crop, unless the exhaust system of the engine is equipped with a spark arrester in effective working order or the engine is constructed, equipped, and maintained for the prevention of fire pursuant to Section 4443 of the Public Resources Code.

(2) It is not specifically designed for any of the uses described in paragraph (1) but could be used for any of those uses, unless the person provides written notice to the purchaser or bailee at the time of sale or at the time of entering into the lease or rental contract stating that the use or operation of the engine on any flammable agricultural cropland is a violation of subdivision (b), unless the exhaust system is equipped with a spark arrester in effective working order or the engine is constructed, equipped, and maintained for the prevention of fire pursuant to Section 4443 of the Public Resources Code.

(b) Operates or causes to be operated any tractor, engine, machine, or truck equipped with an internal combustion engine that uses hydrocarbon fuels in harvesting or moving grain or hay, or on land covered with any other flammable agricultural crop, unless the engine is equipped with a spark arrester maintained in effective working order or the engine is constructed, equipped, and maintained for the prevention of fire pursuant to Section 4443 of the Public Resources Code.

Spark arrester, as used in this section, is as defined in Section 4442 of the Public Resources Code.

Spark arresters attached to the exhaust system of engines on equipment or vehicles, as described in this section, shall not be placed or mounted in such a manner as to allow flames or heat from the exhaust system to ignite any flammable material.

Motortrucks, truck tractors, buses, and passenger vehicles, except motorcycles, are not subject to the provisions of paragraph (2) of subdivision (a) if the exhaust system is equipped with a muffler as defined in the Vehicle Code.

(Amended by Stats. 1982, Ch. 1333, Sec. 2.)

13006.5. Every owner, operator, lessee, or other person in charge of any apartment house, roominghouse, motel or hotel heretofore or hereafter constructed, or any occupant thereof, who becomes aware of any fire or smoldering combustion of an unwarranted or insidious nature which is not confined within equipment designed for fire or which is a hazard to the apartment house, roominghouse, motel or hotel, shall be guilty of a misdemeanor if he shall fail to report said fire or smoldering combustion without delay to the local fire department.

(Added by Stats. 1965, Ch. 733.)

13007. Any person who personally or through another wilfully, negligently, or in violation of law, sets fire to, allows fire to be set to, or allows a fire kindled or attended by him to escape to, the property of another, whether privately or publicly owned, is liable to the owner of such property for any damages to the property caused by the fire.

(Added by Stats. 1953, Ch. 48.)

13008. Any person who allows any fire burning upon his property to escape to the property of another, whether privately or publicly owned, without exercising due diligence to control such fire, is liable to the owner of such property for the damages to the property caused by the fire.

(Added by Stats. 1953, Ch. 48.)

13009. (a) Any person (1) who negligently, or in violation of the law, sets a fire, allows a fire to be set, or allows a fire kindled or attended by the person to escape onto any public or private property, (2) other than a mortgagee, who, being in actual possession of a structure, fails or refuses to correct, within the time allotted for correction, despite having the right to do so, a fire hazard prohibited by law, for which a public agency properly has issued a notice of violation respecting the hazard, or (3) including a mortgagee, who, having an obligation under other provisions of law to correct a fire hazard prohibited by law, for which a public agency has properly issued a notice of violation respecting the hazard, fails or refuses to correct the hazard within the time allotted for correction, despite having the right to do so, is liable for the fire suppression costs incurred in fighting the fire and for the cost of providing rescue or emergency medical services, and those costs shall be a charge against that person. The charge shall constitute a debt of that person, and is collectible by the person, or by the federal, state, county, public, or private agency, incurring those costs in the same manner as in the case of an obligation under a contract, expressed or implied.

(b) Public agencies participating in fire suppression, rescue, or emergency medical services as set forth in subdivision (a), may designate one or more of the participating agencies to bring an action to recover costs incurred by all of the participating agencies. An agency designated by the other participating agencies to bring an action pursuant to this section shall declare that authorization

and its basis in the complaint, and shall itemize in the complaint the total amounts claimed under this section by each represented agency.

(c) Any costs incurred by the Department of Forestry and Fire Protection in suppressing any wildland fire originating or spreading from a prescribed burning operation conducted by the department pursuant to a contract entered into pursuant to Article 2 (commencing with Section 4475) of Chapter 7 of Part 2 of Division 4 of the Public Resources Code shall not be collectible from any party to the contract as provided in subdivision (a), to the extent that those costs were not incurred as a result of a violation of any provision of the contract.

(d) This section applies to all areas of the state, regardless of whether primarily wildlands, sparsely developed, or urban.

(e) The statute of limitations applicable to an action brought pursuant to this section is that set forth in Section 338 of the Code of Civil Procedure.

(Amended by Stats. 2021, Ch. 401, Sec. 20. (AB 1578) Effective January 1, 2022.)

13009.1. (a) Any person (1) who negligently, or in violation of the law, sets a fire, allows a fire to be set, or allows a fire kindled or attended by the person to escape onto any public or private property, (2) other than a mortgagee, who, being in actual possession of a structure, fails or refuses to correct, within the time allotted for correction, despite having the right to do so, a fire hazard prohibited by law, for which a public agency properly has issued a notice of violation respecting the hazard, or (3) including a mortgagee, who, having an obligation under other provisions of law to correct a fire hazard prohibited by law, for which a public agency properly has issued a notice of violation respecting the hazard, fails or refuses to correct the hazard within the time allotted for correction, despite having the right to do so, is liable for both of the following:

(1) The cost of investigating and making any reports with respect to the fire.

(2) The costs relating to accounting for that fire and the collection of any funds pursuant to Section 13009, including, but not limited to, the administrative costs of operating a fire suppression cost recovery program. The liability imposed pursuant to this paragraph is limited to the actual amount expended that is attributable to the fire.

(b) In any civil action brought for the recovery of costs provided in this section, the court in its discretion may impose the amount of liability for costs described in subdivision (a).

(c) The burden of proof as to liability shall be on the plaintiff and shall be by a preponderance of the evidence in an action alleging that the defendant is liable for costs pursuant to this section. The burden of proof as to the amount of costs recoverable shall be on the plaintiff and shall be by a preponderance of the evidence in any action brought pursuant to this section.

(d) Any testimony, admission, or any other statement made by the defendant in any proceeding brought pursuant to this section, or any evidence derived from the testimony, admission, or other statement, shall not be admitted or otherwise used in any criminal proceeding arising out of the same conduct.

(e) The liability constitutes a debt of that person and is collectible by the person, or by the federal, state, county, public, or private agency, incurring those costs in the same manner as in the case of an obligation under a contract, expressed or implied.

(f) This section applies in all areas of the state, regardless of whether primarily wildlands, sparsely developed, or urban.

(g) The statute of limitations applicable to an action brought pursuant to this section is that set forth in Section 338 of the Code of Civil Procedure.

(Amended by Stats. 2021, Ch. 401, Sec. 21. (AB 1578) Effective January 1, 2022.)

13009.2. (a) In a civil action by a public agency seeking damages caused by a fire, pecuniary damages must be quantifiable and not unreasonable in relation to the prefire fair market value of the property, taking into consideration the ecological and environmental value of the property to the public. The only recoverable pecuniary damages shall be:

(1) Either the restoration and rehabilitation costs associated with bringing the damaged property back to its preinjured state or replacement or acquisition costs of equivalent value, or diminution in value of property as a result of the fire, including lost timber value, or some combination thereof.

(2) Short-term costs related to immediate damages suffered as a result of the fire, such as burned area emergency response costs, costs associated with discrete restoration activities related to repair and replacement of real property improvements, and remediation and eradication costs relative to invasive species and any other nonnative infestation caused by or exacerbated by sudden burn area conditions.

(b) In addition to the damages authorized by subdivision (a), a public agency may also recover ecological and environmental damages caused by the fire, if those damages are quantifiable, and are not redressed by the damages set forth in subdivision (a),

taking into consideration the ecological and environmental value of the property to the public. Ecological and environmental damages may include:

- (1) Lost recreational value.
- (2) Lost interim use.
- (3) Lost historical and archeological value.
- (4) Damage to wildlife, wildlife habitat, water or soil quality, or plants.
- (5) Damage to any rare natural features of the property.
- (6) Lost aesthetic value.

(c) In assessing the reasonableness of damages under subdivision (b), the prefire fair market value of the property is relevant and one factor to be considered, in addition to the other factors listed in subdivision (b).

(d) A public agency plaintiff who claims environmental damages of any kind under subdivision (a) or (b) shall not seek to enhance any pecuniary or environmental damages recovered under this section. This section is not intended to alter the law regarding whether Section 3346 of the Civil Code or Section 733 of the Code of Civil Procedure can be used to enhance fire damages, but this section does confirm that if a public agency claims environmental damages under subdivision (a) or (b), it shall not seek to enhance any damages recovered under this section for any reason, and shall not use Section 3346 of the Civil Code or Section 733 of the Code of Civil Procedure to do so, regardless of whether those sections might otherwise apply. This section is not intended to limit or change the ability of a public agency to recover costs arising from a fire as provided in Sections 13009 and 13009.1.

(e) For purposes of this section, the term "public agency" means the United States of America or any political subdivision thereof, the State of California, any city, county, district, public agency, or any other public subdivision of the state.

(f) This section shall apply only to a civil action filed on or after the effective date of the act adding this section.

(Added by Stats. 2012, Ch. 289, Sec. 1. (AB 1492) Effective September 11, 2012.)

13009.5. Where the Department of Forestry and Fire Protection utilizes inmate labor for fighting fires, the charge for their use, for the purpose of Section 13009, shall be set by the Director of Forestry and Fire Protection. In determining the charges, he or she may consider, in addition to costs incurred by the department, the per capita cost to the state of maintaining the inmates.

(Amended by Stats. 1992, Ch. 427, Sec. 92. Effective January 1, 1993.)

13009.6. (a) (1) Those expenses of an emergency response necessary to protect the public from a real and imminent threat to health and safety by a public agency to confine, prevent, or mitigate the release, escape, or burning of hazardous substances described in subdivision (c) are a charge against any person whose negligence causes the incident, if either of the following occurs:

(A) Evacuation from the building, structure, property, or public right-of-way where the incident originates is necessary to prevent loss of life or injury.

(B) The incident results in the spread of hazardous substances or fire posing a real and imminent threat to public health and safety beyond the building, structure, property, or public right-of-way where the incident originates.

(2) Expenses reimbursable to a public agency under this section are a debt of the person liable therefor, and shall be collectible in the same manner as in the case of an obligation under contract, express or implied.

(3) The charge created against the person by this subdivision is also a charge against the person's employer if the negligence causing the incident occurs in the course of the person's employment.

(4) The public agencies participating in an emergency response meeting the requirements of paragraph (1) of this subdivision may designate one or more of the participating agencies to bring an action to recover the expenses incurred by all of the designating agencies which are reimbursable under this section.

(5) An action to recover expenses under this section may be joined with any civil action for penalties, fines, injunctive, or other relief brought against the responsible person or employer, or both, arising out of the same incident.

(b) There shall be deducted from any amount otherwise recoverable under this section, the amount of any reimbursement for eligible costs received by a public agency pursuant to Part 2 (commencing with Section 78000) of Division 45. The amount so reimbursed may be recovered as provided in Section 79650.

(c) As used in this section, "hazardous substance" means any hazardous substance listed in subdivision (a) of Section 78075 or subdivision (q) of Section 25501 of this code, or in Section 6382 of the Labor Code.

(d) As used in this section, "mitigate" includes actions by a public agency to monitor or model ambient levels of airborne hazardous substances for the purpose of determining or assisting in the determination of whether or not to evacuate areas around the property where the incident originates, or to determine or assist in the determination of which areas around the property where the incident originates should be evacuated.

(Amended by Stats. 2022, Ch. 258, Sec. 31. (AB 2327) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 130 of Stats. 2022, Ch. 258.)

13010. Sections 13007, 13008, and 13009 of this code do not apply to nor affect any rights, duties, or causes of action in existence and accruing prior to August 14, 1931.

(Added by Stats. 1953, Ch. 48.)

13011. Both doors of any double doors designated as the public entrance to any place of business shall be kept unlocked during normal business hours.

(Added by Stats. 1983, Ch. 267, Sec. 1.)