

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

SENATE BILL 1549

By: Lerblance

AS INTRODUCED

An Act relating to agriculture; providing for a prescribed burn; requiring certain conduct and procedures for conducting a prescribed burn; requiring notification; providing for liability for certain burnings; describing liability for various actions; providing for punishment; setting certain fine; amending 2 O.S. 2001, Section 16-28.2, as amended by Section 4, Chapter 410, O.S.L. 2003 (2 O.S. Supp. 2005, Section 16-28.2), which relates to prescribed burns; exempting certain persons from certain liabilities under certain circumstances; repealing 2 O.S. 2001, Sections 16-28 and 1301-208, which relate to prescribed burnings; providing for codification; providing an effective date; and declaring an emergency.

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

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

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 burn in a protected area shall comply with the provisions of Section 2 of this act;

2. Outside protection areas, in order for prescribed 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 burn outside protection areas shall comply with the provisions of Section 2 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 2 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, 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 2. AMENDATORY 2 O.S. 2001, Section 16-28.2, as amended by Section 4, Chapter 410, O.S.L. 2003 (2 O.S. Supp. 2005, Section 16-28.2), is amended to read as follows:

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

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

B. 1. 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.

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

3. 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 burn.

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 burn 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 Oklahoma Department of Agriculture, Food, and Forestry, which shall be in substantially the following form:

PRESCRIBED BURN 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:

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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 burn 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~~ 16-28.1 of this title, notify the local office or local representative of the Forestry Division receiving a copy of the prescribed burn notification plan.

F. A prescribed burn 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 vegetative fuels are used.

G. 1. Any owner who ~~conducting~~ conducts 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 in~~ compliance with this article and according to the standards and

specifications of the United States Department of Agriculture  
Natural Resources Conservation Service prescribed burn practice is  
not liable for damage or injury caused by the fire or resulting from  
the smoke unless it is proven that there was gross negligence in  
starting, controlling, or completing the 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 burn 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 land as authorized by this section, 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 3. REPEALER 2 O.S. 2001, Sections 16-28 and 1301-208, are hereby repealed.

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

SECTION 5. 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.

50-2-2824

JT

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