

By: Murr

H.B. No. 2053

A BILL TO BE ENTITLED

AN ACT

relating to individuals and organizations providing certain services and liability in connection with prescribed burns.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 352.081(f), Local Government Code, is amended to read as follows:

(f) This section does not apply to outdoor burning activities:

(1) related to public health and safety that are authorized by the Texas Commission on Environmental Quality for:

(A) firefighter training;

(B) public utility, natural gas pipeline, or mining operations; or

(C) planting or harvesting of agriculture crops;

or

(2) that are conducted by a certified and insured prescribed burn manager certified under Section 153.048, Natural Resources Code, and meet the standards of Section 153.047, Natural Resources Code [~~, or~~

~~(3) that are conducted by the members of a prescribed burning organization under the conditions provided by Section 153.049, Natural Resources Code, and meet the standards of Section 153.047, Natural Resources Code].~~

SECTION 2. Sections 153.004 and 153.047, Natural Resources

1 Code, are amended to read as follows:

2 Sec. 153.004. PRESCRIBED BURNING IN STATE OF EMERGENCY OR
3 DISASTER. A certified and insured prescribed burn manager [~~or the~~
4 ~~members of a prescribed burning organization~~] may conduct a burn in
5 a county in which a state of emergency or state of disaster has been
6 declared by the governor or the president of the United States,
7 unless the declaration expressly prohibits all outdoor burning.

8 Sec. 153.047. PRESCRIBED BURNING STANDARDS. Minimum
9 standards established by the board for prescribed burning must:

10 (1) ensure that prescribed burning is the controlled
11 application of fire to naturally occurring or naturalized
12 vegetative fuels under specified environmental conditions in
13 accordance with a written prescription plan:

14 (A) designed to confine the fire to a
15 predetermined area and to accomplish planned land management
16 objectives; and

17 (B) that conforms to the standards established
18 under this section;

19 (2) require that~~+~~

20 ~~[(A)]~~ at least one certified and insured
21 prescribed burn manager is present on site during the conduct of the
22 prescribed burn; ~~or~~

23 ~~[(B) the burn be conducted by the members of a~~
24 ~~prescribed burning organization,]~~

25 (3) establish appropriate guidelines for size of
26 burning crews sufficient to:

27 (A) conduct the burn in accordance with the

1 prescription plan; and

2 (B) provide adequate protection for the safety of
3 persons and of adjacent property;

4 (4) include standards for notification to adjacent
5 land owners, the Texas Commission on Environmental Quality, and
6 local fire authorities; and

7 (5) include minimum insurance requirements for
8 certified and insured prescribed burn managers [~~and prescribed~~
9 ~~burning organizations~~].

10 SECTION 3. Section 153.081(a), Natural Resources Code, is
11 amended to read as follows:

12 (a) Subject to Section 153.082, an owner, lessee, or
13 occupant of agricultural or conservation land is not liable for
14 property damage or for injury or death to persons caused by or
15 resulting from prescribed burning conducted on the land owned by,
16 leased by, or occupied by the person if the prescribed burning is
17 conducted[+]

18 [~~(1)~~] under the supervision of a certified and insured
19 prescribed burn manager [~~+ or~~

20 [~~(2) by the members of a prescribed burning~~
21 ~~organization~~].

22 SECTION 4. Section 153.082, Natural Resources Code, is
23 amended to read as follows:

24 Sec. 153.082. INSURANCE. The limitation on liability under
25 Section 153.081 does not apply to an owner, lessee, or occupant of
26 agricultural or conservation land unless:

27 (1) the burn is conducted under the supervision of a

1 certified and insured prescribed burn manager who has liability
2 insurance coverage:

3 (A) of at least \$1 million for each single
4 occurrence of bodily injury or death, or injury to or destruction of
5 property; and

6 (B) with a policy period minimum aggregate limit
7 of at least \$2 million; or

8 (2) the owner, lessee, or occupant is a governmental
9 unit, as that term is defined by Section 2259.001, Government Code,
10 that has a self-insurance program that provides the amount of
11 coverage required by Subdivision (1) [~~or~~

12 ~~[(3) the burn is conducted by the members of a~~
13 ~~prescribed burning organization that has insurance coverage in an~~
14 ~~amount not less than the amount established by the board under~~
15 ~~Section 153.046].~~

16 SECTION 5. Subchapter C, Chapter 153, Natural Resources
17 Code, is amended by adding Section 153.083 to read as follows:

18 Sec. 153.083. LIABILITY REGARDING CERTAIN PRESCRIBED
19 BURNS. (a) In this section, "burn boss" means an individual
20 responsible for directing a prescribed burn under a written
21 prescription plan described by Section 153.047.

22 (b) Except as provided by Subsection (c), if a prescribed
23 burn is conducted in accordance with a written prescription plan
24 described by Subsection (d) and Section 153.047, a person may be
25 held liable for property damage, personal injury, or death caused
26 by or resulting from the burn only if the person:

27 (1) is the burn boss; and

1 (2) is otherwise liable under other law.

2 (c) Subject to Sections 153.081 and 153.082, a person other
3 than the burn boss, including a person assisting or acting under the
4 direction of the burn boss, may be held liable for property damage,
5 personal injury, or death caused by or resulting from the burn only
6 if the person:

7 (1) commits gross negligence or intentionally causes
8 the property damage, personal injury, or death; and

9 (2) is otherwise liable under other law.

10 (d) For purposes of this section, if the burn boss is not the
11 owner, lessee, or occupant of the land on which the burn is
12 conducted, the written prescription plan must include:

13 (1) the signature of:

14 (A) the burn boss; or

15 (B) the owner, lessee, or occupant of the land on
16 which the burn is conducted; and

17 (2) a contract acknowledging liability.

18 (e) Nothing in this section may be construed to create a
19 cause of action or to create a standard of care, obligation, or duty
20 that forms the basis of a cause of action.

21 SECTION 6. Sections 153.001(3) and 153.049, Natural
22 Resources Code, are repealed.

23 SECTION 7. The change in law made by this Act applies only
24 to a cause of action that accrues on or after the effective date of
25 this Act. A cause of action that accrues before the effective date
26 of this Act is governed by the law applicable to the cause of action
27 immediately before the effective date of this Act, and that law is

1 continued in effect for that purpose.

2 SECTION 8. This Act takes effect September 1, 2019.