

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1633

By: Sweeden

COMMITTEE SUBSTITUTE

An Act relating to agriculture; providing legislative intent for prescribed burning and fires; specifying purpose; defining terms; creating the Oklahoma Fire Management Act; amending 2 O.S. 1991, Sections 742, 743, 748, 1301-207, 1301-208, as last amended by Section 35, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 and 1301-209 (2 O.S. Supp. 2000, Section 1301-208), which relate to burning and forestry; making certain actions unlawful; deleting out-of-date language; requiring certain conduct and procedures for burning; providing for liability for certain burnings; updating language; requiring extinguishment of campfires; providing that certain prescribed burning is not a public or private nuisance and is a property right; providing for prescribed burning; providing for liability; providing procedures for conducting prescribed burn; requiring notification; providing for contents; requiring completion and submission of form; describing liability for various actions; repealing 2 O.S. 1991, Sections 741, 744, 745, 746 and 747, which relate to burning and fires; providing for noncodification; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

A. The Oklahoma Legislature finds that:

1. The application of prescribed burning is a land management tool that benefits the safety of the public, the environment, and the economy of Oklahoma;

2. Prescribed burning reduces naturally occurring vegetative fuels within agricultural and wildlife areas. Reduction of the fuel load reduces the risk and severity of major catastrophic wildfire,

thereby reducing the threat of loss of life and property, particularly in urbanizing areas;

3. Most of Oklahoma's natural communities require periodic fire for maintenance of their ecological integrity. Prescribed burning is essential to the perpetuation, restoration, and management of many plant and animal communities. Significant loss of the state's biological diversity will occur if fire is excluded from fire-dependent systems;

4. Rangeland and forestland constitute significant economic, biological, and aesthetic resources of statewide importance. Prescribed burning on rangeland improves the quality and quantity of forage for livestock, habitat for popular game species, endangered plants and animals, water quality and quantity, air quality, and human health. In addition, prescribed burning on forestland prepares sites for reforestation, removes undesirable competing vegetation, expedites nutrient cycling, and controls or eliminates certain forest pathogens;

5. The use of prescribed burning for management of public lands is essential to maintain the specific resource values for which these lands were acquired; and

6. As Oklahoma's population continues to grow, pressures from liability issues and nuisance complaint inhibit the use of prescribed burning.

B. It is the purpose of the Oklahoma Fire Management Act to:

1. Authorize and to promote the continued use of prescribed burning for ecological, rangeland management, forestry, and wildlife management purposes; and

2. Provide criminal and civil liability relief for persons who conduct prescribed burning pursuant to the provisions of the Oklahoma Fire Management Act.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 741.1 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Sections 2 through 6 of this act shall be known and may be cited as the "Oklahoma Fire Management Act".

B. For purposes of the Oklahoma Fire Management Act:

1. "Owner" means the person who owns or controls the croplands, rangelands or forestlands which are to be set on fire or are burned or who has requested the burning of his or her croplands, rangelands or forestlands;

2. "Prescribed burning" means the controlled application by the owner of croplands, rangelands or forestlands of fire to naturally occurring vegetative fuel under specified environmental conditions and following appropriate precautionary measures, which causes the fire to be confined to a predetermined area and accomplish land management objectives. Prescribed burning includes compliance with the provisions specified in Section 5 of this act.

SECTION 3. AMENDATORY 2 O.S. 1991, Section 742, is amended to read as follows:

Section 742. ~~For~~ A. It shall be lawful for an owner of croplands, rangelands or forestlands to set the croplands, rangelands or forestlands on fire for the purposes of:

~~(1)~~ 1. Managing and manipulating plant species present whether grass, weeds, brush or trees; and

~~(2)~~ 2. Destroying detrimental or unwanted plants, plant parts, shrubs or trees on the croplands, rangelands or forestlands, ~~it shall be lawful for the person who owns or controls croplands, rangelands or forestlands to set the croplands, rangelands or forestlands on fire for a prescribed or controlled burning.~~

B. Burning conducted pursuant to the Oklahoma Fire Management Act shall not be allowed to spread beyond the control of the owner

and shall be subdued and extinguished the same day on which it is set.

C. Nothing in this section shall relieve the owner ~~or person in~~ control of the cropland, rangeland or forestland from the liability or damages ~~named in Sections 741, 743, 744, 745, 746, 747, 748, 1301-205, 1301-206, 1301-208, 1301-209 and 1301-212 of this title~~ as specified in Sections 4 and 5 of this act.

SECTION 4. AMENDATORY 2 O.S. 1991, Section 743, is amended to read as follows:

Section 743. ~~If~~ A. Except for prescribed burning conducted pursuant to Section 5 of this act, if any fire, set as ~~provided in the preceding section~~ authorized by Section 742 of this title, should by accident and without any fault or neglect of the ~~person setting the same~~ owner, get beyond ~~his~~ the control of the owner or beyond the bounds of the owner's cropland, rangeland or forestland, such person the owner shall be civilly liable ~~as provided in the second preceding section~~ for all damages done by ~~said~~ the fire, ~~but not otherwise. But if such~~

B. 1. Except for prescribed burning conducted pursuant to Section 5 of this act, if any fire set as authorized by Section 742 of this title should by negligence, carelessness or be intentionally permitted to spread beyond the control of the owner or beyond the bounds of such strip of land mentioned in the preceding section the owner's cropland, rangeland or forestland, then the person setting such fire the owner shall be ~~liable~~ both civilly liable for all damage done by the fire and criminally liable as provided in ~~the second preceding section~~ paragraph 2 of this subsection.

2. Any owner setting or causing to be set on fire his or her croplands, rangeland or forestland, as a result of negligence or carelessness who permits to spread beyond the control of the owner or beyond the bounds of the owner's croplands, rangeland or forestland, shall be deemed guilty of a misdemeanor, and upon

conviction thereof, be fined a sum not more than Five Hundred Dollars (\$500.00) nor less than Ten Dollars (\$10.00), or imprisonment in the county jail for a period not longer than six (6) months.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 744.1 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. 1. The provisions of this section apply to prescribed burning; and

2. Any owner wishing to set fire to his or her croplands, rangelands or forestlands in order to conduct a prescribed burning shall comply with the provisions of this section.

B. Within sixty (60) days prior to conducting a prescribed burn, the owner of the cropland, rangeland or forestland to be burned shall orally or in writing notify all landowners whose land adjoins the cropland, rangeland or forestland to be burned of the prescribed burning. The owner shall include in the written notice or shall orally notify the adjoining landowners of the proposed date and location of the burn and a telephone number where the owner can be reached for information regarding the prescribed burning.

C. In addition to notification of adjoining property owners of a prescribed burning, the owner of croplands, rangelands or forestlands to be burned shall complete the prescribed burning management plan specified in subsection D of this section and shall submit such plan to the rural fire department nearest the croplands, rangelands or forestlands to be burned.

D. 1. Any person wishing to conduct a prescribed burning shall complete the form which shall be in substantially the following form:

PRESCRIBED BURNING MANAGEMENT PLAN

Name _____ Phone _____
Address _____ County: _____

1. Be considered in the public interest and shall not constitute a public or private nuisance; and

2. Be considered a property right of the property owner if naturally occurring vegetative fuels are used.

F. 1. Any owner conducting a prescribed burn who is found by a court of law to have caused damages or injury as a result of accident and without fault or neglect or by ordinary negligence shall only be civilly liable for actual damages resulting from the prescribed burn;

2. Any owner conducting a prescribed burn who is found by a court of law to have committed gross negligence in conducting the prescribed burning may be found to be both civilly liable for the amount of damage done by the fire and criminally liable pursuant to paragraph 3 of this subsection; and

3. Any owner setting or causing to be set on fire his or her croplands, rangeland or forestland, and as a result of gross negligence or who permits the fire to spread beyond the control of the owner or beyond the bounds of the owner's croplands, rangeland or forestland, shall be deemed guilty of a misdemeanor, and upon conviction thereof, be fined a sum not more than Five Hundred Dollars (\$500.00) nor less than Ten Dollars (\$10.00), or imprisonment in the county jail for a period not longer than six (6) months.

SECTION 6. AMENDATORY 2 O.S. 1991, Section 748, is amended to read as follows:

Section 748. A. In any action instituted in any court to recover damages under the provisions of ~~this article~~ Section 743 of this title, it shall not be necessary for any person, injured by any such fire to allege in ~~his~~ the pleadings, or prove on trial of such action, title to the real property over which ~~such~~ the fire has spread, but it shall be sufficient in any such action to allege and prove that the person, so injured was in the occupancy or possession

of any such ranch, buildings, improvements, fencing, timber, marsh or other property, claiming the right to and occupying with cattle any such cattle range; ~~it being.~~

B. It is the purpose and intention of this article Sections 742 through this section of this title to protect the possession as aforesaid possessions specified in subsection A of this section of any person whether he have such person has title to the land so claimed or occupied or not.

C. Any railroad company operating any line in this state shall be liable for all damages sustained by fire originating from operating its road.

SECTION 7. AMENDATORY 2 O.S. 1991, Section 1301-207, is amended to read as follows:

Section 1301-207. ~~It is unlawful for any individual or group of individuals to build a warming or camp fire and leave same unextinguished. Any person who violates this section is~~ A. If any person having made any camp or other warming fire leaves the fire without having thoroughly extinguished the fire and the fire spreads and burns any wood, marsh, or prairie, such person shall be deemed guilty of a misdemeanor punishable by a fine of not more than Five Hundred Dollars (\$500.00) or by imprisonment and upon conviction thereof, shall be fined in any sum not to exceed Five Hundred Dollars (\$500.00), or imprisoned in the county jail for not more than one (1) year, or by both such fine and imprisonment in the discretion of the court.

B. Such person shall also be liable in a civil action to any person damaged by such fire in the amount of damage or injury done by the fire.

SECTION 8. AMENDATORY 2 O.S. 1991, Section 1301-208, as last amended by Section 35, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (2 O.S. Supp. 2000, Section 1301-208), is amended to read as follows:

Section 1301-208. A. It is unlawful for any person either willfully or carelessly to burn or cause to be burned or to set fire to or cause fire to be set to any forest, grass, woods, wild lands or marshes owned or controlled by such person, except under the following circumstances: ~~(1) in~~

1. In protection areas notification to burn must be made to the local office or local representative of the Forestry Division at least four (4) hours in advance and verbal or written approval obtained; or (2) outside. In addition to any civil liability pursuant to Section 1301-209 of this title, any person who is convicted of willfully violating the provisions of this paragraph is guilty of a felony punishable by a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment for not more than three (3) years, or by both; and

2. Outside protection areas, in order for such burning to be lawful, such person shall take reasonable precaution against the spreading of fire to other lands by providing adequate firelines, manpower and fire fighting equipment for the control of such fire, shall watch over said fire until it is extinguished and shall not permit fire to escape to adjoining land. The liability of any person setting fire to cropland, rangeland or forestland owned by such person shall be determined pursuant to the Oklahoma Fire Management Act.

B. Nothing in this section shall relieve the person from the obligation to confine the fire to the owner's, agent's or tenant's land; and

4. C. This ~~act~~ section shall not apply to trimming or cutting of trees by public or private utilities for the purpose of eliminating interference with utility lines, poles or other utility equipment.

~~B. Any person who carelessly violates this section is guilty of a misdemeanor punishable by a fine of not more than Five Hundred~~

~~Dollars (\$500.00) or by imprisonment for not more than one (1) year, or by both. Any person who willfully violates this section is guilty of a felony punishable by a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment for not more than three (3) years, or by both.~~

SECTION 9. AMENDATORY 2 O.S. 1991, Section 1301-209, is amended to read as follows:

Section 1301-209. ~~Any~~ Except as otherwise provided by Section 1301-208 of this title, any person violating any of the provisions of this ~~act~~ article shall be liable for all damages caused by such violation, which damages shall be recoverable in any court of competent jurisdiction. The civil liability shall obtain whether or not there be criminal prosecution and conviction.

SECTION 10. REPEALER 2 O.S. 1991, Sections 741, 744, 745, 746 and 747, are hereby repealed.

SECTION 11. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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