

James Nedresky photographer



Bambi, a Walt Disney Character who escaped a forest fire, was a natural subject for a forest fire prevention poster.



Remember-Only you can

PREVENT THE MADNESS!



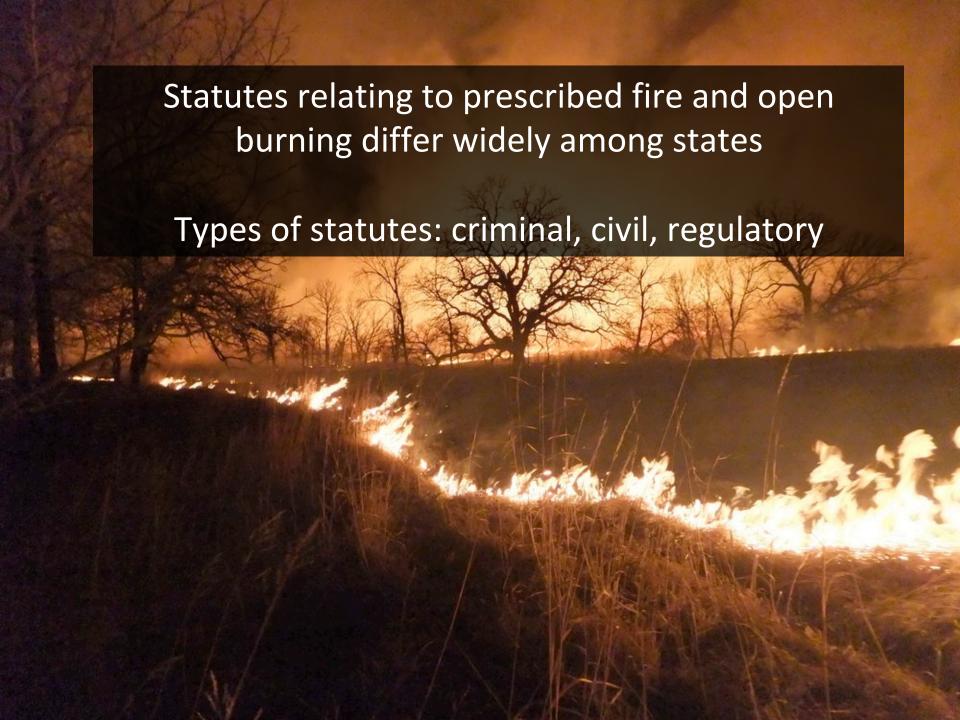
#### The National Strategy

The Final Phase in the Development of the National Cohesive Wildland Fire Management Strategy



April 2014

Vision: To safely and effectively extinguish fire when needed; use fire where allowable; manage our natural resources; and as a nation, to live with wildland fire.



# Nebraska Open Burning Statute (R.R.S. Neb. § 81-520.01)

There shall be a statewide open burning ban on all bonfires, outdoor rubbish fires, <u>and fires</u> for the purpose of clearing land.

-The fire chief of a local fire department **may** waive an open burning ban for an area under the local fire department's jurisdiction by issuing an open burning permit to a person requesting permission to conduct open burning

-The fire chief of a local fire department may waive the open burning ban in the local fire department's jurisdiction when conditions are acceptable to the chief.

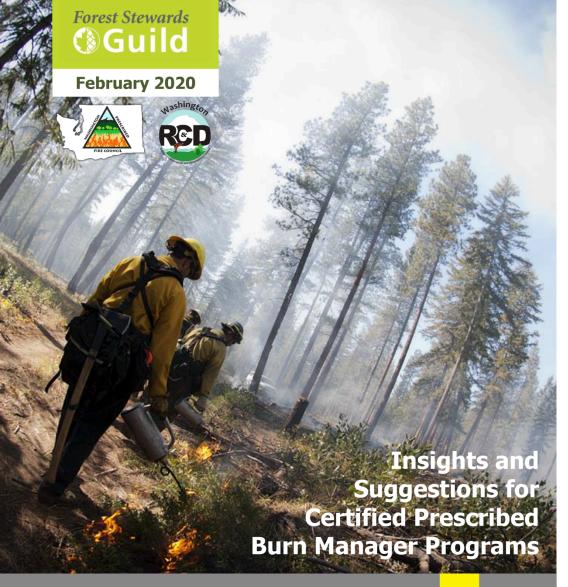


# Statutory Reform

### "Right to Burn" Acts

- Establish right of landowner to burn land
- Statutorily explicit liability standard (gross or simple negligence)
- Establish CPBM programs
- Regulatory requirements
- Burn ban exceptions





Meg (Megan) Matonis

Intermountain West Regional Manager
The Forest Stewards Guild

http://www.nwfirescience.org/biblio/ insights-and-suggestions-certifiedprescribed-burn-manager-programs

REPORT

#### **FL Right to Burn Law**

The application of prescribed burning is a land management tool that benefits the safety of the public, the environment, and the economy of the state. The Legislature finds that:

- Prescribed burning reduces vegetative fuels within wild land areas. Reduction of the fuel load reduces the risk and severity of wildfire
- Most of Florida's natural communities require periodic fire for maintenance of their ecological integrity. Prescribed burning is essential to the perpetuation, restoration, and management of many plant and animal communities. Significant loss of the state's biological diversity will occur if fire is excluded from fire-dependent systems.
- <u>Forestland and rangeland constitute significant economic, biological, and aesthetic resources of statewide importance</u>. Prescribed burning on forestland prepares sites for reforestation, removes undesirable competing vegetation, expedites nutrient cycling, and controls or eliminates certain forest pathogens. On rangeland, prescribed burning improves the quality and quantity of herbaceous vegetation necessary for livestock production.

#### **GA Right to Burn Law**

- (a) It is declared by the General Assembly that prescribed burning is a resource protection and land management tool which benefits the safety of the public, Georgia's forest resources, the environment, and the economy of the state. The General Assembly finds that:
- -Prescribed burning on forest land serves to <u>reduce hazardous accumulations of fuels</u>, <u>prepare sites for both natural and artificial forest regeneration, improve wildlife</u> <u>habitat, control insects and disease, and perpetuate fire dependent ecosystems</u>;
- --As Georgia's population continues to grow, pressures from liability issues and smoke nuisance complaints cause prescribed burn practitioners to limit prescribed burn activity, thus reducing the above-mentioned benefits to the state;
- -Public misunderstanding of the benefit of prescribed burning to the ecological and economic welfare of the state exerts unusual pressures that prevent uninhibited use of this valuable forest resource management tool; and
- (b) It is the purpose of this part to authorize and promote the continued use of prescribed burning for community protection, silvicultural, environmental, and wildlife management purposes.

#### Legislative intent

That atmospheric conditions subsequently intervened does not lessen the legislative intent that burns conducted "in accordance with" the subsection of the certified burn statute at issue were to be adjudged under a gross negligence standard. Any other interpretation renders the gross negligence standard illusory. For example, a prescription plan that is prepared, approved and then implemented in accordance with pre-ignition standards and protocols would provide little or no shield against liability if a jury can adjudge them as inadequate for failing to foresee weather-related events occurring post-ignition. As such, the "adequacy" of a prescription plan's designation of "firebreaks at the burn site" must be according to pre-ignition predictions and guideposts; the "sufficiency" of a prescription plan's designation of "personnel and firefighting equipment for the control of the fire" is to be adjudged likewise. To impose a lesser standard of tort liability after-the-fact based on unpredicted weather events, even though a property owner or agent has complied with the terms of a prescription plan, thwarts the legislative purpose of the certified burn statute.

Independent Variables	%∆ odds	p-value	%∆ odds	p-value	
Hypothesis 1: Legal liability					
General/personal liability (risk)	-25.7	0.025	-38.0	0.000	
Burn ban inhibits burning	22.4	0.001	7.1	0.263	
Reduced concern	19.4	0.228	19.2	0.228	
Influence	10.2	0.461	-6.7	0.613	
Prescribed fire insurance	3.0	0.691	9.8	0.223	
State-legislated liability standards	10.6	0.140	-1.8	0.798	
			to the same thank		S. J A Phys.
Kreuter, U. P., Stroman, D. A., Wonkka, C. Liability for Using Prescribed Fire in the Society		-		· ·	

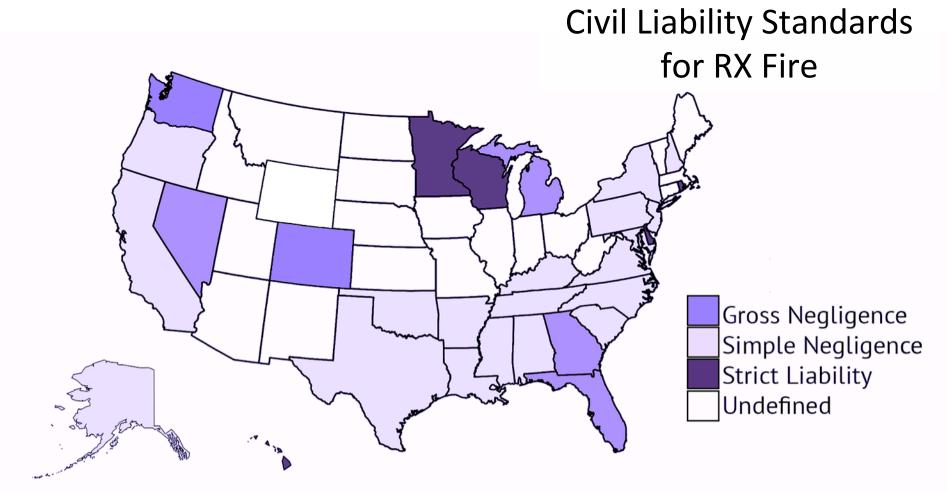
Burn own land

Pseudo R<sup>2</sup>= 0.2491;

p < 0.001

Burn another's land Pseudo R²= 0.3163;

*p*<0.001



- Strict liability: burner liable for any damage caused by an escaped prescribed fire, regardless of the action of the burner
- Simple negligence: requires burner to practice reasonable care in applying a prescribed burn
- Gross negligence: if burner follows codified regulations regarding burning, plaintiff must show wanton and reckless disregard of the duty of care owed others by the burner

### Gross negligence liability standards as incentive

Gross negligence incentivizes training/certification and adherence to regulatory requirements

Shifts burden of liability away from burner



#### Wolfe v. Carter (GA 2012)

Opinion of the appellate court states:

#### Statute says:

"No property owner or owner's agent conducting an authorized prescribed burn under this part shall be liable for damages or injury caused by fire or resulting smoke unless it is proven that there was gross negligence in starting, controlling, or completing the burn."

"Gross negligence" is defined under OCGA § 51-1-4, as the absence of even slight diligence, and slight diligence is defined in the Code section as "that degree of care which every man of common sense, however inattentive he may be, exercises under the same or similar circumstances." In other words, gross negligence has been defined as equivalent to the failure to exercise even a slight degree of care or lack of the diligence that even careless men are accustomed to exercise.

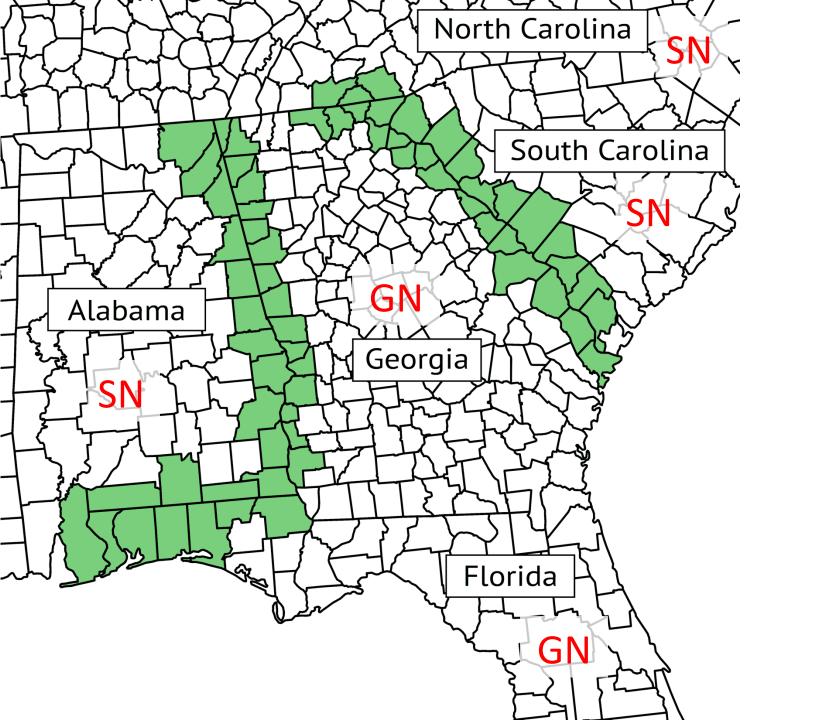
We find no evidence from which a jury could reasonably conclude that Carter failed to exercise even slight care and was therefore grossly negligent

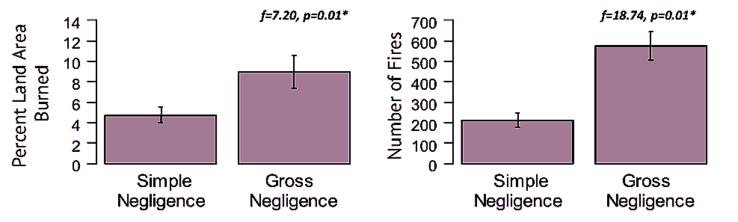
#### Additional regulatory requirements differ among states

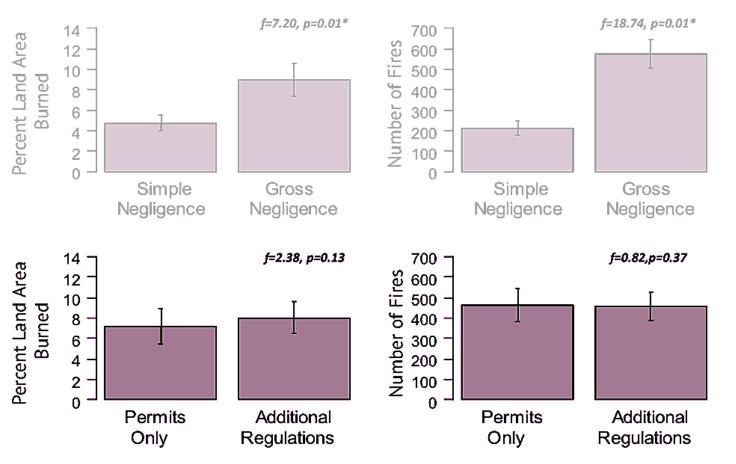
- Burn Permit
- Certified Prescribed
   Burn Manager
- Written Prescription
- Adequate Personnel and Firebreaks
- Burn Ban Exemptions

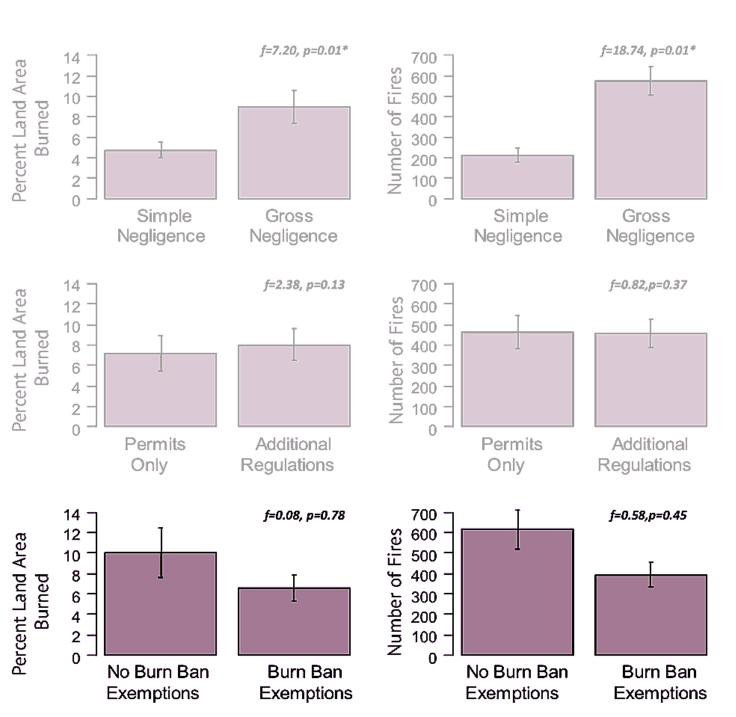
Regulations demand only small to moderate resource commitments, and are in the planning stage rather than in the implementation stage

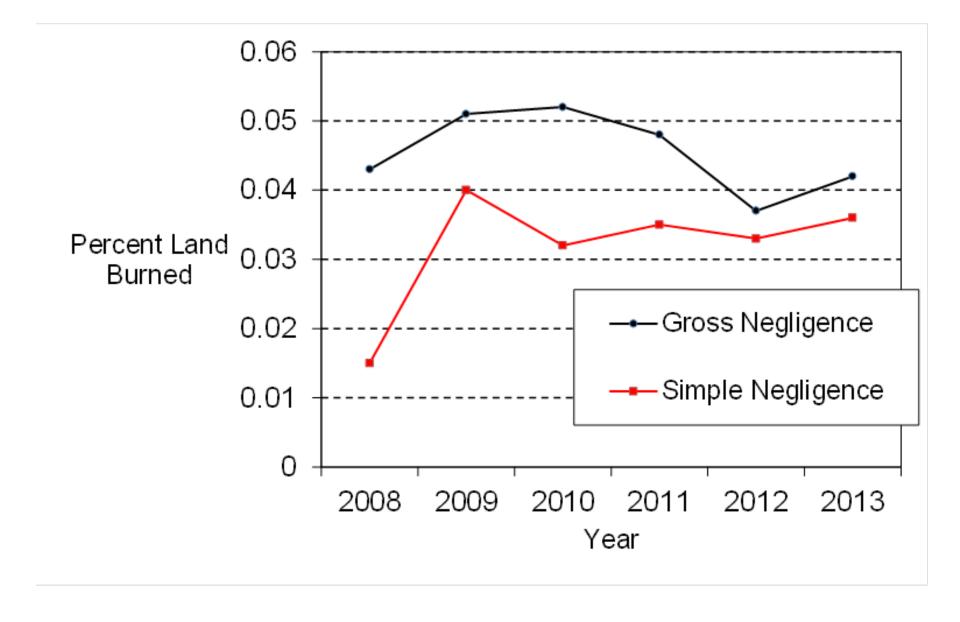












Wonkka, Carissa L., William E. Rogers, and Urs P. Kreuter. "Legal barriers to effective ecosystem management: exploring linkages between liability, regulations, and prescribed fire." Ecological applications 25.8 (2015): 2382-2393.

# **Findings**

- •States with gross negligence liability standards have more private landowner use of prescribed fire and increased percent private land area burned compared to states with simple negligence standards
- •Regulatory requirements, such as adequate firebreaks, personnel, and equipment, written burn plans, and CPBMs on site do not decrease the amount of burning

2% increase in acres burned for counties with gross negligence compared to counties with simple negligence

AL study area includes 7,398,848 acres...

147,977 more acres burned/yr



### Legal Basis for Regulating Prescribed Burning

- General tort law concerning property damage and personal injury resulting from escaping fire or drifting smoke
- Criminal nuisance law (largely for smoke drift into communities)
- Forest fire control law best management practices (interaction with liability open to liability if not followed) & restricts conditions for burning
- Air quality law state implementation of plans under clean air act focus on control of particulate matter
- National environmental laws
  - Endangered Species Act incidental take during fire
  - Clean Water Act best management practices for erosion and sedimentation
  - Migratory Bird Treaty Act incidental take (applies where federal cost-share is used to conduct burn)
- Local and municipal restrictions



- Smoke management and prescribed fire guidelines
- Can prohibit burning based on conditions (drought, wind speed, direction, etc.) or fuel types (based on smoke production)





LINCOLN, Neb. & WICHITA, Kan. We've seen some smoky skies this week from controlled burns going on in the Flint Hills, but a south wind has pushed a lot of that smoke to Nebraska - enough to cancel recess for some kids.

Officials there say it's unacceptable and they're demanding changes to the controlled burn process in Kansas.

Lincoln Mayor Chris Beutler says he's planning to file a complaint with the KDHE and other Kansas officials.

"The mayor is concerned, we've received a number of complaints to the office," said Rick Hoppe, Chief of Staff for Mayor Chris Beutler.

Lincoln, and Nebraska state officials say the smoke is blowing into their state, from the flint hills controlled burns. They say it's been a problem for years, but is worse this season.



"We had smoke impacts in our communities from wildfires that, by orders of magnitude, were more destructive to air quality and human health than anything we see from prescribed burns," said Amanda Rau, who pushed for the changes. Rau is a prescribed fire burn boss for the Nature Conservancy and chair of the Oregon Prescribed Fire Council.

In fact, 93% of all unhealthy air quality days in Oregon communities in 2018 were caused by wildfire.

Earlier this year, the <u>Oregon Departments of</u> <u>Environmental Quality and Forestry approved an</u> <u>update to the state smoke management rules</u>.

Now, instead of forbidding all smoke from reaching towns, prescribed burners can drop a modest amount of smoke into communities without fear of being shut down.



by Jes Burns and Maya Miller, Climate Central OPB June 19, 2019 11:30 a.m. | Updated: June 25, 2019 2:07 p.m.

# **Environmental Law**

- Clean Air Act
- Endangered Species Act
- Clean Water Act
- National Forest Management Act
- National Environmental Policy Act
- Migratory Bird Treaty Act

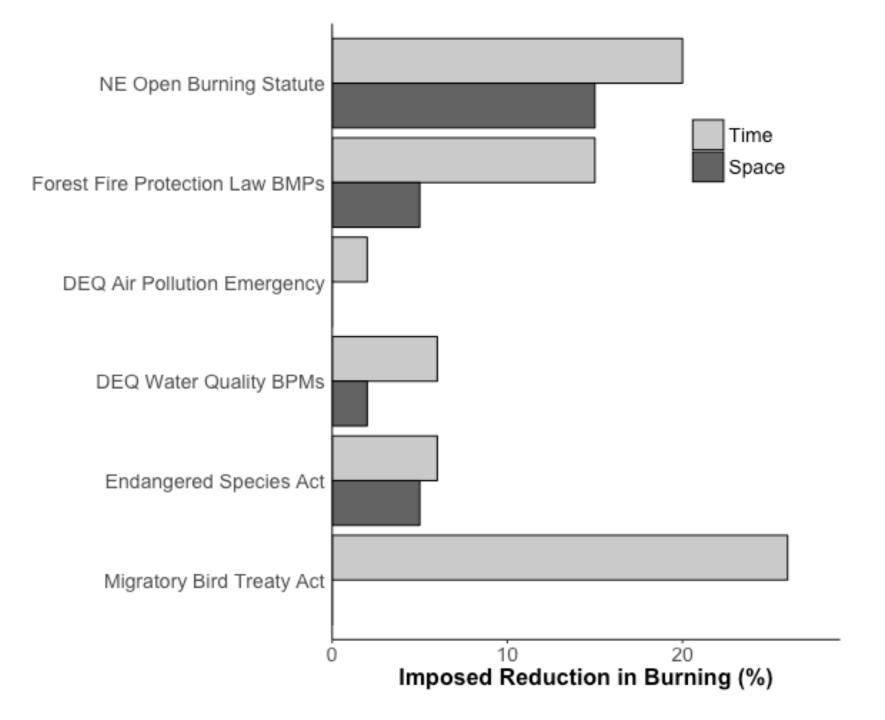




Photo by the Forest Service, USDA - Thomas Fire, Ventura, CA, Los Padres NF, 2017

#### Acknowledgements

- Dirac Twidwell
- Urs Kreuter
- William Rogers
- Jessie Birckhead
- Dino Falaschetti
- Reed Watson
- Dean Lueck
- Craig Allen
- David Angeler
- Ahjond Garmestani



- Georgia Forestry Commission
- Florida Forest Service
- North Carolina Forest Service
- South Carolina Forestry Commission
- Alabama Forestry Commission
- Tennessee Forestry Division

## Funding Sources A: A Graduate Progra

- USDA NIFA: A Graduate Program in Forest Resources: Developing Integrated Expertise in Forest Resource, Management, Conservation, and Restoration 2009-38420-05631
- Property and Environment Research Center
  - Joint Fire Science Program: Contract # 16-1-02-10
  - Nebraska Game & Parks Commission W-125-R-1









