

PRESCRIBED BURNING LAWS

ISSUE

Prescribed burning is a technique that has been used by land managers for centuries. During a prescribed burn, a carefully monitored fire is intentionally set for resource-management purposes. Fire is a natural part of both forest and grassland ecology, and prescribed burns can halt encroachment of non-native species, enrich soil, provide better forage for wildlife, and prevent catastrophic wildfires by reducing the accumulation of fuels. These burns can be a cost-effective tool for restoring and managing forests, croplands, and rangelands.

Despite fire's many benefits for working lands and the environment, landowners are often reluctant to conduct prescribed burns. Fires, of course, can grow out of control and damage neighboring properties—possibly making landowners who use prescribed burns liable for such damages. Liability rules governing prescribed burns are regulated by state law, and states apply one of three liability standards to lawsuits involving prescribed burns: strict liability, simple negligence, or gross negligence. Strict liability holds burners liable for any property damage caused by an escaped burn, regardless of the action of the burner. Simple negligence requires the plaintiff to show the burner did not practice reasonable care and was negligent, which would allow the plaintiff to collect damages in a lawsuit. Gross negligence is the most lenient standard; it holds that, assuming the burner followed outlined regulations, the plaintiff must show reckless disregard by the burner.

Liability standards play a role in determining the risk incurred by a landowner who sets a prescribed burn on his or her land. Even if a burn plan is followed and a landowner responsibly manages a fire, there is always a chance that a fire can grow out of

control and damage a neighbor's property. Research has found that private landowners are more likely to use prescribed fire to manage their properties and burn a greater portion of their lands—both of which improve environmental quality—when there are gross negligence standards as opposed to strict-liability or simple-negligence ones.¹⁸

Yet only four states have gross negligence standards for prescribed burning, meaning that in nearly all states, working landowners are less likely to use environmentally beneficial prescribed burns because of the enormous liability risk if something goes wrong.¹⁹ Policies that increase liabilities for burners decrease prescribed burning—and the environmental benefits that come with it.

REFORM

One approach to encourage wider use of prescribed burns on working lands is to amend liability laws to gross negligence. In cases of damage, this standard places the burden on a plaintiff to show reckless disregard by a burner so long as the burner followed outlined burn regulations. Lowering liability restrictions in the 46 states that do not have gross negligence standards would significantly increase the use of prescribed burning.

Though prescribed burning can be beneficial for the environment, less stringent liability laws increase fire risks for neighboring properties. Gross negligence standards can make it more difficult for a plaintiff to be compensated for damages by a burner. While such trade-offs must be carefully weighed, the status quo of strict liability and simple negligence policies, followed by virtually all states,



Prescribed burning (left) can reduce fuel accumulation and encourage new growth to take root (right).

results in exceedingly little prescribed burning. The consequence is foregoing a great deal of environmental good that could be done by using prescribed fire on private woodlands, farms, and ranches across the country.

One way to promote prescribed burning while mitigating potential damages to neighboring properties is to use prescribed burn insurance. A home, farm, or ranch insurance policy does not cover damage a policyholder causes to other property. By sharing best management practices and pooling risk across the state, prescribed burn insurance can help landowners reduce fire hazards.

In Oklahoma, the Samuel Roberts Noble Foundation, the Oklahoma Prescribed Burn Association, and the Bramlett Agency worked together to address prescribed burn liability. The Bramlett Agency now offers prescribed burn insurance, a property and casualty liability program. The policy protects landowners or lessees implementing prescribed fire

against claims for any damage on someone else's property, providing up to \$1 million in general liability coverage. A policy costs \$500 a year and covers two prescribed burns, but coverage for additional burns can be purchased for \$250 per burn. To be eligible for a policy, landowners must follow all legal statutes and ordinances, adhere to set prescribed burn requirements, and develop and adhere to a prescribed burn plan.

Research has shown that the fear of being held liable for damages caused by an escaped burn limits landowners' use of fire as a land management tool.²⁰ To encourage the use of prescribed burning to boost pasture productivity, improve wildlife habitat, and stimulate new plant growth, it is important to reduce the economic risk for landowners. Prescribed burn insurance reduces risk while still ensuring damages are covered.