



# What is?

## **PRESCRIBED FIRE LIABILITY**

Liability is the legal responsibility for ones acts or omissions.

Prescribed fire liability from escaped fire in the United States falls under one of three Standards of Care: strict liability, simple negligence, or gross negligence.

### **Strict liability**

Under a strict liability standard, a court would hold burners liable for any property damage caused by an escaped prescribed fire, regardless of the action of the burner. Strict liability is the highest Standard of Care for anyone conducting a prescribed burn.

### **Simple negligence**

Under a simple negligence liability standard, a court would hold burners liable for any property damage caused by an escaped prescribed fire, **IF** the burner acted negligently regardless of their consciousness or willfulness in doing so. Under this law, the burner must practice “reasonable care” during a prescribed burn. If the burner omitted something that a reasonable person in similar circumstances would do, or not do, that burner could be held liable under the simple standard. Simple negligence is the most common rule for prescribed fire in the United States, however, the variation in language of this law may differ from state to state. Oregon and Washington use simple negligence as the liability standard.



Photo credit: Amanda Rau

### **Gross negligence**

Under a gross negligence liability standard, a court would hold burners liable for any property damage caused by an escaped prescribed fire, **IF** the burner had a conscious and voluntary reckless disregard for the need to use “reasonable care.” Gross negligence is a severe degree of negligence above and beyond failing to do what a

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reasonable person would have done given similar circumstances. In states where gross negligence applies, there typically are certification requirements that a burner must meet in order to receive a gross negligence standard.

### Limited vs total liability

In addition to which type of liability is followed in a given state, burners should also be aware of any statutory provisions related to prescribed burning. Many states, including Oregon, offer limited liability to landowners if certain requirements are met.

#### *Limited liability in Oregon*

If an investigation finds that all applicable regulations were fully followed, the landowner/operator (a burner is considered an operator) may be required to reimburse up to \$300,000 of extra fire suppression costs.

#### *Total liability in Oregon*

If a landowner/operator did not follow applicable regulations then they may be billed for all of the costs to put out the fire.

The laws concerning liability are complex. Before any type of forest operation, including prescribed burning, contact your local [Oregon Department of Forestry](#) or [Washington Department of Natural Resources](#) office.

**Author:** Carrie Berger, Fire Program Manager, Oregon State University Extension

### For more information:

Great Plains Fire Science Exchange, [Prescribed fire liability factsheet: standards of care by state](#)

Oregon Department of Forestry, [Landowner Fire Liability](#)

Oklahoma Cooperative Extension Service, [Prescribed Fire: Understanding Liability, Laws and Risk](#)

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