

ENGROSSED HOUSE
BILL NO. 1633

By: Sweeden and Braddock of the
House

and

Harrison of the Senate

An Act relating to agriculture; providing legislative intent for prescribed burning; specifying purpose; amending 2 O.S. 1991, Sections 1301-102, as amended by Section 2, Chapter 238, O.S.L. 1995 and 1301-208, as last amended by Section 35, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (2 O.S. Supp. 2000, Sections 1301-102 and 1301-208), which relate to burning and forestry; modifying and adding terms; making certain actions unlawful; deleting out-of-date language; requiring certain conduct and procedures for conducting a prescribed burn; providing for liability for certain burnings; updating language; providing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 notification form; providing for contents; describing liability for various actions; repealing 2 O.S. 1991, Section 743, which relates to civil and criminal liability for certain actions; 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 fires 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, cropland and forestland constitute significant economic, biological, and aesthetic resources of statewide importance. Prescribed burning on rangeland and cropland 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 provisions of this act to:

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

2. Provide criminal and nuisance liability relief for persons who conduct prescribed burning pursuant to the provisions of this act.

SECTION 2. AMENDATORY 2 O.S. 1991, Section 1301-102, as amended by Section 2, Chapter 238, O.S.L. 1995 (2 O.S. Supp. 2000, Section 1301-102), is amended to read as follows:

Section 1301-102. As used in the Oklahoma Forestry Code:

1. ~~"Board" means the State Board of Agriculture of the State of Oklahoma~~ "Director" means the Director of Forestry of the State Department of Agriculture;

2. "Division" means the Forestry Division of the State ~~Board~~ Department of Agriculture;

3. ~~"Director" means the Director of Forestry of the State Board of Agriculture~~ "Established property line" means any boundary line which has been:

- a. recognized by adjoining land owners as a boundary and uncontested for at least fifteen (15) years including, but not limited to, fence lines, roads, and natural features,
- b. established by a registered land surveyor, or
- c. uncontested for at least fifteen (15) years;

4. ~~"Person" means any individual, firm, partnership, corporation, organization or any combination thereof, whether or not incorporated~~ "Forest rangers" means all employees of the Forestry Division who have responsibilities in forest protection, including laborers, mechanics, and other employees who assist in forest protection;

5. ~~"Forests"~~ "Forest" means ~~forest~~ a tract of wooded land or dense trees that is at least ten percent (10%) stocked by ~~forest~~ trees of any size, whether of commercial or noncommercial species, or formerly having ~~such~~ tree cover and not currently developed for nonforest use, including woodlands, woodlots, windbreaks, and shelterbelts;

6. ~~"Forest rangers" means all employees of the Forestry Division who have responsibilities in forest protection, including~~

~~laborers, mechanics, radio technicians and other employees who assist in forest protection~~ "Logging or timber harvesting operation" means the cutting or harvesting of and removal of timber from a site, leaving the root mass intact;

7. "Owner" means the possessor of a fee interest, a tenant, lessee, occupant or other person in lawful control of land;

8. "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. Any person conducting a prescribed burn shall comply with the provisions of Section 5 of this act;

9. "Timber" means live and dead trees and the profit in any live and dead trees including, but not limited to, bark, foliage, wood, vines, firewood, crossties, and shrubbery;

10. "Timber owner" means any person who owns the right to cut or harvest timber at the time the timber is to be cut or harvested, or who legally owns the severed timber;

11. "Wildfires" ~~includes~~ means any fire which is not controlled on forests, grasslands ~~or~~, unimproved fields, or croplands; and

~~8.~~ 12. "Wild lands" ~~refers to~~ means any unimproved lands regardless of kind of vegetative plant cover including forests, prairies, marshes, and swamps;

~~9.~~ "Timber" ~~means and includes live and dead trees and the profit in any live and dead trees including but not limited to bark, foliage, wood, vines, firewood, crossties and shrubbery;~~

~~10.~~ "Logging or timber harvesting operations" ~~means the cutting or harvesting of and removal of timber from a site, leaving the root mass intact;~~

~~11.~~ "Established property line" ~~means any boundary line which has been;~~

- a. ~~recognized by adjoining land owners as a boundary and uncontested for at least fifteen (15) years including but not limited to fence lines, roads and natural features,~~
- b. ~~established by a registered land surveyor, or~~
- c. ~~uncontested for at least fifteen (15) years; and~~

~~12. "Timber owner" means any person who owns the right to cut or harvest timber at the time the timber is to be cut or harvested, or who legally owns the severed timber.~~

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 16-24.1 of Title 2, unless there is created a duplication in numbering, reads as follows:

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. Managing and manipulating plant species present whether grass, weeds, brush or trees; and
- 2. Destroying detrimental or unwanted plants, plant parts, shrubs or trees on the croplands, rangelands or forestlands.

B. The provisions of this section shall not be construed to exempt or release a person from civil liability for damages or injury incurred as a result of the burn or for criminal liability as imposed pursuant to the Oklahoma Forestry Code.

SECTION 4. 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, croplands, rangeland, woods, wild lands, or marshes ~~owned or controlled by an~~

owner of such person property, except under the following circumstances:

~~(1)~~ 1. In protection areas, notification to burn ~~must~~ shall be made by the owner to the local office or local representative of the Forestry Division at least four (4) hours in advance and verbal or written approval obtained. In addition to the notification requirements of this paragraph, any owner conducting a prescribed burn in a protected area shall comply with the provisions of Section 5 of this act; or

~~(2)~~ ~~outside~~ 2. Outside protection areas, in order for ~~such~~ prescribed or controlled burning to be lawful, ~~such person~~ an owner 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~~ the fire, shall watch over ~~said~~ the fire until it is extinguished and shall not permit fire to escape to adjoining land; or

3. Any owner wishing to conduct a prescribed burn outside protection areas shall comply with the provisions of Section 5 of this 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. ~~This act~~

C. The Oklahoma Forestry Code 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~~ D. 1. Except as otherwise provided by Section 5 of this act, any person:

- a. who, whether by accident, neglect or intent, causes or allows damage or injury to occur to any ranch, buildings, improvements, hay, grass, crops, fencings, timber, marsh, or other property of another person by

any fire described and conducted pursuant to this section, shall be civilly responsible for such damage or injury so caused pursuant to Section 16-30 of this title, and

- b. 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~~ 2. In addition to civil liability, 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.

E. Fire set under the provisions of this section shall not be allowed to spread beyond the control of the person setting the fire and shall be subdued and extinguished.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 16-28.2 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.

2. Any owner wishing to set fire to his or her land 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 land to be burned shall orally or in writing notify all landowners whose lands adjoin the owner's land to be burned. 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 pursuant to subsection B of this section, the owner of the land to

be burned shall complete the prescribed burning notification plan specified in subsection D of this section and shall submit such plan to the rural fire department nearest the land to be burned. If the land to be burned is in a protection area, the owner shall also submit a copy of the notification plan to the local office or local representative of the Forestry Division nearest to the land to be burned.

D. Any person wishing to conduct a prescribed burn shall complete this form, distributed by the State Department of Agriculture, which shall be in substantially the following form:

PRESCRIBED BURNING NOTIFICATION PLAN

Name _____ Phone _____

Address _____ County _____

City, State, Zip _____

Ranch name, if any _____

Area to be burned _____

Approximate acres to be burned _____

Written distance description of location _____

Projected time frame _____

Date of previous burn _____

Objectives to be accomplished through the prescribed burn:

Contact information:

Rural Fire Department:

Name: _____ Location: _____ Phone No.: _____

Forestry District Office (for protection areas) _____

Adjoining landowners:

You need to file the original copy of the form with the rural fire department nearest to the land to be burned. If you are conducting a prescribed burn within a protection area, you also need to file a copy of the notification plan with the local office or local representative of the Forestry Division nearest to the land to be burned. A copy of the plan shall be retained by the owner of the land to be burned.

E. 1. Whether the land is located within or outside a protection area, the owner of land to be burned shall, within forty-eight (48) hours of conducting a prescribed burn, notify the rural fire department receiving a copy of the prescribed burning notification plan that the prescribed burn will be conducted.

2. Within a protection area, the owner of land to be burned shall also, within the time period required by Section 16-28 of Title 2 of the Oklahoma Statutes, notify the local office or local representative of the Forestry Division receiving a copy of the prescribed burning notification plan.

F. Prescribed burning conducted pursuant to provisions of this section shall:

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.

G. 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 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.

3. Any owner setting or causing to be set on fire his or her land, and as a result of gross negligence permitting the fire to spread beyond the control of the owner or beyond the bounds of the owner's land, shall be deemed guilty of a misdemeanor, and upon conviction thereof, be fined a sum not more than Five Hundred Dollars (\$500.00), or imprisonment in the county jail for a period not more than six (6) months.

SECTION 6. REPEALER 2 O.S. 1991, Section 743, is hereby repealed.

SECTION 7. 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.

Passed the House of Representatives the 12th day of March, 2001.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2001.

Presiding Officer of the Senate