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SB-332 Civil liability: prescribed burning operations: gross negligence. (2021-2022)

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Date Published: 10/07/2021 02:00 PM

Senate Bill No. 332

CHAPTER 600

An act to add Section 3333.8 to the Civil Code, relating to civil liability.

[Approved by Governor October 06, 2021. Filed with Secretary of State October 06, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 332, Dodd. Civil liability: prescribed burning operations: gross negligence.

Existing law makes a person 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 the person to escape onto any public or private property liable for the fire suppression costs incurred in fighting the fire, the cost of providing rescue or emergency medical services, the cost of investigating and making any reports with respect to the fire, and the costs relating to accounting for the fire and the collection of specified funds.

Existing law authorizes the Director of Forestry and Fire Protection to enter into an agreement, including a grant agreement, for prescribed burning or other hazardous fuel reduction efforts with any person for specified purposes. Existing law requires the agreement to designate an officer of the Department of Forestry and Fire Protection or a certified burn boss as the burn boss with final authority regarding the prescribed burning operation and to specify the duties of, and the precautions taken by, the person contracting with the department and any personnel furnished by that person. Existing law prohibits a person from knowingly setting or permitting agricultural burning unless that person has a valid permit, as specified. Existing law prohibits, among other things, a person from setting fire or causing fire to be set to any forest, brush, or other flammable material that is on any land that is not the person's own, or under the person's legal control, without the permission of the owner, lessee, or agent of the owner or lessee of the land.

This bill would provide that no person shall be liable for any fire suppression or other costs otherwise recoverable for a prescribed burn if specified conditions are met, including, among others, that the burn be for the purpose of wildland fire hazard reduction, ecological maintenance and restoration, cultural burning, silviculture, or agriculture, and that, when required, a certified burn boss review and approve a written prescription for the burn. The bill would provide that any person whose conduct constitutes gross negligence shall not be entitled to immunity from fire suppression or other costs otherwise recoverable, as specified. The bill would define terms for its purposes.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 3333.8 is added to the Civil Code, to read:

3333.8. (a) The Legislature finds and declares that in order to meet fuel management goals, the state must rely on private entities to engage in prescribed burning for public benefit.

(b) Notwithstanding Sections 13009 and 13009.1 of the Health and Safety Code, no person shall be liable for any fire suppression or other costs otherwise recoverable pursuant to Section 13009 or 13009.1 of the Health and Safety Code resulting from a prescribed burn if all of the following conditions are met:

(1) The purpose of the burn is for wildland fire hazard reduction, ecological maintenance and restoration, cultural burning, silviculture, or agriculture.

(2) A person certified as a burn boss pursuant to Section 4477 of the Public Resources Code reviewed and approved a written prescription for the burn that includes adequate risk mitigation measures.

(3) The burn is conducted in compliance with the written prescription.

(4) The burn is authorized pursuant to Chapter 6 (commencing with Section 4411) or Chapter 7 (commencing with Section 4461) of Part 2 of Division 4 of the Public Resources Code.

(5) The burner has a landowner's written permission or the approval of the governing body of a Native American Tribe to burn.

(6) The burn is conducted in compliance with any air quality permit required pursuant to Article 3 (commencing with Section 41850) of Chapter 3 of Part 4 of Division 26 of the Health and Safety Code.

(7) Cultural burns conducted by a cultural fire practitioner are exempt from paragraphs (2) and (3).

(c) This section shall not be construed to grant immunity from fire suppression or other costs otherwise recoverable pursuant to Section 13009 or 13009.1 of the Health and Safety Code to any person whose conduct constitutes gross negligence.

(d) Nothing in this section affects the ability of a private or public entity plaintiff to bring a civil action against any defendant.

(e) "Cultural burn" means the intentional application of fire to land by Native American tribes, tribal organizations, or cultural fire practitioners to achieve cultural goals or objectives, including subsistence, ceremonial activities, biodiversity, or other benefits.

(f) "Cultural fire practitioner" means a person associated with a Native American tribe or tribal organization with experience in burning to meet cultural goals or objectives, including subsistence, ceremonial activities, biodiversity, or other benefits.