

NATURAL RESOURCES CODE

TITLE 6. TIMBER

CHAPTER 153. PRESCRIBED BURNING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 153.001. DEFINITIONS. In this chapter:

- (1) "Board" means the Prescribed Burning Board.
- (2) "Department" means the Department of Agriculture.
- (3) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1096

(H.B. 2053), Sec. 6, eff. September 1, 2019.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 2.01, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 169 (H.B. 2119), Sec. 3, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1096 (H.B. 2053), Sec. 6, eff. September 1, 2019.

Sec. 153.002. LANDOWNER'S RIGHT TO CONDUCT BURNS NOT LIMITED. This chapter does not limit a landowner's right to conduct burns on the landowner's property.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.

Sec. 153.003. LIABILITY. This chapter does not modify a landowner's liability for property damage, personal injury, or death resulting from a burn that is not conducted as provided by this chapter.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.

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

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. [1016](#)), Sec. 2.02, eff. September 1, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 169 (H.B. [2119](#)), Sec. 4, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1096 (H.B. [2053](#)), Sec. 2, eff. September 1, 2019.

SUBCHAPTER B. PRESCRIBED BURNING BOARD

Sec. 153.041. ESTABLISHMENT. (a) The Prescribed Burning Board is established within the department and is composed of:

(1) an employee of the Texas Forest Service designated by the director of the Texas Forest Service;

(2) an employee of the Parks and Wildlife Department appointed by the executive director of the Parks and Wildlife Department;

(3) an employee of the Texas Commission on Environmental Quality appointed by the executive director of the Texas Commission on Environmental Quality;

(4) an employee of the Texas AgriLife Extension Service appointed by the executive director of the Texas AgriLife Extension Service;

(5) an employee of Texas AgriLife Research appointed by the director of Texas AgriLife Research;

(6) an employee of the Texas Tech University Range and Wildlife Department appointed by the dean of the Texas Tech University College of Agricultural Sciences and Natural Resources;

(7) an employee of the department appointed by the commissioner of agriculture;

(8) an employee of the State Soil and Water Conservation Board appointed by the executive director of the State Soil and Water Conservation Board; and

(9) five persons who are:

(A) owners of agricultural land, as that term is defined by Section [153.081](#);

(B) self-employed or employed by a person other

than a governmental entity; and

(C) appointed by the commissioner of agriculture.

(b) A member serves for a two-year term.

(c) The board shall, by majority vote, elect a presiding officer from the members of the board.

(d) Appointments to the board shall be made without regard to the race, creed, sex, disability, age, religion, or national origin of the appointees.

(e) It is a ground for removal from the board that a member:

(1) does not have at the time of appointment the qualifications required by Subsection (a) for appointment to the board;

(2) does not maintain during the service on the board the qualifications required by Subsection (a) for appointment to the board;

(3) cannot because of illness or disability discharge the member's duties for a substantial part of the term for which the member is appointed; or

(4) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

(f) The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. [1016](#)), Sec. 2.03, eff. September 1, 2009.

Sec. 153.042. INFORMATION RELATING TO STANDARDS OF CONDUCT. The presiding officer of the board or the presiding officer's designee shall provide to members of the board, as often as necessary, information regarding their qualification for office under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.

Sec. 153.043. MEMBER TRAINING. (a) A person appointed to the board is not eligible for membership on the board unless the person completes at least one training program that complies with this section.

(b) The training program must provide information to the member regarding:

- (1) this chapter;
- (2) the programs operated by the board;
- (3) the role and functions of the board;
- (4) the requirements of Chapters 551, 552, and 2001, Government Code;
- (5) the requirements of the conflict of interest laws and other laws relating to public officials; and
- (6) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement for travel expenses incurred in attending the training program as provided by the General Appropriations Act as if the person were a member of the board.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.

Sec. 153.044. SUNSET PROVISION. The Prescribed Burning Board is subject to Chapter 325, Government Code (Texas Sunset Act). The board shall be reviewed during the period in which the Department of Agriculture is reviewed.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.

Amended by Acts 2003, 78th Leg., ch. 1112, Sec. 2.04, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1227 (H.B. 1116), Sec. 3.05, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 2.04, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 2.04, eff. September 1, 2009.

Sec. 153.045. ADVISORY BOARD. (a) The board shall establish an advisory board of members of the public, including individuals representing:

- (1) property owners;
- (2) agriculture, forestry, and livestock producers;
- (3) conservation interests;
- (4) environmental interests; and
- (5) insurance interests.

(b) The board shall determine the number of persons and manner of selection of the advisory board.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.

Sec. 153.046. DUTIES. The board shall:

- (1) establish standards for prescribed burning;
- (2) develop a comprehensive training curriculum for certified and insured prescribed burn managers;
- (3) establish standards for certification, recertification, and training for certified and insured prescribed burn managers;
- (4) establish minimum education and professional requirements for instructors for the approved curriculum; and
- (5) establish insurance requirements for certified and insured prescribed burn managers in amounts not less than those required by Section [153.082](#).

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. [1016](#)), Sec. 2.05, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 565 (S.B. [702](#)), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 169 (H.B. [2119](#)), Sec. 5, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1096 (H.B. [2053](#)), Sec. 2, eff. September 1, 2019.

Sec. 153.047. PRESCRIBED BURNING STANDARDS. Minimum

standards established by the board for prescribed burning must:

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

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

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

(2) require that at least one certified and insured prescribed burn manager is present on site during the conduct of the prescribed burn;

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

(A) conduct the burn in accordance with the prescription plan; and

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

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

(5) include minimum insurance requirements for certified and insured prescribed burn managers.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. [1016](#)), Sec. 2.06, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 169 (H.B. [2119](#)), Sec. 6, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1096 (H.B. [2053](#)), Sec. 2, eff. September 1, 2019.

Sec. 153.048. CERTIFIED AND INSURED PRESCRIBED BURN MANAGERS. (a) Minimum standards established by the board for certification as a certified and insured prescribed burn manager must require the completion of the approved training curriculum to

be developed and promulgated by the board and taught by an approved instructor.

(b) The board shall certify a person as a certified and insured prescribed burn manager if the person:

(1) applies to the board for certification;

(2) demonstrates completion of an approved training program by an approved instructor;

(3) pays a fee to the board in an amount determined by the board; and

(4) meets the insurance requirements established by the board under Section [153.046](#).

(c) The certification is for two years.

(d) A person may renew certification only by completing a continuing education program established by the board.

(e) The board shall maintain a register of certified and insured prescribed burn managers and dates of completion of initial and continuing training.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. [1016](#)), Sec. 2.07, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 565 (S.B. [702](#)), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 565 (S.B. [702](#)), Sec. 3, eff. September 1, 2013.

SUBCHAPTER C. LIMITATIONS ON LIABILITY

Sec. 153.081. LIMITATION OF OWNER LIABILITY.

(a) Subject to Section [153.082](#), an owner, lessee, or occupant of agricultural or conservation land is not liable for property damage or for injury or death to persons caused by or resulting from prescribed burning conducted on the land owned by, leased by, or occupied by the person if the prescribed burning is conducted under the supervision of a certified and insured prescribed burn manager.

(b) This section does not apply to an owner, lessee, or

occupant of agricultural or conservation land who is a certified and insured prescribed burn manager and conducts a burn on that land.

(c) In this section, "agricultural or conservation land" means land that is located in this state and that is suitable for:

(1) use and production of plants and fruits for human or animal consumption or plants grown for the production of fibers, floriculture, viticulture, horticulture, or planting seed;

(2) forestry and the growing of trees for the purpose of rendering those trees into lumber, fiber, or other items used for industrial, commercial, or personal consumption;

(3) domestic or native farm or ranch animals kept for use or profit;

(4) management of native or exotic wildlife; or

(5) conservation or management of an ecosystem, a forest, a habitat, a species, water, or wildlife.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 2.08, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 196 (S.B. 764), Sec. 1, eff. May 25, 2013.

Acts 2015, 84th Leg., R.S., Ch. 169 (H.B. 2119), Sec. 8, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1096 (H.B. 2053), Sec. 3, eff. September 1, 2019.

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

(1) the burn is conducted under the supervision of a certified and insured prescribed burn manager who has liability insurance coverage:

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

(B) with a policy period minimum aggregate limit

of at least \$2 million; or

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

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 829, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. [1016](#)), Sec. 2.09, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 196 (S.B. [764](#)), Sec. 2, eff. May 25, 2013.

Acts 2015, 84th Leg., R.S., Ch. 169 (H.B. [2119](#)), Sec. 9, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1096 (H.B. [2053](#)), Sec. 4, eff. September 1, 2019.

Sec. 153.083. LIABILITY REGARDING CERTAIN PRESCRIBED BURNS.

(a) In this section, "burn boss" means an individual responsible for directing a prescribed burn under a written prescription plan described by Section [153.047](#).

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

- (1) is the burn boss; and
- (2) is otherwise liable under other law.

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

- (1) commits gross negligence or intentionally causes the property damage, personal injury, or death; and
- (2) is otherwise liable under other law.

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

(1) the signature of:

(A) the burn boss; or

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

(2) a contract acknowledging liability.

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

Added by Acts 2019, 86th Leg., R.S., Ch. 1096 (H.B. 2053), Sec. 5, eff. September 1, 2019.

SUBCHAPTER D. COMPLAINTS, ENFORCEMENT, AND PENALTIES

Sec. 153.101. COMPLAINTS. The department shall receive and process complaints concerning certified and insured prescribed burn managers in the manner described by Section 12.026, Agriculture Code, and rules adopted under that section.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 2.10, eff. September 1, 2009.

Sec. 153.102. DISCIPLINARY ACTION; SCHEDULE OF SANCTIONS.

(a) The department may impose an administrative sanction, including an administrative penalty, as provided by Sections 12.020, 12.0201, 12.0202, and 12.0261, Agriculture Code, for a violation of this chapter.

(b) The department by rule shall adopt a schedule of the disciplinary sanctions that the department may impose under this chapter. In adopting the schedule of sanctions, the department shall ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action.

(c) In determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the department shall consider:

(1) whether the person:

(A) is being disciplined for multiple violations of either this chapter or a rule or order adopted under this chapter; or

(B) has previously been the subject of disciplinary action by the department under this chapter and has previously complied with department rules and this chapter;

(2) the seriousness of the violation;

(3) the threat to public safety; and

(4) any mitigating factors.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. [1016](#)), Sec. 2.10, eff. September 1, 2009.

Sec. 153.103. INJUNCTION. (a) The department may apply to a district court in any county for an injunction to restrain a person who is not a certified and insured prescribed burn manager from representing that the person is a certified and insured prescribed burn manager.

(b) At the request of the department, the attorney general shall initiate and conduct an action in a district court in the state's name to obtain an injunction under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. [1016](#)), Sec. 2.10, eff. September 1, 2009.

Sec. 153.104. EMERGENCY SUSPENSION. (a) On determining that a certification holder is engaged in or about to engage in a violation of this chapter and that the certification holder's continued practice constitutes an immediate threat to the public welfare, the department may issue an order suspending the certification holder's certification without notice or a hearing. The department shall immediately serve notice of the suspension on the certification holder.

(b) The notice required by Subsection (a) must:

(1) be personally served on the certification holder or be sent by registered or certified mail, return receipt requested, to the certification holder's last known address according to the department's records;

(2) state the grounds for the suspension; and

(3) inform the certification holder of the right to a hearing on the suspension order.

(c) A certification holder whose certification is suspended under this section is entitled to request a hearing on the suspension not later than the 30th day after the date of receipt of notice of the suspension. Not later than the fifth day after the date a hearing is requested, the department shall issue a notice of hearing.

(d) A hearing on a suspension order under this section is subject to Chapter 2001, Government Code. If the hearing is before an administrative law judge, after the hearing, the administrative law judge shall recommend to the department whether to uphold, vacate, or modify the suspension order.

(e) A suspension order issued under this section remains in effect until further action is taken by the department. If the administrative law judge's recommendation under Subsection (d) is to vacate the order, the department shall determine whether to vacate the order not later than the second day after the date of the recommendation.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 2.10, eff. September 1, 2009.