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SENATE BILL 798

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

John Arthur Smith

AN ACT

RELATING TO CRIMINAL OFFENSES; PROVIDING FOR LIABILITY FOR COSTS INCURRED FOR FIGHTING A FOREST FIRE AND FOR DAMAGES; PROVIDING FOR ARREST FOR VIOLATION OF FOREST FIRE LAWS; REPEALING SECTION 30-32-2 NMSA 1978 (BEING LAWS 1921, CHAPTER 33, SECTION 5, AS AMENDED).

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

Section 1. Section 30-32-1 NMSA 1978 (being Laws 1921, Chapter 33, Section 4, as amended) is amended to read:

"30-32-1. FIRES EXTINGUISHED BY OFFICERS--RESPONSIBILITY FOR COSTS.--

A. As used in this section, "forest fire" means a fire burning uncontrolled on lands covered wholly or in part by timber, brush, grass, grain or other inflammable vegetation.

~~[B. Any forest fire in New Mexico without proper~~

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1 ~~precaution being taken to prevent its spread is hereby declared~~  
2 ~~to be a public nuisance by reason of its menace to life or~~  
3 ~~property.~~

4 ~~G. Any person, firm or corporation responsible for~~  
5 ~~either the starting or the existence of such fire is hereby~~  
6 ~~required to commence efforts with reasonably available~~  
7 ~~equipment and personnel to control or to extinguish it~~  
8 ~~immediately, and if the responsible person, firm or corporation~~  
9 ~~refuses, neglects or fails to commence and to continue~~  
10 ~~reasonable efforts to do so, the state forester or his agents~~  
11 ~~or peace officers of the state upon investigation and finding~~  
12 ~~of fact that life and property are endangered may declare the~~  
13 ~~fire a public nuisance and may summarily abate the nuisance~~  
14 ~~thus constituted by controlling or extinguishing the fire and~~  
15 ~~the cost thereof may be recovered from the responsible person,~~  
16 ~~firm or corporation by action for debt.]~~

17 B. A person who willfully or negligently sets a  
18 forest fire or causes a forest fire to be set for which efforts  
19 to control or extinguish the fire are exerted by the forestry  
20 division of the energy, minerals and natural resources  
21 department; an agency under agreement with the energy, minerals  
22 and natural resources department; a county or municipality; or  
23 any fire protection agency of the United States shall be liable  
24 for the costs incurred, including expenses for fighting the  
25 fire and costs of investigation and litigation, including

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1 reasonable attorney fees."

2 Section 2. Section 30-32-3 NMSA 1978 (being Laws 1921,  
3 Chapter 33, Section 6) is amended to read:

4 "30-32-3. ARREST FOR VIOLATIONS.--~~[Voluntary forest fire~~  
5 ~~wardens and]~~ All peace officers of the state, including ~~[deputy~~  
6 ~~game and fish wardens, shall]~~ department of game and fish  
7 conservation officers, have the power to make arrests on  
8 warrant issued by any magistrate of the state for violation of  
9 any of the state forest fire laws, including Chapter 68,  
10 Article 2 NMSA 1978, rules implementing Chapter 68, Article 2  
11 NMSA 1978 or fire restrictions issued pursuant to such rules,  
12 or without warrant for violations ~~[thereof]~~ of those laws  
13 committed in their presence, and shall not be liable to civil  
14 action for trespass for acts done in the discharge of their  
15 duties."

16 Section 3. Section 30-32-4 NMSA 1978 (being Laws 1882,  
17 Chapter 61, Section 7, as amended) is amended to read:

18 "30-32-4. DAMAGES TO PERSON INJURED.--~~[SEC. 69 If any~~  
19 ~~person shall set on fire any woods, marshes, prairies, whether~~  
20 ~~his own or not, so as thereby to occasion any damage to any~~  
21 ~~other person, such person shall make satisfaction in]~~ A person  
22 who sets a forest fire or causes a forest fire to be set and  
23 that fire injures another person or damages the other person's  
24 property shall be liable for double damages to the party  
25 injured to be recovered by civil action."

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Section 4. REPEAL.--Section 30-32-2 NMSA 1978 (being Laws  
1921, Chapter 33, Section 5, as amended) is repealed.