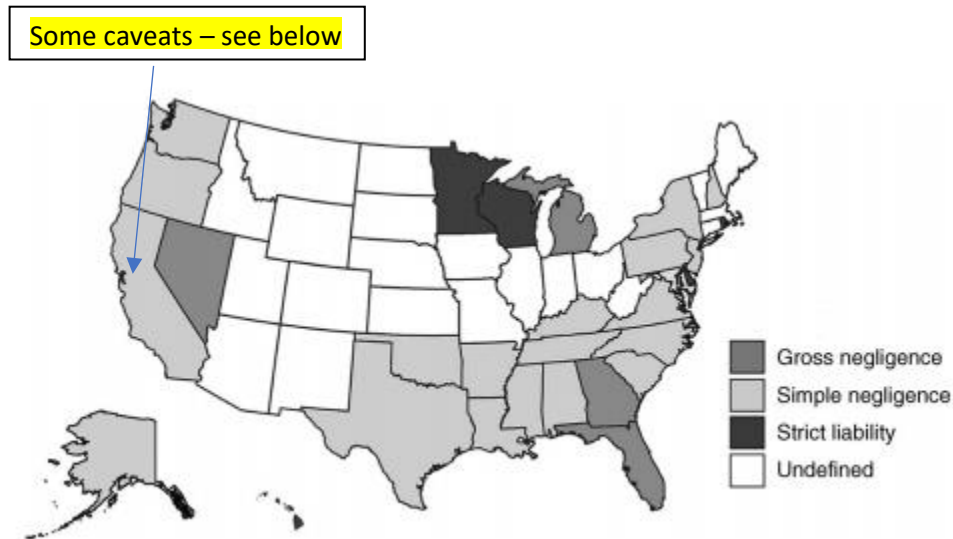


PRESCRIBED FIRE LIABILITY LAWS—A NATIONAL PERSPECTIVE



Map from Wonkka et al. 2015

Gross negligence: Liable if proven grossly negligent

Simple negligence: Liable if proven negligent

Strict liability: Liable for damages under any circumstance

Undefined liability: No statutes relating to prescribed fire liability; often defaults to simple negligence standards.

CALIFORNIA CODES RELATED TO PRESCRIBED FIRE

PUBLIC RESOURCES CODE - PRC

DIVISION 4. FORESTS, FORESTRY AND RANGE AND FORAGE LANDS [4001 - 4958]

(Division 4 repealed and added by Stats. 1965, Ch. 1144.)

PART 1. DEFINITIONS AND GENERAL PROVISIONS [4001 - 4034]

(Part 1 added by Stats. 1965, Ch. 1144.)

CHAPTER 2. General Provisions [4021 - 4053]

(Chapter 2 added by Stats. 1965, Ch. 1144.)

ARTICLE 1. Penalties [4021 - 4022]

(Article 1 added by Stats. 1965, Ch. 1144.)

4021.

Except as otherwise provided, the willful or negligent commission of any of the acts prohibited or the omission of any of the acts required by Chapter 2 (commencing with Section 4251) to Chapter 6 (commencing with Section 4411), inclusive, of Part 2 of this division is a misdemeanor.
(Amended by Stats. 1972, Ch. 618.)

PUBLIC RESOURCES CODE - PRC

DIVISION 4. FORESTS, FORESTRY AND RANGE AND FORAGE LANDS [4001 - 4958]

(Division 4 repealed and added by Stats. 1965, Ch. 1144.)

PART 2. PROTECTION OF FOREST, RANGE AND FORAGE LANDS [4101 - 4789.7]

(Part 2 added by Stats. 1965, Ch. 1144.)

CHAPTER 6. Prohibited Activities [4411 - 4446]

(Chapter 6 added by Stats. 1965, Ch. 1144.)

ARTICLE 2. Prohibited Activities [4421 - 4446]

(Article 2 added by Stats. 1965, Ch. 1144.)

4421.

A person shall not set fire or cause fire to be set to any forest, brush, or other flammable material which is on any land that is not his own, or under his legal control, without the permission of the owner, lessee, or agent of the owner or lessee of the land.

(Repealed and added by Stats. 1965, Ch. 1144.)

4422.

A person shall not do any of the following:

- (a) Willfully or knowingly allow fire to burn uncontrolled on land which he owns or controls, or to escape to the lands of any person other than that of the owner.
- (b) Allow any fire kindled or attended by him to escape from his control or to spread to the land of any person other than from the land from which the fire originated.

(Added by Stats. 1965, Ch. 1144.)

4423.

A person shall not burn any brush, stumps, logs, fallen timber, fallows, slash, grass-covered land, brush-covered land, forest-covered land, or other flammable material, in any state responsibility area, area receiving fire protection by the department by contract, or upon federal lands administered by the United States Department of Agriculture or Department of the Interior, unless the person has a written permit from the department or its duly authorized representative or the authorized federal officer on federal lands administered by the United States Department of Agriculture or of the Interior and in strict accordance with the terms of the permit:

- (a) At any time in Zone A.

(b) At any time in Zone B between May 1st and the date the director declares, by proclamation, that the hazardous fire conditions have abated for that year, or at any other time in Zone B during any year when the director has declared, by proclamation, that unusual fire hazard conditions exist in the area. The issuing agency may require the permittee to contact the agency to determine permit suspension status prior to burning.

(Amended by Stats. 1988, Ch. 270, Sec. 4.)

4423.1.

Burning under permit by any person on public or private lands, except within incorporated cities, may be suspended, restricted, or otherwise prohibited by proclamation. Any of the following public officers may issue a proclamation, which shall be applicable within their respective jurisdictions:

- (a) The director or his or her designee.
- (b) Any county fire warden with the approval of the director.
- (c) The federal officers directing activities within California of the United States Bureau of Land Management, the National Park Service, and the United States Forest Service.

The proclamation may be issued when, in the judgment of the issuing public official, the menace of destruction by fire to life, improved property, or natural resources is, or is forecast to become, extreme due to critical fire weather, fire suppression forces being heavily committed to control fires already burning, acute dryness of the vegetation, or other factors that may cause the rapid spread of fire. A proclamation is effective on issuance or at a time specified therein and shall remain in effect until a proclamation removing the suspension, restriction, or prohibition is issued. The proclamation may be effective for a single day or longer. The proclamation shall declare the conditions that necessitate its issuance, designate the geographic area to which it applies, require that all or specified burning under permit be suspended, restricted, or prohibited until the conditions necessitating the proclamation abate, and identify the public official issuing the proclamation. The proclamation may be in the form of a verbal or audio recorded telephone message, a press release, or a posted order.

The proclamation may be issued without complying with Chapter 3.5 (commencing with Section 11340) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(Amended by Stats. 2009, Ch. 88, Sec. 75. (AB 176) Effective January 1, 2010.)

4423.2.

(a) Whenever the burning under permit has been suspended, restricted, or prohibited by proclamation pursuant to Section 4423.1, the officer having jurisdiction may issue a restricted temporary burning permit in instances in which the continuation of burning may be essential for reasons of public health, safety, or welfare. The permit may stipulate any special precautions that are required to be followed to reduce the risk of uncontrolled fire originating from the operation.

(b) Violation of the terms of a restricted temporary burning permit is a misdemeanor, and any person upon conviction thereof shall be punished by a fine of not less than two hundred fifty dollars (\$250). No part of the fine shall be suspended. The court may permit the fine prescribed by this section to be paid in installments if the court determines that the defendant is unable to pay the fine in one lump sum.

(Amended by Stats. 1988, Ch. 270, Sec. 6.)

PUBLIC RESOURCES CODE - PRC

DIVISION 4. FORESTS, FORESTRY AND RANGE AND FORAGE LANDS [4001 - 4958]

(Division 4 repealed and added by Stats. 1965, Ch. 1144.)

PART 2. PROTECTION OF FOREST, RANGE AND FORAGE LANDS [4101 - 4789.7]

(Part 2 added by Stats. 1965, Ch. 1144.)

CHAPTER 7. Burning of Lands [4461 - 4497.2]

(Chapter 7 added by Stats. 1965, Ch. 1144.)

ARTICLE 2. Department of Forestry Burning Agreements [4475 - 4483]

(Heading of Article 2 amended by Stats. 2018, Ch. 624, Sec. 8.)

4475.

(a) The director may enter into an agreement, including a grant agreement, for prescribed burning or other hazardous fuel reduction that is consistent with this chapter and the regulations of the board with any person to conduct prescribed burning operations and joint prescribed burning operations that serve the public interest and are beneficial to the state. To be considered for the public interest and beneficial to the state, each prescribed burn shall be for any of the following purposes, or any combination of those purposes:

- (1) Prevention of high-intensity wildland fires through reduction of the volume and continuity of wildland fuels.
- (2) Watershed management.
- (3) Range improvement.
- (4) Vegetation management.
- (5) Forest improvement.
- (6) Wildlife habitat improvement.
- (7) Air quality maintenance.

(b) For the purposes of this article and consistent with subdivision (c), "person" includes, but is not limited to, private or nongovernmental entities, Native American tribes, or local, state, and federal public agencies. For purposes of this article, "person" shall also include the plural when the department determines an agreement needs to contain two or more persons as defined in this section.

(c) The Legislature finds and declares that historically, the department conducted prescribed burns only utilizing its own personnel and therefore was liable for any damages resulting from the burn. However, to reach the statewide prescribed burn goals identified in the "California Forest Carbon Plan: Managing our Forest Landscapes in a Changing Climate," to limit the threat of catastrophic wildfire, and to improve forest health, the department may have a smaller role on individual prescribed burns with a cooperator taking more control as authorized by the act adding this subdivision. This cooperator control may range from creating the burn plan to being the burn boss and conducting the burn.

*(Amended by Stats. 2018, Ch. 624, Sec. 9. **SB 1260** Effective January 1, 2019.)*

4476.

An agreement that is entered into pursuant to this article shall do all of the following:

- (a) Vest in the director the final authority to determine the time during which wildland fuel and structural fire hazards may be burned to minimize the risk of escape of a fire set in a prescribed burning operation and to facilitate maintenance of air quality.

(b) Designate an officer of the department or a **burn boss certified pursuant to Section 4477** as the burn boss with final authority to approve and amend the plan and formula applicable to a prescribed burning operation, to determine that the site has been prepared and the crew and equipment are ready to commence the operation, and to supervise the work assignments of departmental employees and all personnel furnished by the person contracting with the department until the prescribed burning is completed and all fire is declared to be out.

(c) Specify the duties of, and the precautions taken by, the person contracting with the department and any personnel furnished by that person.

(d) Provide that any personnel furnished by a person contracting with the department to assist in any aspect of site preparation or prescribed burning or other hazardous fuel reduction shall be an agent of that person for all purposes of workers' compensation. However, any volunteer recruited or used by the department to suppress a wildland fire originating or spreading from a prescribed burning operation is an employee of the department for all purposes of workers' compensation.

(e) (1) Provide that the department may, in its discretion, purchase a third-party liability policy of insurance that provides coverage against loss resulting from a wildland fire sustained by any person or public agency, including the federal government. The amount of the policy, if purchased, shall be determined by the director. The policy shall name the person contracting with the department and the department as joint policyholders. A certificate of insurance, if purchased, covering each policy shall be attached to or become a part of the agreements. If the department elects not to purchase insurance, with respect to liability arising out of performance of the agreement, the department shall, in the agreement, either (A) indemnify and hold harmless the person contracting with the department, (B) provide a maximum dollar amount of liability for the department, or (C) provide for the proportionate share of liability between the department and the person contracting with the department.

(2) If the department chooses to use option (B) or (C) as allowed pursuant to paragraph (1), the department shall determine the maximum amount of liability or proportionate share of liability for each prescribed burn conducted pursuant to this article using factors including, but not limited to, department involvement with the planning and conducting the prescribed burn, fire hazard severity, assets at risk from a wildfire without the prescribed burn being conducted, wildlife habitat, and watershed values. When using a proportionate share of liability as allowed in (C) pursuant to paragraph (1), the maximum percentage of liability for the person contracting with the department shall be 75 percent. This section does not preclude the department from purchasing an insurance policy to cover the maximum amount of state liability or state proportionate share of liability in the contract.

(f) Provide that the department shall be fully responsible for prescribed burns initiated at the department's request, with the consent of the landowner, for training or other purposes on lands owned by a nonprofit organization or other public agencies.

(Amended by Stats. 2018, Ch. 624, Sec. 12. (SB 1260) Effective January 1, 2019.)

4477.

(a) On or before January 1, 2021, the State Fire Marshal, with the involvement of the Statewide Training and Education Advisory Committee, shall develop a curriculum for, or amend into an existing curriculum, a certification program for burn bosses, who, pursuant to Section 4476, possess authority to engage in a prescribed burning operation and to enter into the necessary contracts related to a prescribed burning operation. The curriculum shall provide for the initial certification as well as the continuing education of burn bosses. It is the intent of the Legislature that this curriculum become a regular part of the training of firefighters conducted by the Department of Forestry and Fire Protection and all other appropriate accredited training providers.

(b) In addition to the curriculum and certification program developed pursuant to subdivision (a), the department shall develop a training program for prescribed fire users to certify professionals in any agency or organization as burn bosses. The department shall certify these individuals to a common standard. It is the intent of the Legislature that the department use its discretion to ensure that burn bosses are thoroughly qualified to engage in prescribed burning operations prior to issuing certifications. *(Repealed and added by Stats. 2018, Ch. 624, Sec. 14. (SB 1260) Effective January 1, 2019.)*

4479.

(a) Liability for any costs incurred by the department in suppressing any wildland fire originating or spreading from a prescribed burning operation conducted pursuant to an agreement entered into pursuant to this article shall be governed by subdivision (c) of Section 13009 of the Health and Safety Code.

(b) This section shall not apply when the department is applying for federal assistance. *(Amended by Stats. 2018, Ch. 624, Sec. 16. (SB 1260) Effective January 1, 2019.)*

4480.

In any area of the state where there are substantially more requests for prescribed burning operations or other hazardous fuel reduction pursuant to this article than can be conducted directly by the department in a single fiscal year, the director may enter into an agreement with private consultants or contractors or with other public agencies for furnishing all or a part of the state's share of the responsibility for planning the operation, preparing the site, and conducting the prescribed burning or other hazardous fuel reduction. The private consultant or contractor or other public agency, and the work assignments of its employees, shall be supervised by the burn boss when conducting prescribed burning operations, or designated officer as determined by the department when conducting other hazardous fuel reduction, as provided in subdivision (c) of Section 4476.

(Amended by Stats. 2018, Ch. 624, Sec. 17. (SB 1260) Effective January 1, 2019.)

4483.

(a) To the extent feasible, the board's Vegetation Treatment Program Programmatic Environmental Impact Report, when certified, shall serve, in addition to any identified entities in the report, as the programmatic environmental document for prescribed fires initiated by a third party for a public purpose pursuant to Section 4491.

(b) (1) It is the intent of the Legislature that additional consideration be provided for chaparral and coastal sage scrub plant communities that are being increasingly threatened by fire frequency in excess of their natural fire return patterns due to climate change and human-caused fires.

(2) Prescribed burning, mastication, herbicide application, mechanical thinning, or other vegetative treatments of chaparral or sage scrub shall occur only if the department finds that the activity will not cause "type conversion" away from the chaparral and coastal sage scrub currently on site.

(3) This subdivision shall be in addition to the requirements in the Vegetation Treatment Program Programmatic Environmental Impact Report.

(Added by Stats. 2018, Ch. 624, Sec. 18. (SB 1260) Effective January 1, 2019.)

ARTICLE 3. Private Burning of Lands Under Permit [4491 - 4494]

(Heading of Article 3 amended by Stats. 2017, Ch. 93, Sec. 1.)

4491.

(a) Cooperation by the department, as provided in this article, with a person desiring to use prescribed burning as a means of converting brush-covered lands into forage lands or to help meet wildland management goals, which has as its objective the prevention of high intensity wildland fires, watershed management, range improvement, vegetation management, forest improvement, wildlife habitat improvement, restoring ecological integrity and resilience, community wildfire protection, carbon resilience, enhancement of culturally important resources, and maintenance of air quality, or any combination thereof, is declared to be for a public purpose.

(b) This article shall be administered by the director or, if responsibility therefor is delegated by the director, by the chief of a county fire department in a county contracting with the department pursuant to Section 4129.

(c) In furtherance of this article, the department shall provide advisory service to applicants for permits as to precautions to be taken by the applicant to prevent damage to the property of others by reason of the prescribed burning, and shall provide standby fire protection, to the extent the personnel, fire crews, and firefighting equipment are available.

(Amended by Stats. 2017, Ch. 93, Sec. 2. (AB 1712) Effective January 1, 2018.)

4492.

A person, firm, or corporation, or a group or combination of persons, firms, corporations, or groups, that owns or controls brush-covered land, forest lands, woodland, grassland, shrubland, or any combination thereof within a state responsibility area may apply to the department for permission to utilize prescribed burning for those public purposes set forth in subdivision (a) of Section 4491. The application shall be on a form prescribed by the department and shall contain a description of the lands and other pertinent information that the department may require.

(Amended by Stats. 2017, Ch. 93, Sec. 3. (AB 1712) Effective January 1, 2018.)

4493.

Upon receipt of an application, the department shall inspect the land in company with the applicant to determine whether a permit shall be granted, shall prescribe the manner in which the site for the prescribed burning shall be prepared, and shall require any precautions to be taken by the applicant as may be considered reasonable to prevent damage to the property of others by reason of the burning. The precautions shall, if deemed necessary, include the advance preparation of firebreaks and the firefighting equipment and personnel desirable to conduct the prescribed burning.

(Amended by Stats. 2017, Ch. 93, Sec. 4. (AB 1712) Effective January 1, 2018.)

4494.

(a) Upon the conclusion of the examination provided for in Section 4493, the department may issue to the applicant a burning permit that shall specify the site preparation requirements and required precautions to be exercised prior to and during the burning. The issuance of a permit by the department does not relieve the permit holder from the duty of exercising due diligence to avoid damage to property of others in conducting the burning of vegetation as authorized by the permit.

(b) Compliance with a permit issued pursuant to this article shall constitute prima facie evidence of due diligence.

(Amended by Stats. 2018, Ch. 624, Sec. 19. (SB 1260) Effective January 1, 2019.)

ARTICLE 4. Air Quality and Prescribed Burns Program [4495- 4495.]

(Article 4 added by Stats. 2018, Ch. 624, Sec. 20.)

4495.

In coordination with local air pollution control and air quality management districts, the department and the State Air Resources Board shall develop and fund a program, upon appropriation by the Legislature, to enhance air quality and smoke monitoring, and to provide a public awareness campaign regarding prescribed burns. The program may include, but not be limited to, purchasing new, rapidly deployable air quality monitors. The program shall include adequate funding, upon appropriation by the Legislature, for local air pollution control and air quality management district participation and implementation costs.

(Added by Stats. 2018, Ch. 624, Sec. 20. (SB 1260) Effective January 1, 2019.)

ARTICLE 4. Prescribed Burn Insurance Pool [4500- 4500.]

(Article 4 added by Stats. 2018, Ch. 634, Sec. 1.)

4500.

(a) It is the intent of the Legislature to enact legislation to increase the pace and scale of the use of prescribed fire and to reduce barriers for conducting prescribed burns.

(b) On or before January 1, 2020, the Forest Management Task Force or its successor entity, in coordination with the Department of Insurance, shall develop recommendations for the implementation of an insurance pool or other mechanism for prescribed burn managers that reduces the cost of conducting prescribed fire while maintaining adequate liability protection for lives and property when conducting prescribed burns.

(Added by Stats. 2018, Ch. 634, Sec. 1. (AB 2091) Effective January 1, 2019.)

ARTICLE 4.3. Burning with Cooperators [4497 - 4497.2]

(Article 4.3 added by Stats. 2018, Ch. 638, Sec. 2.)

4497.

The director may enter into an agreement with the owner or any other person who has legal control of any property, any public agency with regulatory or natural resource management authority over any property that is included within any wildland, or any nonprofit organization to conduct joint prescribed burning operations that serve the public interest and are beneficial to the state. The agreement shall establish guidelines for the cooperative management of joint prescribed burning operations and shall require the completion of a project agreement for each prescribed burn, which shall include all of the following:

(a) A list of all participants.

(b) A joint prescribed burn plan.

(c) A display of the project costs to be assumed by each participant.

(d) A summary of the benefits to be received by each participant.

(Added by Stats. 2018, Ch. 638, Sec. 2. (AB 2551) Effective January 1, 2019.)

4497.2.

To be considered for the public interest and beneficial to the state, each prescribed burn, pursuant to Section 4497, shall be for any of the following purposes or any combination of the following purposes:

- (a) Prevention of high-intensity wildland fires through reduction of the volume and continuity of wildland fuels.
- (b) Watershed management.
- (c) Range improvement.
- (d) Vegetation management.
- (e) Forest improvement.
- (f) Wildlife habitat improvement.
- (g) Air quality maintenance.

(Added by Stats. 2018, Ch. 638, Sec. 2. (AB 2551) Effective January 1, 2019.)

HEALTH AND SAFETY CODE - HSC

DIVISION 12. FIRES AND FIRE PROTECTION [13000 - 14960]

(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.)

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 him or her 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, including any private consultant or contractor who entered into an agreement with that party pursuant to subdivision (d) of Section 4475.5 of the Public Resources Code, 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.

(Amended by Stats. 1994, Ch. 444, Sec. 1. Effective January 1, 1995.)