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Indicates New Matter

AMENDED

March 8, 2012

**H. 3631**

Introduced by Reps. Harrison, Clemmons, Funderburk, Pitts, Anderson, R.L. Brown, Govan, Hodges, Allen, White, Edge, Whipper, Hiott, Limehouse, Horne, Vick, Herbkersman, Agnew, Viers, Hardwick, Harrell, Sellers, Skelton, Gambrell, Young and Taylor

S. Printed 3/8/12--S. [SEC 3/9/12 3:34 PM]

Read the first time March 15, 2011.

**A** **BILL**

TO AMEND SECTION 48‑34‑40, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE REQUIREMENTS FOR CONDUCTING A PRESCRIBED FIRE, SO AS TO FURTHER SPECIFY SUPERVISION REQUIREMENTS FOR A PRESCRIBED FIRE MANAGER AND TO REFERENCE SPECIFIC REGULATORY AND STATUTORY PROVISIONS APPLICABLE TO CONDUCTING A PRESCRIBED FIRE; AND TO AMEND SECTION 48‑34‑50, RELATING TO LIABILITY FOR DAMAGES CAUSED BY A PRESCRIBED FIRE, SO AS TO PROVIDE THAT A PROPERTY OWNER, LESSEE, AGENT, OR EMPLOYEE IS NOT LIABLE FOR DAMAGES CAUSED BY THE RESULTING SMOKE OF A PRESCRIBED FIRE UNLESS GROSS NEGLIGENCE IS PROVEN.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 48‑34‑40 of the 1976 Code is amended to read:

“Section 48‑34‑40. (A) For purposes of this section, ‘South Carolina Smoke Management Guidelines’ means smoke management guidelines for vegetative debris burning for forestry, agriculture, and wildlife purposes that are promulgated as regulations by the State Commission of Forestry pursuant to the Administrative Procedures Act.

(B) Prescribed fires conducted pursuant to this chapter:

(1) must have a written prescribed fire plan that:

(a) complies with the South Carolina Smoke Management Guidelines;

(b) is prepared before authorization to burn is ~~given~~ issued by the State Commission of Forestry~~,~~; and ~~the plan must be~~

(c) is on site and followed during the burn;

(2) must have present at least one certified prescribed fire manager ~~present and supervising~~ who must:

(a) be certified by the commission;

(b) personally supervise the burn from ignition until ~~it is declared~~ the certified prescribed fire manager determines the burn to be safe ~~according to certification guidelines~~;

(c) fully consider both fire behavior and related smoke management issues during and after the burn;

(3) are considered in the public interest and do not constitute a public or private nuisance when conducted pursuant to ~~state air pollution statutes,~~ the South Carolina Smoke Management Guidelines, ~~and~~ ~~regulations applicable to the use of prescribed fire~~ Chapters 1 and 35 of Title 48, and Chapter 2, Title 50; prescribed fires that are purposefully set in accordance with these chapters and the South Carolina Smoke Management Guidelines are exempt from the open fire prohibition pursuant to R. 61‑62.2 and are acceptable to the Department of Health and Environmental Control if the fire is for:

(a) burning forest lands for specific management practices;

(b) agricultural control of diseases, weeds, and pests and for other specific agricultural purposes; and

(c) open burning of trees, brush, grass, and other vegetable matter for game management purposes;

(4) are considered a property right of the property owner.”

SECTION 2. Section 48‑34‑50 of the 1976 Code is amended to read:

“Section 48‑34‑50. ~~No~~ A property owner or lessee or his agent or employee conducting a prescribed fire pursuant to this chapter is not liable for damage, injury, or loss caused by fire~~, resulting smoke,~~ or other consequences of the prescribed fire, except for smoke, unless negligence is proven. A property owner or lessee or his agent or employee conducting a prescribed fire pursuant to this chapter is not liable for damage, injury, or loss caused by the resulting smoke of a prescribed fire unless gross negligence or recklessness is proven.”

SECTION 3. The guidelines published by the State Commission of Forestry in August 2006 entitled, ‘Smoke Management Guidelines for Vegetative Debris Burning for Forestry, Agriculture, and Wildlife purposes in the State of South Carolina’ are hereby considered promulgated by the State Commission of Forestry and approved by the General Assembly. Any amendment, replacement, or revision of these guidelines must be promulgated by the State Commission of Forestry pursuant to the Administrative Procedures Act.

SECTION 4. This act takes effect upon approval by the Governor.

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