

WILDLAND FIRE LIABILITY AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael K. McKell

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses liability following a wildland fire.

Highlighted Provisions:

This bill:

▶ states that a person who negligently, recklessly, or intentionally causes a wildland fire shall be liable for damages and the cost of suppressing the fire;

▶ states that a person that causes a wildland fire through the operation, maintenance, or use of any instrumentality of the person's shall be liable for all damages resulting from the wildland fire;

▶ states that a property owner who suffers damage from a wildland fire may bring an action to recover damages, costs, and reasonable attorney fees;

▶ provides a balancing test for a court evaluating a property owner's request to restore property following a wildland fire; and

▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



28 **65A-3-4**, as repealed and reenacted by Laws of Utah 2012, Chapter 361

29 **76-6-104.5**, as last amended by Laws of Utah 2009, Chapter 320



31 *Be it enacted by the Legislature of the state of Utah:*

32 Section 1. Section **65A-3-4** is amended to read:

33 **65A-3-4. Liability for causing wildland fires.**

34 (1) A person who negligently, recklessly, or intentionally causes ~~[or spreads]~~ a
35 wildland fire shall be liable for damages resulting from the wildland fire, including the cost of
36 suppressing that wildland fire, regardless of whether the fire begins on:

- 37 (a) private land;
- 38 (b) land owned by the state;
- 39 (c) federal land; or
- 40 (d) tribal land.

41 (2) (a) The conduct described in Subsection (1) includes any negligent, reckless, or
42 intentional conduct, and is not limited to conduct described in Section **65A-3-2**.

43 (b) Notwithstanding Subsection (1) or (2)(a) or any provision of Title 63G, Chapter 7,
44 Governmental Immunity Act of Utah, when a person causes a wildland fire through the
45 operation, maintenance, or use of any instrumentality of the person, the person shall be liable
46 for all damages resulting from the wildland fire, including the cost of suppression.

47 (3) (a) ~~[A person who incurs]~~ A property owner who suffers damage from a wildland
48 fire, including costs to suppress a wildland fire, may bring an action under this section to
49 recover ~~[those costs]~~ damages resulting from the fire and attorney fees.

50 (b) Damages resulting from fire, as described in Subsection (3)(a), include the
51 reasonable costs to restore the property, even if the costs exceed the diminution in value of the
52 property, so long as the property owner has a genuine intent to restore the actual damage
53 caused by the fire.

54 (c) To determine whether a property owner has a genuine intent to restore the actual
55 damage, as described in Subsection (3)(b), the court shall weigh the following factors:

- 56 (i) how long the property owner has owned the property;
- 57 (ii) how long the property has been owned by the property owner's family;
- 58 (iii) the use of the property;

- 59 (iv) whether the property is improved;
- 60 (v) whether the property is used as a primary or secondary residence;
- 61 (vi) whether the property owner has begun or completed the restoration of the property;

62 and

- 63 (vii) any other factor that may show the owner's intent to restore the property.
- 64 (d) To determine the reasonableness of costs sought by a property owner, the court
- 65 shall weigh the following factors:

66 (i) the reasonableness of the proposed restoration in light of the damage to the
67 property;

68 (ii) the costs of the proposed restoration; and

69 (iii) the projected value of the property after the restoration takes place.

70 (4) A person who suffers damage from a wildland fire may pursue all other legal
71 remedies in addition to seeking damages under Subsection (3).

72 Section 2. Section **76-6-104.5** is amended to read:

73 **76-6-104.5. Abandoned fire -- Penalties.**

74 (1) A person is guilty of abandoning a fire if, under circumstances not amounting to the
75 offense of arson, aggravated arson, or causing a catastrophe under Title 76, Chapter 6, Part 1,
76 Property Destruction, the person leaves a fire:

- 77 (a) without first completely extinguishing it; and
- 78 (b) with the intent to not return to the fire.

79 (2) A person does not commit a violation of Subsection (1) if the person leaves a fire to
80 report an uncontrolled fire.

81 (3) A violation of Subsection (1):

- 82 (a) is a class C misdemeanor if there is no property damage;
- 83 (b) is a class B misdemeanor if property damage is less than \$1,000 in value; and
- 84 (c) is a class A misdemeanor if property damage is or exceeds \$1,000 in value.

85 (4) If a violation of Subsection (1) involves a wildland fire, the violator is also liable
86 for damages and suppression costs [~~under~~] as described in Section 65A-3-4.

87 (5) A fire spreading or reigniting is prima facie evidence that the person did not
88 completely extinguish the fire as required by Subsection (1)(a).

Legislative Review Note
Office of Legislative Research and General Counsel