



## SB 332 – DODD PRESCRIBED BURNING - LIABILITY

### Summary

SB 332 would establish a “gross negligence” liability standard for individuals who are trained and certified as a qualified burn boss when conducting prescribed burn operations for vegetation management and wildfire prevention purposes. The bill would also apply the same standard of negligence for property owners who contract with trained and certified burn bosses to conduct prescribed burns on their property.

### Background

Prescribed burning is the controlled application of fire to the land to reduce wildfire hazards, clear downed trees, control plant diseases, improve rangeland and wildlife habitats, and restore natural ecosystems. Sometimes called a controlled burn or prescribed fire, prescribed burning is one of the most important and cost-effective tools used to manage fire today. As catastrophic wildfires continue to be a growing concern in California, the use of prescribed burning to reduce hazardous fuels is projected to increase. Daily burn decisions are issued based on the forecast of fire risk, air quality and meteorological conditions that can affect smoke dispersion. People who conduct prescribed burn operations are known as “burn bosses.”

Resistance to the use of prescribed fire is strong among many private land managers despite the advantages it offers for maintaining fire-prone ecosystems. Often, managers who are aware of the benefits of using prescribed fire as a

management tool avoid using it because of fear of liability for damages that may result from an escaped fire or smoke even though prescribed burns rarely escape their containment and almost never cause losses. In the United States, state open burning statutes define the standard of care owed to the public by burn bosses. In a lawsuit, a burn boss will be found liable for damages resulting from their fire or smoke if they have not met the standard of care prescribed by their state statute. If a state has not developed a statute specifically related to open burning or prescribed burning, judges will apply the standard of care established by previous prescribed burning cases in their state. Three different standards of care have emerged for prescribed fire practitioners: strict liability, simple negligence, and gross negligence.

Liability insurance has become one of the major barriers to prescribed fire. If private companies, contractors, land trusts, and non-profits cannot obtain sufficient insurance, they are unable to implement prescribed burning. Land managers who are aware of the benefits of using prescribed fire as a management tool avoid using it, citing potential liability and lack of available insurance as a major reason for their aversion. Recognizing the importance of prescribed fire for wildfire risk reduction, ecosystem management and the constraints current statutory schemes impose on its use, several states in the United States have undertaken prescribed burn statutory reform.



Five states have adopted gross negligence standards, in whole or in part: Florida, Georgia, Michigan, Nevada, and South Carolina. Perhaps unsurprisingly, states with gross negligence standards see significantly more private burning. Research shows that prescribed fire is applied more often and to more land in states with gross negligence standards than in neighboring states with simple negligence standards. There is also evidence that limiting burn boss liability via gross negligence standards can increase private landowner participation in the use of prescribed fire even when the regulations for attaining this limited liability are more onerous.

### **Existing Law**

Under current California law burn bosses are subject to a “simple negligence” standard of liability. This liability standard means that any person “who personally or through another, willfully, negligently, or in violation of law” sets fire or allows an escaped fire to damage another’s property is liable for that damage. Likewise, property owners can be liable for third-party damage caused by fire escaping from their property, even if they do not set the fire, if they are found to have failed to exercise “due diligence” to control the fire. While these statutes refer explicitly to *property* damages, courts have held that burn bosses and property owners can also be liable under these statutes for other harms, such as bodily injury, death, or smoke-related harms.

State law also holds burn bosses responsible for fire suppression costs. Specifically, anyone who “negligently, or in violation of the law” allows a fire to escape is liable for the costs of fire suppression, rescue and medical services, and related investigations.

If a burn boss obtains a burn permit from CAL FIRE, then state law provides that “compliance with the permit issued [] constitute[s] prima facie evidence of due diligence.” In other words, if the burn boss obtains a CAL FIRE permit, and can demonstrate compliance with every term, then the burn boss may prove—in the first instance—that their actions were not negligent and they should not be liable. However, a harmed party can still rebut that showing, either by proving that the burn boss did not comply with the terms of the permit, that the permit terms were not reasonable, or perhaps that the permit was obtained with false or misleading information. In addition, CalFire burn permits are not required for all types of prescribed burns and at all times of year.

Under existing law the State Fire Marshall has developed a curriculum for the training and certification of burn bosses who manage prescribed burns. The curriculum provides for the initial training and certification, as well as continuing education of burn bosses such that each trained and certified burn boss is deemed qualified to engage in prescribed burning operations. Burn bosses are highly experienced fire practitioners – typically with more than a decade of experience in wildland fire.

### **This Bill**

SB 332 simply says that individuals who have been trained and met the certification standards established by the State Fire Marshall pursuant to state law, and who possess authority to engage in prescribed burn operations, shall not be liable for any damage or injury to property or persons that is caused by an authorized prescribed burn unless the prescribed burn was conducted in a grossly negligent manner. The bill would also apply this standard to property owners who contract with



a trained and certified burn boss who supervises or oversees a prescribed burn on their property.

**Support**

None on File

**Opposition**

None on File

**Contact**

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