

## Missouri Prescribed Burning Act (RSMo Section 537.354) Guidance

### MDC and Partner Staff

Prescribed burning has been used in Missouri long before the passage of the Prescribed Burning Act. Exposure to liability was unknown or undefined because it was not defined in state statute. The goal of the legislative process was to define liability in a way that would not hinder prescribed burning and would increase the safe application of prescribed fire.

The Prescribed Burning Act was enacted in August of 2021. The law states that a landowner or agent of the landowner will not be liable for damages, injury, or loss caused by a prescribed burn or the smoke from a prescribed burn unless they are proven to be negligent. Conducting a prescribed burn in Missouri does not require training or the use of a written burn plan. To reduce the risk of being negligent, training and use of a burn plan is a prudent and responsible measure to take. A few examples of potential negligence include a person conducting a burn without checking the weather, not establishing firebreaks, and/or not having adequate equipment.

The law also defines a Certified Prescribed Burn Manager (CPBM) and liability for a CPBM. A CPBM is one who completes a training program approved by MDC, currently the Prescribed Burning for Missouri Land Managers course or a similar/equivalent course reviewed/approved by the MDC Fire Management Coordination Team (FMCT). A CPBM conducting a burn with a burn plan will not be liable for damages, injury, or loss from a prescribed burn or the smoke from a prescribed burn unless they are proven to be negligent. This is the same level of liability as defined in the paragraph above for landowners or their agents. There are some insurance providers that offer prescribed burning insurance policies for CPBMs, which are now available in Missouri.

There is an exception to proving negligence for damages to property, lands, rights-of-way, and easements owned by a utility, an electric cooperative, or controlled by a railroad. In these circumstances, it is assumed that those conducting the burn will be strictly liable (or liable without regard to negligence) for damages, although this assumption has not been tested in court. Note, adequate preparation and planning of a prescribed burn should reduce risk to these sensitive areas within and adjacent to the burn unit.

The law defines a burn plan as one written in a format approved by MDC. A burn plan meeting this definition is one that includes the following elements:

- Description of the burn unit
- Map of the burn unit
- Objectives of the burn
- Desired weather conditions and fire behavior
- Firebreaks
- Number of crew members and type of equipment needed
- Safety plan, including contingency plan
- Smoke management considerations
- Public safety and neighbor notification list
- Mop up standards

This definition does not specify a particular template. It does not dictate who can write a burn plan or specify any qualifications to do so. It does not include a review or approval process. A burn plan for a burn contracted under a USDA or MDC cost share program must still meet the program requirements to be eligible for cost-share, but this does not affect liability under the Prescribed Burning Act.

### **Summary**

- People can conduct a prescribed burn without training and a written burn plan. To reduce the chance of being negligent, training and use of a burn plan is a prudent and responsible measure to take.
- A burn plan is required for a CPBM conducting a burn to receive the protections of the Act.
- A burn plan does not have to be written using the MDC or NRCS template (unless required by a cost share program). A burn plan needs to contain the elements listed above. It does not require a particular template.
- MDC or partner staff do not need to write the burn plan for a landowner, agent, or CPBM to be covered by the Prescribed Burn Act.
- MDC or partner staff do not need to review or approve burn plans unless required for a cost share program.

### **Prescribed Burning Act**

537.354. 1. This section shall be known and may be cited as the "Prescribed Burning Act".

2. As used in this section, the following terms mean:

(1) "Agent of an owner of land", any person who has permission from a landowner to participate in a prescribed burning on the landowner's property;

(2) "Certified prescribed burn manager", a person who successfully completes a prescribed burn certification program approved by the Missouri department of conservation;

(3) "Prescribed burn plan", a written plan that is in a format approved by the Missouri department of conservation establishing the conditions and methods to perform a prescribed burning;

(4) "Prescribed burning", the planned and controlled application of fire to existing vegetative fuels in order to accomplish one or more specific land management objectives including, but not limited to, vegetative fuel reduction, silvicultural treatments, wildlife habitat improvement, and management of grassland and other plant communities.

3. No owner of land or agent of an owner of land shall be liable for damage, injury, or loss caused by a prescribed burning or the resulting smoke of a prescribed burning unless the owner of land or agent of an owner of land is proven to be negligent.

4. No certified prescribed burn manager shall be liable for damage, injury, or loss caused by a prescribed burning or the resulting smoke of a prescribed burning conducted under a prescribed burn plan unless the certified prescribed burn manager is proven to be negligent.

5. The provisions of subsections 3 and 4 of this section shall not apply to any damage, injury, or loss caused by a prescribed burning or the resulting smoke from a prescribed burning to any of the following:

(1) Property, lands, rights-of-way, or easements owned by a public utility or municipally owned utility;

(2) Property, lands, rights-of-way, or easements owned by a rural electric cooperative organized or operating under the provisions of chapter 394, or any corporation organized on a nonprofit or cooperative basis as described in subsection 1 of section 394.200, or any electrical corporation operating under a cooperative business plan as described in subsection 2 of section 393.110; or

(3) Property, lands, rights-of-way, or easements appurtenant or incidental to lands controlled by any railroad.