

- SUBJECT:** Limiting liability and sanctions in connection with smoke
- COMMITTEE:** Agriculture and Livestock — committee substitute recommended
- VOTE:** 8 ayes — Burns, Anderson, Bailes, Cole, Cyrier, Guillen, Rosenthal, Toth  
0 nays  
1 absent — Herrero
- WITNESSES:** For — Charles Maley, South Texans Property Rights Association; Justin Penick and Rob Hughes, Texas Forestry Association; (*Registered, but did not testify*: Eric Opiela, South Texans' Property Rights Association; Lee Parsley, Texans for Lawsuit Reform; Peyton Schumann, Texas and Southwestern Cattle Raisers Association; J Pete Laney, Texas Conservation Association For Water and Soil; Harold Stone, Texas Farm Bureau; Joe Morris, Texas Forestry Association; Kenneth Hodges)  
  
Against — None  
  
On — (*Registered, but did not testify*: Dan Hunter, Texas Department of Agriculture)
- BACKGROUND:** Natural Resources Code sec. 153.048 establishes the requirements for a person to qualify as a certified and insured prescribed burn manager by the Prescribed Burning Board. The requirements include completion of an approved training program, payment of a fee, and meeting certain insurance standards set by the board.
- DIGEST:** CSHB 2004 would establish that a burn boss who was a certified and insured prescribed burn manager as defined by statute would not be liable for property damage, personal injury, or death caused by or resulting from smoke that occurred more than 300 feet from the burn. This exemption would not apply to a burn boss who committed gross negligence or intentionally caused property damage, personal injury, or death.

The Texas Department of Agriculture could not take disciplinary action against a certified and insured burn manager in relation to a prescribed burn on the basis that the burn resulted in emissions or was a nuisance.

The bill would take effect September 1, 2021, and would apply only to a cause of action that accrued on or after that date.

**SUPPORTERS  
SAY:**

CSHB 2004 would help prevent forest fires and maintain soil health by ensuring that certified, insured prescribed burn managers were able to conduct their work without being held liable for smoke that traveled more than 300 feet from a burn site.

Prescribed burning is a critical tool to protect life and property in the state. This burning is especially important in areas known as Wildland Urban Interfaces (WUIs), where there is a heightened threat of catastrophic wildfires. Reducing liability originating from runaway smoke for certified and insured burn managers as well as shielding them from a weaponized complaint process would protect this vital industry and allow necessary prescribed burning to continue.

Texas has about 70 certified and insured burn managers. The disruption caused by unwarranted claims poses a serious risk to the entire industry. Burn managers are able to control many aspects of a prescribed burn, but they are unable to control the wind. Limiting their liability in relation to this uncontrollable factor would ensure that lawsuits did not unnecessarily affect prescribed burns. Provisions in statute governing the immediate area around the burn, as well as adjacent roadways, would remain in effect. Burn managers would still have responsibility for smoke within 300 feet of the burn site, and the bill would contain no relief for damage caused by fire.

The bill would prevent the chilling effect on prescribed burns created by unfounded complaints made against burn managers. These complaints, which often do not adequately establish the prescribed burn as the source of the smoke, place an unreasonable burden on burn managers. Such complaints are especially prevalent in WUIs where a growing population

is surrounded by wildland that requires regular prescribed burning. Rather than face regular complaints, many burn managers are choosing not to operate in these areas and some insurance carriers are no longer offering the insurance coverage necessary to be certified as a burn manager. Burn managers who continue to operate in these areas are more likely to increase their prices, which could put a financial strain on residents and local governments or price them out of prescribed burning by a certified and insured burn manager entirely.

CRITICS  
SAY:

No concerns identified.