

ENROLLED HOUSE
BILL NO. 2984

By: Jett, Armes, DeWitt,
Hickman, McMullen and
Shelton of the House

and

Shurden and Lawler of the
Senate

An Act relating to environment; amending 2 O.S. 2001, Section 16-24.1, which relates to lawful burning; expanding certain instances of lawful burning; amending 21 O.S. 2001, Sections 1753.3 and 1761.1, which relate to litter; modifying definition; providing penalties for flaming or glowing litter; providing for additional penalties for flaming or glowing litter during a burn ban; making entering certain property a trespassing violation; stating penalty; providing exceptions; specifying certain misdemeanor offense; providing penalty; providing for affirmative defense; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 2 O.S. 2001, Section 16-24.1, is amended to read as follows:

Section 16-24.1 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; and
3. Cedar tree eradication.

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 2. AMENDATORY 21 O.S. 2001, Section 1753.3, is amended to read as follows:

Section 1753.3 A. The operator of a vehicle, unless any other person in the vehicle admits to or is identified as having committed the act, shall be liable pursuant to subsection B of this section

for any act of throwing, dropping, depositing, or otherwise placing any litter from a vehicle upon highways, roads, or public property.

B. Any person convicted of violating the provisions of subsection A of this section shall be subject to a state traffic offense punishable by a fine of not more than One Thousand Dollars (\$1,000.00) and upon conviction shall be sentenced to perform not less than five (5) nor more than twenty (20) hours of community service in a litter abatement work program as approved by the court, or the violator may be subject to criminal prosecution as provided by the provisions of Section 1761.1 of this title. The penalties collected from the payment of ~~such~~ the citations shall, after deduction of court costs, be paid into the reward fund created pursuant to Section 1334 of Title 22 of the Oklahoma Statutes.

C. Any person convicted of violating the provisions of subsection A of this section with any flaming or glowing substances except those which by law may be placed upon highway rights-of-way, or any substance which may cause a fire shall be subject to a state traffic offense punishable by a fine of not more than Two Thousand Dollars (\$2,000.00) and, upon conviction, shall be sentenced to perform not less than ten (10) nor more than forty (40) hours of community service in a litter abatement work program as approved by the court, or the violator may be subject to criminal prosecution as provided by the provisions of Section 1761.1 of this title. The penalties collected from the payment of the citations shall, after deduction of court costs, be paid to the fire department of the district in which the flaming or glowing substance was discarded.

D. During a declared burn ban by the Governor, any person convicted of violating the provisions of subsection A of this section with any flaming or glowing substances except those which by law may be placed upon highway rights-of-way, or any substance which may cause a fire shall be subject to a state traffic offense punishable by a fine of not more than Four Thousand Dollars (\$4,000.00) and, upon conviction, shall be sentenced to perform not less than twenty (20) nor more than eighty (80) hours of community service in a litter abatement work program as approved by the court, or the violator may be subject to criminal prosecution as provided by the provisions of Section 1761.1 of this title. The penalties collected from the payment of the citations shall, after deduction of court costs, be paid to the fire department of the district in which the flaming or glowing substance was discarded.

E. As used in this section, "litter" means any flaming or glowing substances except those which by law may be placed upon highway rights-of-way, any substance which may cause a fire, any bottles, cans, trash, garbage, or debris of any kind. As used in this section, "litter" shall not include trash, garbage, or debris placed beside a public road for collection by a garbage or collection agency, or deposited upon or within public property designated by the state or by any of its agencies or political subdivisions as an appropriate place for such deposits if the person making the deposit is authorized to use the property for such purpose.

SECTION 3. AMENDATORY 21 O.S. 2001, Section 1761.1, is amended to read as follows:

Section 1761.1 A. Any person who deliberately places, throws, drops, dumps, deposits, or discards any garbage, trash, waste, rubbish, refuse, debris, or other deleterious substance on any public property or on any private property of another without consent of the property owner shall be deemed guilty of a misdemeanor.

B. Any person convicted of violating the provisions of subsection A of this section shall be punished by a fine of not less than Two Hundred Dollars (\$200.00) nor more than Five Thousand Dollars (\$5,000.00) or by imprisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment.

C. Any person convicted of violating the provisions of subsection A of this section with any flaming or glowing substance, or any substance which may cause a fire shall be punished by a fine of not less than Two Thousand Dollars (\$2,000.00) nor more than Five Thousand Dollars (\$5,000.00) or by imprisonment in the county jail for not more than sixty (60) days, or by both such fine and imprisonment. The penalties collected from the payment of the citations shall, after deduction of court costs, be paid to the fire department of the district in which the flaming or glowing substance was discarded. Any person violating the provisions of this subsection shall be liable for all damages caused by the violation. Damages shall be recoverable in any court of competent jurisdiction.

D. During a burn ban declared by the Governor, any person convicted of violating the provisions of subsection A of this section with any flaming or glowing substances, or any substance which may cause a fire shall be punished by a fine of not less than Four Thousand Dollars (\$4,000.00) nor more than Ten Thousand Dollars (\$10,000.00) or by imprisonment in the county jail for not more than one hundred twenty (120) days, or by both such fine and imprisonment. The penalties collected from the payment of the citations shall, after deduction of court costs, be paid to the fire department of the district in which the flaming or glowing substance was discarded. Any person violating the provisions of this subsection shall be liable for all damages caused by the violation. Damages shall be recoverable in any court of competent jurisdiction.

E. In addition to the penalty prescribed by subsection B of this section, the court shall direct the person to make restitution to the property owner affected; to remove and properly dispose of the garbage, trash, waste, rubbish, refuse, or debris from the property; to pick up, remove, and properly dispose of garbage, trash, waste, rubbish, refuse, debris, and other nonhazardous deleterious substances from public property; or perform community service or any combination of the foregoing which the court, in its discretion, deems appropriate. The dates, times, and locations of such activities shall be scheduled by the sheriff pursuant to the order of the court in such a manner as not to interfere with the employment or family responsibilities of the person.

~~D.~~ F. In addition to the penalty prescribed in subsection B of this section and the restitution prescribed in subsection ~~E~~ E of this section, the court may order the defendant to pay into the reward fund as prescribed in Section 1334 of Title 22 of the Oklahoma Statutes an amount not to exceed Two Thousand Dollars (\$2,000.00).

~~E.~~ G. The discovery of two or more items which have been dropped, dumped, deposited, discarded, placed, or thrown at one location and which bear a common address in a form which tends to identify the latest owner of the items shall create a rebuttable presumption that any competent person residing at such address committed the unlawful act. The discovery or use of such evidence shall not be sufficient to qualify for the reward provided in Section 1334 of Title 22 of the Oklahoma Statutes.

~~F.~~ H. Any person may report a violation of this section, if committed in their presence, to an officer of the State Highway Patrol, a county sheriff or deputy, a municipal law enforcement officer or any other peace officer in this state. The peace officer shall then conduct an investigation into the allegations, if warranted. If a violation of this section has in fact been committed, and the peace officer has reasonable cause to believe a particular person or persons have committed the violation, a report shall be filed with the District Attorney for prosecution.

~~G.~~ I. Notwithstanding the provisions of subsection ~~F.~~ H. of this section, any peace officer of this state or of any political subdivision of this state may issue a state traffic citation to any person committing a violation of subsection A of this section. Such state traffic citation shall be in an amount not exceeding Two Hundred Dollars (\$200.00) and the penalties collected from the payment of such citations shall, after deduction of court costs, be divided as follows:

1. One-half (1/2) shall be paid into the reward fund created pursuant to Section 1334 of Title 22 of the Oklahoma Statutes; and

2. One-half (1/2) shall be paid into the sheriff's service fee account for that county to be used for enforcing provisions of this section.

~~H.~~ J. The amount of bail for littering offenses specified in Section 1753.3 of this title and for trash dumping offenses specified in this section shall be the amount of fine specified in each statute plus costs including any penalty assessment, as well as costs incurred in Section 1313.3 of Title 20 of the Oklahoma Statutes.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1835.2 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Notwithstanding the provisions of Section 1835 of Title 21 of the Oklahoma Statutes, the following provisions apply to private land that is primarily devoted to farming, ranching, or forestry purposes:

1. Except as provided in this section, whoever willfully enters private land of another that is primarily devoted to farming, ranching, or forestry purposes without permission by the owner or lawful occupant thereof shall be deemed guilty of trespass and, upon conviction thereof, shall be fined in any sum not to exceed Two Hundred Fifty Dollars (\$250.00);

2. This provision shall not apply to peace officers as defined in Section 99 of Title 21 of the Oklahoma Statutes or any federal,

state, or local government employees engaged in the performance of their duties, or to any firefighters, emergency medical personnel, or public utility employees engaged in addressing an emergency that presents an imminent danger to health, safety, or the environment in the performance of their duties, or to parties engaged in oil and gas operations, which shall include, without limitation, exploration, drilling, production and sales activities, under authority of mineral ownership, an oil and gas lease, seismic agreement or permit, gas gathering, purchase, transportation, or treating contracts, Corporation Commission order, or other lawful authority from persons entitled to give the same. The provisions of this section shall not prohibit railroad employees and emergency equipment from entering such land to restore rail service following an accident, derailment or natural disaster; nor the entrance of utility employees or contractors while acting in the scope of their employment; nor employees or contractors of valid easement or license holders while acting in the scope of their employment;

3. The following persons may enter such land of another unless forbidden to do so, either orally or in writing, by the owner or lawful occupier thereof: registered land surveyors and registered professional engineers for the purpose of land surveying in the performance of their professional services; persons in the sole process of retrieving their domestic livestock or other animals; persons making a delivery, selling a product or service, conducting a survey or poll, working on behalf of a candidate for political office, or who otherwise have a legitimate reason for entering and who, immediately upon entering, seek to conduct said business; and

4. Anyone who willfully or maliciously enters any such land of another and therein commits or attempts to commit waste, theft, or damage shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in any sum not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00), or by confinement in the county jail for not less than thirty (30) days nor more than six (6) months, or both such fine and imprisonment.

B. This section shall not be construed to prohibit acts that are permitted pursuant to Section 5-202 or 6-304 of Title 29 of the Oklahoma Statutes.

C. It shall be an affirmative defense to prosecution under paragraph 1 of subsection A of this section that the accused had express or implied permission or legal authority to be on the property.

SECTION 5. This act shall become effective November 1, 2006.

Passed the House of Representatives the 22nd day of May, 2006.

Presiding Officer of the House of
Representatives

Passed the Senate the 24th day of May, 2006.

Presiding Officer of the Senate