

3 **Senate Bill No. 1549**
4 **As Amended**

5 SENATE BILL NO. 1549 - By: LERBLANCE of the Senate and SWEEDEN of
6 the House.

7 [agriculture - conduct and procedures for prescribed burn -
8 codification - effective date -
9 emergency]

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

11 SECTION 1. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 16-28.1 of Title 2, unless there
13 is created a duplication in numbering, reads as follows:

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

19 1. In protection areas, notification to burn shall be made by
20 the owner to the local office or local representative of the
21 Forestry Division at least four (4) hours in advance and verbal or
22 written approval obtained. In addition to the notification
23 requirements of this paragraph, any owner conducting a prescribed
24 burn in a protected area shall comply with the provisions of Section
25 2 of this act;

1 2. Outside protection areas, in order for prescribed or
2 controlled burning to be lawful, an owner shall take reasonable
3 precaution against the spreading of fire to other lands by providing
4 adequate firelines, manpower, and fire fighting equipment for the
5 control of the fire, shall watch over the fire until it is
6 extinguished and shall not permit fire to escape to adjoining land;
7 or

8 3. Any owner wishing to conduct a prescribed burn outside
9 protection areas shall comply with the provisions of Section 2 of
10 this act;

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

14 C. The Oklahoma Forestry Code shall not apply to trimming or
15 cutting of trees by public or private utilities for the purpose of
16 eliminating interference with utility lines, poles, or other utility
17 equipment.

18 D. 1. Except as otherwise provided by Section 2 of this act,
19 any person:

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

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

4 b. who carelessly violates this section is guilty of a
5 misdemeanor punishable by a fine of not more than Five
6 Hundred Dollars (\$500.00), by imprisonment for not
7 more than one (1) year, or both.

8 2. In addition to civil liability, any person who willfully
9 violates this section is guilty of a felony punishable by a fine of
10 not more than One Thousand Dollars (\$1,000.00), by imprisonment for
11 not more than three (3) years, or by both.

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

15 SECTION 2. AMENDATORY 2 O.S. 2001, Section 16-28.2, as
16 amended by Section 4, Chapter 410, O.S.L. 2003 (2 O.S. Supp. 2005,
17 Section 16-28.2), is amended to read as follows:

18 Section 16-28.2 A. 1. The provisions of this section apply to
19 a prescribed burn.

20 2. Any owner wishing to set fire to land in order to conduct a
21 prescribed burn shall comply with the provisions of this section.

22 B. 1. Within sixty (60) days prior to conducting a prescribed
23 burn, the owner of land to be burned shall orally or in writing

1 notify all landowners whose lands adjoin the owner's land to be
2 burned.

3 2. If any landowner is burning on a large, consolidated tract
4 of land in which there are multiple adjacent owners, only those
5 owners with adjoining land within one (1) mile of the proposed burn
6 area must be notified.

7 3. The owner shall include in the written notice or shall
8 orally notify the adjoining landowners of the proposed date and
9 location of the burn and a telephone number where the owner can be
10 reached for information regarding the prescribed burn.

11 C. In addition to notification of adjoining property owners
12 pursuant to subsection B of this section, the owner of the land to
13 be burned shall complete the prescribed burn notification plan
14 specified in subsection D of this section and shall submit such plan
15 to the rural fire department nearest the land to be burned. If the
16 land to be burned is in a protection area, the owner shall also
17 submit a copy of the notification plan to the local office or local
18 representative of the Forestry Division nearest to the land to be
19 burned.

20 D. Any person wishing to conduct a prescribed burn shall
21 complete this form, distributed by the Oklahoma Department of
22 Agriculture, Food, and Forestry, which shall be in substantially the
23 following form:

1 Forestry District Office (for protection areas) _____

2 _____

3 Adjoining landowners:

4 _____

5 _____

6 _____

7 _____

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

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

20 2. Within a protection area, the owner of land to be burned
21 shall also, within the time period required by Section ~~16-28~~ 16-28.1
22 of this title, notify the local office or local representative of

1 the Forestry Division receiving a copy of the prescribed burn
2 notification plan.

3 F. A prescribed burn conducted pursuant to provisions of this
4 section shall:

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

7 2. Be considered a property right of the property owner if
8 vegetative fuels are used.

9 G. 1. Any owner who **conducting** a prescribed burn **who is found**
10 **by a court of law to have caused damages or injury as a result of**
11 **accident or by ordinary negligence shall only be civilly liable for**
12 **actual damages resulting from the prescribed burn.**

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

18 3. Any owner setting or causing to be set on fire land as
19 authorized by this section, and as a result of gross negligence
20 permitting the fire to spread beyond the control of the owner or
21 beyond the bounds of the owner's land, shall be deemed guilty of a
22 misdemeanor, and upon conviction thereof, be fined a sum not more

1 than Five Hundred Dollars (\$500.00), or imprisonment in the county
2 jail for a period not more than six (6) months.

3 SECTION 3. REPEALER 2 O.S. 2001, Sections 16-28 and
4 1301-208, are hereby repealed.

5 SECTION 4. This act shall become effective July 1, 2006.

6 SECTION 5. It being immediately necessary for the preservation
7 of the public peace, health and safety, an emergency is hereby
8 declared to exist, by reason whereof this act shall take effect and
9 be in full force from and after its passage and approval.

10 COMMITTEE REPORT BY: COMMITTEE ON AGRICULTURE & RURAL DEVELOPMENT,
11 dated 2-14-06 - DO PASS, As Amended and Coauthored.