

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL 606

By: Corn

COMMITTEE SUBSTITUTE

An Act relating to agriculture; amending 2 O.S. 2001, Sections 16-2, 16-28, and 16-28.2, which relate to the Oklahoma Forestry Code; modifying name of prescribed burn; adding statutory reference; adding and deleting definitions; providing for compliance with certain laws; requiring advance notification of controlled burn to certain persons; requiring the Department of Agriculture, Food, and Forestry to adopt rules for the use of certified prescribed burning; requiring the Department to adopt rules for certifying and decertifying certain persons; providing for a Prescribed Burning Advisory Committee; authorizing the Committee to promulgate rules and recommend certain fees; providing for membership; stating parameters for burns conducted by certain person; providing for penalties; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 2 O.S. 2001, Section 16-2, is amended to read as follows:

Section 16-2. As used in the Oklahoma Forestry Code:

1. "Advance notification controlled burning" means the lawful and controlled application of fire to vegetative land cover fuels by the owner or agent of the owner in compliance with Section 4 of this act, and in such a manner that the fire remains confined to the property of the owners;

2. "Certified prescribed burn manager" means an individual who meets the requirements of the Department's certification program;

3. "Certified prescribed burning" means the lawful and controlled application of fire to vegetative land cover fuels by a Certified Prescribed Burner according to a written prescription to

accomplish land management objectives, in compliance with Section 4 of this act, and in such a manner that the fire remains confined to the property of the owners;

4. "Director" means the Director of Forestry of the State Oklahoma Department of Agriculture, Food, and Forestry;

~~2.~~ 5. "Division" means the Forestry Division of the State Oklahoma Department of Agriculture, Food, and Forestry;

~~3.~~ 6. "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.~~ 7. "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.~~ 8. "Forest" means a tract of land that is at least ten percent (10%) stocked by trees of any size, whether of commercial or noncommercial species, or formerly having tree cover and not currently developed for nonforest use, including woodlands, woodlots, windbreaks, and shelterbelts;

~~6.~~ 9. "Logging or timber harvesting operations" means the cutting or harvesting of and removal of timber from a site, leaving the root mass intact;

~~7.~~ 10. "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 16-28.2 of this title;~~

~~9.~~ 11. "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.~~ 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;

~~11.~~ 13. "Wildfires" means any fire which is not controlled on forests, grasslands, unimproved fields, or croplands; and

~~12.~~ 14. "Wild lands" means any unimproved lands regardless of kind of vegetative plant cover including forests, prairies, marshes, and swamps.

SECTION 2. AMENDATORY 2 O.S. 2001, Section 16-28, is amended to read as follows:

Section 16-28. A. It is unlawful for any person either willfully or carelessly to burn, cause to be burned, to set fire to, or cause fire to be set to any forest, grass, croplands, rangeland, woods, wild lands, or marshes by an owner of such property, except under the following circumstances:

1. In protection areas, notification to burn 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~~ an advanced notification controlled burn in a protected area shall comply with the provisions of Section ~~5~~ 16-28.2 of this ~~act~~ title;

2. Outside protection areas, in order for certified prescribed, advance notification controlled or controlled burning to be lawful, 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 the fire, shall watch over 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~~ conducting an advanced notification controlled burn outside protection areas shall comply with the provisions of Section ~~5~~ 16-28.2 of this ~~act~~ title; or

4. Any person conducting a certified prescribed burn, whether inside or outside of a protection area, shall comply with Section 16-28.2 of this title and Section 4 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.

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.

D. 1. Except as otherwise provided by ~~Section 5~~ Section 16-28.2 of this ~~act~~ title and Section 4 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), by imprisonment for not more than one (1) year, or both.

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), 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 3. AMENDATORY 2 O.S. 2001, Section 16-28.2, is amended to read as follows:

Section 16-28.2 A. 1. The provisions of this section apply to ~~prescribed~~ advance notification controlled burning.

2. Any owner wishing to set fire to ~~his or her~~ land in order to conduct ~~a prescribed~~ an advance notification controlled burning shall comply with the provisions of this section.

B. Within sixty (60) days prior to conducting ~~a prescribed~~ an advanced notification controlled 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~~ advanced notification controlled burning. When a landowner(s) is burning on a large, consolidated tract of land where there are multiple adjacent owners, only those owners with adjoining land within one mile of the proposed burn area need to be notified.

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~~ advanced notification controlled 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~~ advance notification controlled burn shall complete this form, distributed by the Oklahoma Department of Agriculture, Food, and Forestry, which shall be in substantially the following form:

~~PRESCRIBED~~ ADVANCE NOTIFICATION CONTROLLED 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~~ advance notification controlled 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~~ an advance notification controlled 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~~ an advance notification controlled burn, notify the rural fire department receiving a copy of the ~~prescribed~~ advance notification controlled 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~~ this title, notify the local office or local representative of the Forestry Division receiving a copy of the ~~prescribed~~ advanced notification controlled burning notification plan.

F. ~~Prescribed~~ Advanced notification controlled 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~~ an advance notification controlled 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~~ advance notification controlled burn.

2. Any owner conducting a ~~prescribed~~ an advance notification controlled burn who is found by a court of law to have committed gross negligence in conducting the ~~prescribed~~ advance notification controlled 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 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 16-28.3 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. 1. The provisions of this section shall apply to certified prescribed burning.

2. The Oklahoma Department of Agriculture, Food, and Forestry shall adopt rules, and fees if deemed necessary, for the use of certified prescribed burning and for certifying and decertifying certified prescribed burn managers based on their past experience, training, and record of compliance with the laws in this section. Rules for certified prescribed burning shall be consistent with the requirements of Section 16-28.2 of Title 2 of the Oklahoma Statutes and shall include the following additional requirements: (1) a fire plan with physical location, (2) a site description, (3) a map of

the area, (4) a list of personnel and equipment to be utilized, (5) desired weather parameters, (6) observed weather conditions, (7) a smoke management plan, (8) adequate firebreaks, personnel and equipment on site, and (9) a certified prescribed burn manager on site.

3. A Prescribed Burning Advisory Committee shall be established to assist the Department in promulgating rules and recommending fees if deemed necessary, and to act in an advisory capacity to the Department and Board.

a. The Prescribed Burning Advisory Committee shall consist of representatives of the following:

- (1) Division of Forestry Services,
- (2) Rural Fire Coordinators,
- (3) Oklahoma Department of Wildlife Conservation,
- (4) Oklahoma Conservation Commission,
- (5) Oklahoma Department of Environmental Quality,
- (6) Oklahoma State University,
- (7) Oklahoma USDA Natural Resources Conservation Service,
- (8) Member of a legally organized burn cooperative,
- (9) Private lands owner, and
- (10) Technical service provider.

b. Members of the Committee shall be appointed by and serve at the pleasure of the Commissioner of Agriculture.

B. Burns conducted by a certified prescribed burn manager, in compliance with laws and rules adopted by the Department 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 vegetative fuels are used.

C. 1. Any owner or agent conducting a certified prescribed

burn in accordance with rules adopted by the Department is neither liable for damage or injury caused by the fire or resulting smoke unless gross negligence is proven.

2. Any owner conducting a certified prescribed burn who is found by a court of law to have committed gross negligence in conducting the certified 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 the owner's 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 punished by a fine of not more than Five Hundred Dollars (\$500.00), or imprisonment in the county jail for a period not more than six (6) months, or both such fine and imprisonment.

4. Acting as an agent on behalf of an owner, any certified prescribed burn manager who sets or causes to be set on fire an owner's land, and as a result of gross negligence permits 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 punished by a fine of not more than Five Hundred Dollars (\$500.00), or imprisonment in the county jail for a period not more than six (6) months, or both such fine and imprisonment.

SECTION 5. This act shall become effective July 1, 2003.

SECTION 6. 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.