

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

HOUSE BILL HB1633

By: Sweeden

AS INTRODUCED

An Act relating to agriculture; providing legislative intent for prescribed burning and fires; specifying purpose; defining terms; 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(2 O.S. Supp. 2000, Section 1301-208), which relate to burning and forestry; making certain actions unlawful; deleting out-of-date language; requiring certain conduct and procedures for burning; providing for liability for certain burnings; updating language; requiring extinguishment of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; requiring negligence to be proven for liability; describing liability for various negligence; repealing 2 O.S. 1991, Sections 741, 744, 746 and 747, which relate to burning and fires; providing for noncodification; 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 wild land 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;

6. Proper training in the use of prescribed burning is necessary to ensure maximum benefits and protection for the public; and

7. 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 this law to authorize and to promote the continued use of prescribed burning for ecological, rangeland management, forestry, and wildlife management purposes.

C. For purposes of this section, "prescribed burning" means the controlled application by the owner, a person in the lawful possession of real property, or by a person duly authorized by the owner or lawful possessor thereof 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.

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

Section 742. ~~For~~ A. It shall be lawful for any person who owns or controls croplands, rangelands or forestlands to set the croplands, rangelands or forestlands on fire for a prescribed burning, 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 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. Nothing in this section shall relieve the owner or person in control of the cropland, rangeland or forestland from 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.~~

B. Prescribed burning pursuant to this section shall be conducted pursuant to Section 1301-208 of this title.

C. In addition to other requirements prescribed by the Oklahoma Forestry Code, prescribed burning shall not be allowed to spread beyond the control of the person setting the fire and shall be subdued and extinguished the same day on which it is set.

D. For purposes of this subsection, "prescribed burning" means the controlled application by the owner, a person in the lawful possession of real property, or by a person duly authorized by the owner or lawful possessor thereof 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.

SECTION 3. AMENDATORY 2 O.S. 1991, Section 743, is amended to read as follows:

Section 743. A. If any ~~fire, set as provided in the preceding section,~~ prescribed burning should by accident and without any fault or neglect or by ordinary negligence of the ~~person setting the same~~ owner or controller of croplands, rangelands or forestlands, get beyond ~~his~~ such person's control, ~~such person~~ the owner or controller shall be ~~liable as provided in the second preceding section for all~~ only civilly liable for actual damages and injury for the damages done by said fire, ~~but not otherwise. But if such~~

B. If the fire should by gross negligence, carelessness or be intentionally permitted to spread beyond the bounds of such strip of land mentioned in ~~the preceding section~~ Section 742 of this title, ~~then~~ the person setting such fire shall be liable both civilly and criminally as provided in ~~the second preceding section~~ Article II of the Oklahoma Forestry Code.

SECTION 4. 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 to protect the ~~possession as aforesaid~~

possessions 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 5. 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 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 Two Hundred Dollars (\$200.00), 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 6. 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~~

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;

3. 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. 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 1. Prescribed burning conducted under the provisions of this article and Sections 742 through 748 of this title shall:

- a. be considered in the public interest and shall not constitute a public or private nuisance when conducted pursuant to the provisions of this article, and
- b. be considered a property right of the property owner if naturally occurring vegetative fuels are used and when conducted pursuant to the requirements of this article.

2. No property owner or his agent, conducting a prescribed burn pursuant to the requirements of this article, shall be liable for

damage or injury by fire or resulting smoke, unless negligence is proven.

3. For purposes of this subsection, "prescribed burning" means the controlled application by the owner, the person in the lawful possession of real property or by a person duly authorized by the owner or lawful possessor thereof 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.

C. 1. Any person conducting a prescribed burn who is found by a court of law to have caused damages or injury as a result of ordinary negligence shall only be civilly liable for actual damages resulting from the prescribed burn.

2. In addition to any civil liability pursuant to Section 1301-209 of this title, 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 7. 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 8. REPEALER 2 O.S. 1991, Sections 741, 744, 746 and 747, are hereby repealed.

SECTION 9. 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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