

Article 80.

North Carolina Prescribed Burning Act.

§ 106-965. Legislative findings.

The General Assembly finds that prescribed burning of forestlands is a management tool that is beneficial to North Carolina's public safety, forest and wildlife resources, environment, and economy. The General Assembly finds that the following are benefits that result from prescribed burning of forestlands:

- (1) Prescribed burning reduces the naturally occurring buildup of vegetative fuels on forestlands, thereby reducing the risk and severity of wildfires and lessening the loss of life and property.
- (2) The State's ever-increasing population is resulting in urban development directly adjacent to fire-prone forestlands, referred to as a woodland-urban interface area. The use of prescribed burning in these woodland-urban interface areas substantially reduces the risk of wildfires that cause damage.
- (3) Many of North Carolina's natural ecosystems require periodic fire for their survival. Prescribed burning is essential to the perpetuation, restoration, and management of many plant and animal communities. Prescribed burning benefits game, nongame, and endangered wildlife species by increasing the growth and yield of plants that provide forage and an area for escape and brooding and that satisfy other habitat needs.
- (4) Forestlands are economic, biological, and aesthetic resources of statewide significance. In addition to reducing the frequency and severity of wildfires, prescribed burning of forestlands helps to prepare sites for replanting and natural seeding, to control insects and diseases, and to increase productivity.
- (5) Prescribed burning enhances the resources on public use lands, such as State and national forests, wildlife refuges, nature preserves, and game lands. Prescribed burning enhances private lands that are managed for wildlife refuges, nature preserves, and game lands. Prescribed burning enhances private lands that are managed for wildlife, recreation, and other purposes.

As North Carolina's population grows, pressures resulting from liability issues and smoke complaints discourage or limit prescribed burning so that these numerous benefits to forestlands often are not attainable. By recognizing the benefits of prescribed burning and by adopting requirements governing prescribed burning, the General Assembly helps to educate the public, avoid misunderstandings, and reduce complaints about this valuable management tool. (1999-121, s. 1; 2011-145, s. 13.25(aa).)

§ 106-966. Definitions.

As used in this Article:

- (1) "Certified prescribed burner" means an individual who has successfully completed a certification program approved by the North Carolina Forest Service of the Department of Agriculture and Consumer Services.
- (2) "Prescribed burning" means the planned and controlled application of fire to vegetative fuels under specified weather and environmental and other conditions, while following appropriate precautionary measures that will confine the fire to a predetermined area and accomplish the intended management objectives.

- (3) "Prescription" means a written plan establishing the conditions and methods for conducting a prescribed burn prepared by a certified prescribed burner for starting, controlling, and extinguishing a prescribed burning. (1999-121, s. 1; 2011-145, s. 13.25(aa), (bb); 2013-155, s. 15; 2023-63, s. 9(a).)

§ 106-967. Immunity from liability.

(a) Any prescribed burning conducted in compliance with G.S. 106-968 is in the public interest and does not constitute a public or private nuisance.

(b) A landowner or the landowner's agent who conducts a prescribed burning in compliance with G.S. 106-968 shall not be liable in any civil action for any damage or injury caused by fire, including reignition of a smoldering, previously contained burn, or resulting from smoke.

(c) Notwithstanding subsections (a) and (b), this section does not apply when a nuisance or damage results from gross negligence.

(d) Notwithstanding subsections (a), (b) and (c), this section shall not apply to claims by public utilities resulting from damage to their equipment or facilities, where a prescribed burn proximately causes such damage.

(e) For purposes of this section, the term "public utility" means an electric power supplier, as defined in G.S. 62-133.8(a)(3), a gas operator, as defined in G.S. 62-50(g), or a business providing telecommunications service taxed under G.S. 105-164.4(a)(4c). (1999-121, s. 1; 2011-145, s. 13.25(aa), (bb); 2023-63, s. 9(b).)

§ 106-968. Certified prescribed burning.

(a) Prior to conducting a prescribed burning, a certified prescribed burner shall prepare and provide to the landowner a prescription for the prescribed burning. The certified prescribed burner shall also file the prescription with the North Carolina Forest Service of the Department of Agriculture and Consumer Services. Both the landowner and the certified prescribed burner on site shall retain a copy of this prescription throughout the duration of the prescribed burning. The prescription shall include:

- (1) The landowner's name and address.
- (2) A description of the area to be burned.
- (3) A map of the area to be burned.
- (4) An estimate of tons of the fuel located on the area.
- (5) The objectives of the prescribed burning.
- (6) A list of the acceptable weather conditions and parameters for the prescribed burning sufficient to minimize the likelihood of smoke damage and fire escaping onto adjacent areas.
- (7) The name of the certified prescribed burner responsible for conducting the prescribed burning.
- (8) A summary of the methods that are adequate for the particular circumstances involved to be used to start, control, and extinguish the prescribed burning, including firebreaks and sufficient personnel and firefighting equipment to contain the fire within the burn area. [The following applies:]
 - a. Fire spreading outside the authorized burn area on the day of the prescribed burn ignition shall not constitute conclusive proof of

inadequate firebreaks, insufficient personnel, or a lack of firefighting equipment.

- b. If the prescribed burn is contained within the authorized burn area during the authorized period, there shall be a rebuttable presumption that adequate firebreaks, sufficient personnel, and sufficient firefighting equipment were present.
 - c. Continued smoldering of a prescribed burn resulting in a subsequent wildfire does not in itself constitute evidence of gross negligence under G.S. 106-967.
- (9) Provision for reasonable notice of the prescribed burning to be provided to homes and businesses located adjacent to the burn site to avoid effects on health and property.

(b) The prescribed burning shall be conducted by a certified prescribed burner in accordance with a prescription that satisfies subsection (a) of this section. The certified prescribed burner shall be present on the site and shall be in charge of the burning throughout the period of the burning. A landowner may conduct a prescribed burning and be in compliance with this Article without being a certified prescribed burner if the landowner is burning a tract of forestland of 50 acres or less owned by that landowner and is following all conditions established in a prescription prepared by a certified prescribed burner.

(c) Prior to conducting a prescribed burning, the landowner or the landowner's agent shall obtain an open-burning permit under Article 78 of this Chapter from the North Carolina Forest Service of the Department of Agriculture and Consumer Services. This open-burning permit must remain in effect throughout the period of the prescribed burning. The prescribed burning shall be conducted in compliance with all the following:

- (1) The terms and conditions of the open-burning permit under Article 78 of this Chapter.
- (2) The State's air pollution control statutes under Article 21 and Article 21B of Chapter 143 of the General Statutes and any rules adopted pursuant to these statutes.
- (3) Any applicable local ordinances relating to open burning.
- (4) The smoke management guidelines adopted by the North Carolina Forest Service of the Department of Agriculture and Consumer Services.
- (5) Any rules adopted by the North Carolina Forest Service of the Department of Agriculture and Consumer Services, to implement this Article.

(d) The North Carolina Forest Service may accept prescribed burner certification from another State or other entity for the purpose of prescribed burning under this Article. (1999-121, s. 1; 2011-145, s. 13.25(aa), (bb), (xx); 2013-155, s. 16; 2015-263, s. 26; 2023-63, s. 9(c).)

§ 106-969. Adoption of rules.

The North Carolina Forest Service of the Department of Agriculture and Consumer Services may adopt rules that govern prescribed burning under this Article. (1999-121, s. 1; 2011-145, s. 13.25(aa), (bb); 2013-155, s. 17.)

§ 106-970. Exemption.

This Article does not apply when the Commissioner of Agriculture has cancelled burning permits pursuant to G.S. 106-946 or prohibited all open burning pursuant to G.S. 106-944. (1999-121, s. 1; 2011-145, s. 13.25(aa), (bb).)

§ 106-971: Reserved for future codification purposes.

§ 106-972: Reserved for future codification purposes.

§ 106-973: Reserved for future codification purposes.

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§ 106-977: Reserved for future codification purposes.

§ 106-978: Reserved for future codification purposes.

§ 106-979: Reserved for future codification purposes.