

SENATE BILL No. 925

January 22, 2004, Introduced by Senators McMANUS and JELINEK and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 51501, 51506, 51509, 51510, and 51513 (MCL
324.51501, 324.51506, 324.51509, 324.51510, and 324.51513), as
added by 1995 PA 57, and by adding sections 51503b and 51503d.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 51501. As used in this part:

2 (a) "Certified prescribed burn manager" means an individual
3 who has successfully completed the certification program of the
4 department under section 51513 and possesses a valid
5 certification number.

6 (b) "Department" means the department of natural resources.

7 (c) "Domestic purposes" refers to burning that is any of the
8 following:

9 (i) A fire within the curtilage of a dwelling where the

1 material being burned has been properly placed in a debris burner
2 constructed of metal or masonry, with metal covering device with
3 openings no larger than 3/4 of an inch.

4 (ii) A campfire.

5 (iii) Any fire within a building.

6 (d) "Extinguished", in reference to wild land burning or
7 prescribed burning, means that there is no longer any spreading
8 flame. Extinguished, in reference to vegetative land-clearing
9 debris burning, means that there is no longer any visible flame,
10 smoke, or emissions.

11 (e) ~~—(a)—~~ "Forest land" means timbered land, potential
12 timber-producing land, cutover or burned timber land or grass
13 lands not including lands devoted to agriculture.

14 (f) ~~—(b)—~~ "Flammable material" means any substance that will
15 burn, including, but not limited to, refuse, debris, waste forest
16 material, brush, stumps, logs, rubbish, fallen timber, grass,
17 stubble, leaves, fallow land, slash, crops, or crop residue.

18 ~~—(c)— "Domestic purposes" means any fire within the curtilage~~
19 ~~of a dwelling where the material being burned has been properly~~
20 ~~placed in a debris burner constructed of metal or masonry with~~
21 ~~metal covering device with openings no larger than 3/4 of an~~
22 ~~inch, or a campfire, or any fire within a building.~~

23 (g) "Prescribed burn" or "prescribed burning" means the
24 burning, in compliance with a written prescription, of a
25 continuous cover of fuels that consist of slash resulting from
26 forest practices, surface litter, and duff and that are left in
27 place, fairly uniform, and ignited to meet planned fire or land

1 management objectives in the desired area.

2 (h) "Prescription" means a written plan establishing the
3 criteria necessary for starting, controlling, and extinguishing a
4 burn.

5 Sec. 51503b. A person shall not burn wild land or burn
6 vegetative land-clearing debris, unless all of the following
7 requirements are met:

8 (a) The landowner or his or her designee has specifically
9 consented to the burn.

10 (b) The requirements of section 51503 are met.

11 (c) There are adequate firebreaks at the burn site and
12 sufficient personnel and firefighting equipment for the control
13 of the fire.

14 (d) The fire remains within the boundary of the area
15 authorized in the permit under section 51503.

16 (e) A person 18 years of age or older responsible for
17 monitoring the burn is present at the burn site until the fire is
18 extinguished.

19 (f) The department determines that fire danger is favorable
20 for safe burning and, in consultation with the department of
21 environmental quality, determines that air quality is favorable
22 for safe burning.

23 Sec. 51503d. (1) Prescribed burning does not constitute a
24 public or private nuisance when conducted in compliance with this
25 part, part 55, and rules promulgated to implement this part or
26 part 55.

27 (2) Subject to subsection (3), a property owner or his or her

1 agent conducting prescribed burning is neither liable for damage
2 or injury caused by the fire or resulting smoke nor considered to
3 be in violation of section 51503b unless gross negligence is
4 proven.

5 (3) Subsections (1) and (2) apply to a prescribed burn only
6 if all of the following requirements are met:

7 (a) The landowner or his or her designee has specifically
8 consented to the prescribed burn.

9 (b) The requirements of section 51503 are met.

10 (c) There are adequate firebreaks at the burn site and
11 sufficient personnel and firefighting equipment for the control
12 of the fire.

13 (d) A certified prescribed burn manager is present on site
14 with a copy of the prescription, from ignition of the prescribed
15 burn to its completion.

16 (e) The fire remains within the boundary of the area
17 authorized in the permit under section 51503.

18 Sec. 51506. (1) ~~Any~~ Except as provided in section 51503d,
19 a person who, in violating this part, causes a forest or grass
20 fire is liable for all damages resulting from that fire,
21 including the cost of any governmental unit fighting the fire.

22 ~~This~~

23 (2) Except as provided in section 51503d, this part does not
24 affect any other right of action for damages.

25 Sec. 51509. (1) ~~Any~~ Except as provided in section 51503d,
26 a person who sets fire on any land and negligently allows the
27 fire to escape and become a forest or grass fire is liable for

1 all expenses incurred by the state in the suppression of the
2 fire.

3 (2) The department shall certify, in writing, to the person
4 the claim of the state **under subsection (1)** and shall list the
5 items of expense incurred in the suppression of the fire. The
6 claim shall be paid within 60 days and, if not paid within that
7 time, the department may bring suit against the person in a court
8 of competent jurisdiction in the county of the residence of the
9 defendant or of any defendant if there is more than 1, for the
10 collection of the claim at any time within 2 years ~~of~~ **after** the
11 ~~claim~~ **fire**. If the amount of the claim is cognizable by a
12 circuit court, the department may file the suit in the circuit
13 court of Ingham county, or in the circuit court of the county of
14 the residence of the defendant or any defendant if there is more
15 than 1.

16 Sec. 51510. (1) A person shall not do any of the
17 following:

18 (a) Willfully, maliciously, or wantonly set fire or cause or
19 procure to be set on fire any forest land, lands adjacent to
20 forest land, or flammable material on such forest land.

21 (b) Willfully, maliciously, or wantonly set, throw, or place
22 any device, instrument, paraphernalia, or substance in or
23 adjacent to any forest land with intent to set fire to the land
24 or which in the natural course of events would result in fire
25 being set to the forest land.

26 (2) **This section does not apply to a prescribed burn**
27 **conducted in compliance with section 51503d.**

1 Sec. 51513. (1) The department shall administer this part
2 and shall promulgate rules necessary to implement this part. **The**
3 **department shall adopt rules governing prescribed burning and for**
4 **certifying and decertifying prescribed burn managers based on**
5 **their past experience, training, and record of compliance with**
6 **section 51503d. The department shall submit the proposed rules**
7 **for public hearing pursuant to the administrative procedures act**
8 **of 1969, 1969 PA 306, MCL 24.201 to 24.328, within 6 months after**
9 **the effective date of the 2004 amendatory act that amended this**
10 **section.**

11 (2) The department may make, conduct, or participate in
12 investigations and surveys designed to establish the cause of ~~a~~
13 ~~or~~ responsibility for a particular forest fire or forest fire
14 conditions generally.

15 (3) This part does not limit or otherwise impair the
16 jurisdiction or powers of any other department, agency, or
17 officer of this state to investigate, apprehend, and prosecute
18 violators of this part. ~~or obviate~~ **This part does not preempt**
19 **local ordinances or** ~~prevent enactment of~~ local regulations that
20 are as restrictive or more restrictive than this part, **except to**
21 **the extent the ordinances or regulations conflict with the**
22 **exemption from liability for prescribed burns conducted in**
23 **compliance with section 51503d.**