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Indicates New Matter

COMMITTEE REPORT

March 24, 2010

**H. 3924**

Introduced by Reps. Harrison, Miller, Harrell and Clemmons

S. Printed 3/24/10--H.

Read the first time April 22, 2009.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3924) 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 reference other, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by deleting SECTION 2 in its entirety and inserting:

/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 unless negligence is ~~proven~~ found by the finder of fact. There is a rebuttable presumption that any landowner, lessee, employee, or agent that has conducted a prescribed fire in compliance with Section 48-34-10 has not acted negligently.”/

Renumber sections to conform.

Amend title to conform.

JAMES H. HARRISON for Committee.

**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 REFERENCE OTHER SPECIFIC STATUTORY AND REGULATORY REQUIREMENTS; AND TO AMEND SECTION 48‑34‑50, RELATING TO LIABILITY FOR DAMAGES CAUSED BY A PRESCRIBED FIRE, SO AS TO PROVIDE THAT NO PROPERTY OWNER, LESSEE, AGENT, OR EMPLOYEE MAY BE HELD LIABLE FOR DAMAGES CAUSED BY THE RESULTING SMOKE OF A PRESCRIBED FIRE UNLESS GROSS NEGLIGENCE IS PROVEN AND TO DEFINE GROSS NEGLIGENCE.

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. Prescribed fires conducted pursuant to this chapter:

(1) must have a prescribed fire plan prepared before authorization to burn is given by the State Commission of Forestry, and the plan must be on site and followed during the burn;

(2) must have at least one certified prescribed fire manager present and supervising the burn from ignition until it is declared safe according to certification guidelines and in consideration of both fire behavior and smoke management issues;

(3) are considered in the public interest and do not constitute a public or private nuisance when conducted pursuant to state air pollution statutes, smoke management guidelines (S.C. Code of Regulations 61‑62.2), and regulations applicable to the use of prescribed fire (Chapter 35, Title 48 and Chapter 2, Title 50); and

(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 property owner or lessee or his agent or employee conducting a prescribed fire pursuant to this chapter is liable for damage, injury, or loss caused by fire, ~~resulting smoke,~~ or other consequences of the prescribed fire unless negligence is proven. No property owner or lessee or his agent or employee conducting a prescribed fire pursuant to this chapter is liable for damage, injury, or loss caused by the resulting smoke of a prescribed fire unless gross negligence is proven. In order to establish an absence of gross negligence, a property owner or lessee or his agent or employee must have acted in compliance with the criteria specified in Section 48-34-40(1), (2), and (3). ‘Gross negligence’ means an act or course of action, or inaction, which denotes a lack of reasonable care and conscious disregard or indifference to the rights, safety, or welfare of others and which does or could result in financial loss, injury, or damage to life or property.”

SECTION 3. This act takes effect upon approval by the Governor.

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