

3 Senate Bill No. 517

4 SENATE BILL NO. 517 - By: WILSON of the Senate and McNIEL of the
5 House.

6 An Act relating to agriculture; amending 2 O.S. 2001,
7 Sections 16-2, 16-4, as amended by Section 1, Chapter 209,
8 O.S.L. 2006, 16-8, 16-24.1, 16-25, 16-26, as amended by
9 Section 2, Chapter 209, O.S.L. 2006, and 16-28.2, as amended
10 by Section 2, Chapter 410, O.S.L. 2003 (2 O.S. Supp. 2006,
11 Sections 16-4, 16-26, and 16-28.2), which relate to the
12 Oklahoma Forestry Code; adding and modifying definitions;
13 updating references to forest fires; expanding power of
14 special officers; expanding scope of lawful burns; modifying
15 actions constituting unlawful burning; modifying penalty;
16 specifying circumstances and procedures for a lawful burn;
17 providing penalties; adding procedures for limited liability
18 in prescribed burns; repealing 2 O.S. 2001, Section 1301-
19 208, as amended by Section 4, Chapter 208, O.S.L. 2001, and
20 2 O.S. 2001, Section 16-28, which relate to procedures for
21 lawful burns; and providing an effective date.

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

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

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

26 1. "Director" means the Director of Forestry of the State
27 Department of Agriculture;

28 2. "Division" means the Forestry Division of the State
29 Department of Agriculture;

30 3. "Established property line" means any boundary line which
31 has been:

1 a. recognized by adjoining land owners as a boundary and
2 uncontested for at least fifteen (15) years including,
3 but not limited to, fence lines, roads, and natural
4 features,

5 b. established by a registered land surveyor, or

6 c. uncontested for at least fifteen (15) years;

7 4. "Forest rangers" means all employees of the Forestry
8 Division who have responsibilities in forest protection, including
9 laborers, mechanics, and other employees who assist in forest
10 protection;

11 5. "Forest" means a tract of land that is at least ten percent
12 (10%) stocked by trees of any size, whether of commercial or
13 noncommercial species, or formerly having tree cover and not
14 currently developed for nonforest use, including woodlands,
15 woodlots, windbreaks, and shelterbelts;

16 6. "Lawful burning" means the controlled application by the
17 owner of croplands, rangelands, grasslands, forestlands, or other
18 wild lands of fire to naturally occurring vegetative fuel in
19 compliance with Section 16-24.1 and 16-28.1 of this title;

20 7. "Limited liability burning" means a type of prescribed burn
21 that complies with the provisions of Section 16-28.2 of this title
22 that limit potential criminal liability of the owner;

1 8. "Logging or timber harvesting operations" means the cutting
2 or harvesting of and removal of timber from a site, leaving the root
3 mass intact;

4 ~~7.~~ 9. "Owner" means the possessor of a fee interest, a tenant,
5 lessee, occupant, or other person in lawful control of land;

6 ~~8.~~ 10. "Prescribed burning" means the controlled application by
7 the owner of croplands, rangelands, or forestlands of fire to
8 naturally occurring vegetative fuel under specified environmental
9 conditions and following appropriate precautionary measures, which
10 causes the fire to be confined to a predetermined area and
11 accomplish land management objectives. ~~Any person conducting a~~
12 ~~prescribed burn shall comply with the provisions of Section 16-28.2~~
13 ~~of this title;~~

14 ~~9.~~ 11. "Timber" means live and dead trees and the profit in any
15 live and dead trees including, but not limited to, bark, foliage,
16 wood, vines, firewood, crossties, and shrubbery;

17 ~~10.~~ 12. "Timber owner" means any person who owns the right to
18 cut or harvest timber at the time the timber is to be cut or
19 harvested, or who legally owns the severed timber;

20 ~~11.~~ 13. "Wildfires" means any fire which is not controlled on
21 forests, grasslands, ~~unimproved~~ fields, or croplands; and

1 ~~12-~~ 14. "Wild lands" means any ~~unimproved~~ undeveloped lands
2 regardless of kind of vegetative plant cover including forests,
3 prairies, marshes, and swamps.

4 SECTION 2. AMENDATORY 2 O.S. 2001, Section 16-4, as
5 amended by Section 1, Chapter 209, O.S.L. 2006 (2 O.S. Supp. 2006,
6 Section 16-4), is amended to read as follows:

7 Section 16-4. It shall be the duty of the State Board of
8 Agriculture under terms the Board determines shall best serve the
9 public interest to assist and cooperate with federal and state
10 departments, educational institutions, counties, towns,
11 corporations, or individuals; to gather and disseminate information
12 about forests, their care and management; to prevent and extinguish
13 ~~forest fires~~ wildfires; to enforce all laws pertaining to forests
14 and woodlands; and to monitor the health, inventory, and condition
15 of the state's forest resources.

16 SECTION 3. AMENDATORY 2 O.S. 2001, Section 16-8, is
17 amended to read as follows:

18 Section 16-8. A. The Forestry Division, in connection with the
19 enforcement of the Oklahoma Forestry Code, shall have the following
20 powers, authority, and duties:

21 1. To enforce the provisions of this code and other forest and
22 forest protection laws of this state;

- 1 2. To prevent, detect, extinguish, and investigate ~~forest fires~~
2 wildfires in this state;
- 3 3. To provide ~~forest fire~~ wildfire fighting crews, who shall be
4 under the control and direction of forest rangers and other
5 designated agents of the Division ~~in specified protection areas~~;
- 6 4. To appoint district foresters, assistant district foresters,
7 investigators, rangers, and other employees;
- 8 5. To use the resources of the Division on state-owned parks
9 and other state-administered lands to prevent and suppress fires and
10 to establish fire fighting crews who shall be authorized to suppress
11 fires on state lands;
- 12 6. To be reimbursed on an actual cost basis for all services
13 provided to state parks and other lands administered by the State of
14 Oklahoma;
- 15 7. To investigate cases of forest timber theft;
- 16 8. To make available for sale surplus state vehicles directly
17 to rural fire departments or municipal fire departments, in cities
18 or towns under ten thousand (10,000) population. State vehicles may
19 be offered for sale only after approval is given in writing by the
20 Department of Central Services and an evaluation is made of each
21 vehicle and a price set by the Department of Central Services. The
22 Forestry Division may only receive the amount authorized by the
23 Department of Central Services for the sale of the vehicle; and

1 9. To purchase equipment from the Rural Fire Defense Equipment
2 Revolving Fund's inventory, when advantageous to the state, and to
3 reimburse the Revolving Fund.

4 B. Forest rangers, and the fire fighting crews under their
5 control and direction, may enter upon any lands for the purpose of
6 preventing and suppressing ~~forest fires~~ wildfires and to enforce the
7 provisions of the Oklahoma Forestry Code and other ~~forest fire~~
8 wildfire and forest protection laws of this state.

9 C. Forest rangers, employees of the Division, and all persons
10 under contract or agreement with the Division to assist in fire
11 fighting operations, as well as persons called upon by forest
12 rangers or other authorized employees of the Division to assist in
13 fire fighting under the direction or supervision of employees of the
14 Division, may, in the performance of their duties, set backfires,
15 dig trenches, cut firelines, and carry on all customary activities
16 in the fighting of ~~forest fires~~ wildfires without incurring
17 liability to any person.

18 D. 1. The Director may appoint, subject to the approval of the
19 Board, special officers who shall have the power and authority to
20 arrest. The special officers shall have power and authority
21 throughout the state, under the direction and control of the
22 Division, to enforce the criminal provisions contained in the

1 Oklahoma Forestry Code, ~~and in~~ other laws relating to forests and
2 ~~forest fires~~ wildfires, and the Oklahoma Agricultural Code.

3 2. The special officers shall have power and authority to make
4 arrests with or without warrants for violations of the criminal
5 provisions of the Oklahoma Forestry Code, ~~and of~~ other laws relating
6 to forests and ~~forest fires~~ wildfires, and the Oklahoma Agricultural
7 Code to the same extent and under the same limitations and duties as
8 peace officers under the provisions of Title 22, Chapter 3 of the
9 Oklahoma Statutes.

10 3. In connection with the enforcement of the criminal
11 provisions, the special officers and other state investigators or
12 law enforcement officers may go upon all premises when necessary for
13 the enforcement of laws. All special officers shall be ex officio
14 forest rangers and shall be under the control and direction of the
15 Division; except, the Director may at any time, for cause, remove
16 any powers and authority of arrest conferred. Special officers
17 shall have the same right and authority to carry arms as the
18 sheriffs of this state. The compensation of special officers shall
19 be fixed and paid by the Division from its funds.

20 SECTION 4. AMENDATORY 2 O.S. 2001, Section 16-24.1, is
21 amended to read as follows:

22 Section 16-24.1 A. It shall be lawful for an owner of
23 croplands, rangelands, grasslands, ~~or~~ forestlands, or other wild

1 lands to set the croplands, rangelands, grasslands, ~~or~~ forestlands,
2 or other wild lands on fire for the purposes of:

3 1. Managing and manipulating plant species present whether
4 grass, weeds, brush, or trees; and

5 2. Destroying detrimental or unwanted plants, plant parts,
6 shrubs or trees on the croplands, rangelands, grasslands, ~~or~~
7 forestlands, or other wild lands; and

8 3. Cedar tree eradication.

9 B. The provisions of this section shall not be construed to
10 exempt or release a person from civil liability for damages or
11 injury incurred as a result of the burn or for criminal liability as
12 imposed pursuant to the Oklahoma Forestry Code.

13 SECTION 5. AMENDATORY 2 O.S. 2001, Section 16-25, is
14 amended to read as follows:

15 Section 16-25. A. It is unlawful for any person to carelessly
16 or willfully burn or cause to be burned or to set fire to or cause
17 any fire to be set to any forest, grass, crops, rangeland, or
18 ~~woodlands~~ other wild lands not owned by, duly authorized by the
19 owner or manager, or in the lawful possession of, the person setting
20 the fire or burning the lands or causing the fire to be burned.

21 B. Any person who carelessly violates this section is guilty of
22 a misdemeanor punishable by a fine of not more than Five Hundred
23 Dollars (\$500.00), by imprisonment for not more than one (1) year,

1 or both. Any person who willfully violates this section is guilty
2 of a felony punishable by a fine of not more than ~~One Thousand~~
3 ~~Dollars (\$1,000.00)~~ Five Thousand Dollars (\$5,000.00), by
4 imprisonment for not more than three (3) years, or by both.

5 C. Any person who carelessly or willfully burns, causes to be
6 burned, sets fire, or causes fire to be set, any forest, grass,
7 croplands, or woodlands not owned by, duly authorized by the owner
8 or manager, or in lawful possession of, shall be liable in a civil
9 action to any person injured or damaged by a fire to the amount of
10 the injury or damages.

11 SECTION 6. AMENDATORY 2 O.S. 2001, Section 16-26, as
12 amended by Section 2, Chapter 209, O.S.L. 2006 (2 O.S. Supp. 2006,
13 Section 16-26), is amended to read as follows:

14 Section 16-26. A. It is unlawful for any person to set fire to
15 any forest, grass, ~~woods~~ range, crop, or other wild lands ~~or~~
16 ~~marshes~~, or to build a campfire or bonfire, or to burn trash or
17 other material that may cause a forest, grass, range, crop or ~~woods~~
18 other wild lands fire in any county, counties or area within a
19 county where, because of emergency drought conditions, there is
20 gubernatorially proclaimed extraordinary danger from fire, unless
21 the setting of any backfire during the drought emergency is
22 necessary to afford protection as determined by a representative of
23 the Division of Forestry, or unless it can be established that the

1 setting of the backfire was necessary for the purpose of saving life
2 or property. The burden of proving the necessity shall rest on the
3 person claiming a defense.

4 B. The Division of Forestry shall advise the Governor when the
5 lands described in subsection A of this section in any county,
6 counties or area within a county of this state because of emergency
7 drought conditions are in extraordinary danger from fire. The
8 Governor may by proclamation declare a drought emergency to exist
9 and describe the general boundaries of the area affected.

10 C. Any proclamation promulgated by the Governor under authority
11 of this section shall be effective immediately upon the Governor's
12 signed approval of the emergency proclamation. Notice of the
13 proclamation shall occur through posting on the Oklahoma Department
14 of Agriculture, Food, and Forestry's website and informing local
15 news media. Evidence of publication or posting as herein provided
16 shall be maintained by the Forestry Division.

17 D. When conditions warrant, due notice of the termination of
18 the emergency shall be promptly made by proclamation, which shall be
19 published or posted in like manner as when officially declared.

20 E. Any person who violates this section is guilty of a
21 misdemeanor punishable by a fine of not more than Five Hundred
22 Dollars (\$500.00), by imprisonment for not more than one (1) year,
23 or both.

1 SECTION 7. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 16-28.1 of Title 2, unless there
3 is created a duplication in numbering, reads as follows:

4 A. The provisions of this section shall apply to a lawful burn.

5 B. It is unlawful for any person either willfully or carelessly
6 to burn, cause to be burned, to set fire to, or cause fire to be set
7 to any forest, grass, croplands, rangeland, or other wild lands, by
8 an owner of such property, except under the following circumstances:

9 1. In protection areas, notification to burn shall be made by
10 the owner to the local office or local representative of the
11 Forestry Division at least four (4) hours in advance and verbal or
12 written approval obtained. In addition to the notification
13 requirements of this paragraph, any owner conducting a limited
14 liability burn in a protected area shall comply with the provisions
15 of Section 16-28.2 of this title; or

16 2. Outside protection areas, in order for prescribed or
17 controlled burning to be lawful, an owner shall take reasonable
18 precaution against the spreading of fire to other lands by providing
19 adequate firelines, manpower, and fire fighting equipment for the
20 control of the fire, shall watch over the fire until it is
21 extinguished and shall not permit fire to escape to adjoining land.

1 C. Nothing in this section shall relieve the person from the
2 obligation to confine the fire to the owner's, agent's, or tenant's
3 land.

4 D. The Oklahoma Forestry Code shall not apply to trimming or
5 cutting of trees by public or private utilities for the purpose of
6 eliminating interference with utility lines, poles, or other utility
7 equipment.

8 E. 1. Except as otherwise provided by Section 16-28.2 of this
9 title, any person:

10 a. who, whether by accident, neglect or intent, causes or
11 allows damage or injury to occur to any ranch,
12 buildings, improvements, hay, grass, crops, fencings,
13 timber, marsh, or other property of another person by
14 any fire described and conducted pursuant to this
15 section, shall be civilly responsible for such damage
16 or injury so caused pursuant to Section 16-30 of this
17 title, and

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

22 2. In addition to civil liability, any person who willfully
23 violates this section is guilty of a felony punishable by a fine of

1 not more than One Thousand Dollars (\$1,000.00), by imprisonment for
2 not more than three (3) years, or by both.

3 F. Fire set under the provisions of this section shall not be
4 allowed to spread beyond the control of the person setting the fire
5 and shall be subdued and extinguished.

6 SECTION 8. AMENDATORY 2 O.S. 2001, Section 16-28.2, as
7 amended by Section 2, Chapter 410, O.S.L. 2003 (2 O.S. Supp. 2006,
8 Section 16-28.2), is amended to read as follows:

9 Section 16-28.2 A. 1. The provisions of this section apply to
10 a prescribed burn. While limited liability burns are not mandatory
11 to conduct a lawful burn, compliance with the procedures set forth
12 in this section shall limit the potential criminal liability of a
13 property owner if damage or injury results from the prescribed burn.

14 2. Any owner wishing to set fire to land in order to conduct a
15 ~~prescribed~~ limited liability burn shall comply with the provisions
16 of this section.

17 B. 1. Within sixty (60) days prior to conducting a ~~prescribed~~
18 limited liability burn, the owner of land to be burned shall orally
19 or in writing notify all landowners whose lands adjoin the owner's
20 land to be burned.

21 2. If any landowner is burning on a large, consolidated tract
22 of land in which there are multiple adjacent owners, only those

1 owners with adjoining land within one (1) mile of the proposed burn
2 area must be notified.

3 3. The owner shall include in the written notice or shall
4 orally notify the adjoining landowners of the proposed date and
5 location of the burn and a telephone number where the owner can be
6 reached for information regarding the ~~prescribed~~ limited liability
7 burn.

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

17 D. Any person wishing to conduct a ~~prescribed~~ limited liability
18 burn shall complete ~~this form~~, a prescribed burn notification plan
19 designated and distributed by the Oklahoma Department of
20 Agriculture, Food, and Forestry, ~~which shall be in substantially the~~
21 ~~following form:~~

22 ~~PRESCRIBED BURN NOTIFICATION PLAN~~

23 Name _____ Phone _____

1 Address _____ County _____
2 City, State, Zip _____
3 Ranch name, if any _____
4 Area to be burned _____
5 Approximate acres to be burned _____
6 Written distance description of location _____
7 _____
8 Projected time frame _____
9 Date of previous burn _____
10 Objectives to be accomplished through the prescribed burn:
11 _____
12 _____
13 _____
14 Contact information:
15 _____
16 _____
17 _____
18 Rural Fire Department:
19 Name: _____ Location: _____ Phone No.: _____
20 _____
21 _____
22 Forestry District Office (for protection areas) _____
23 _____

1 ~~Adjoining landowners:~~

2 _____
3 _____
4 _____
5 _____

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

14 E. 1. Whether the land is located within or outside a
15 protection area, the owner of land to be burned shall, within forty-
16 eight (48) hours of conducting a ~~prescribed~~ limited liability burn,
17 notify the rural fire department receiving a copy of the prescribed
18 burn notification plan that the ~~prescribed~~ limited liability burn
19 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 conducting a ~~prescribed~~ limited liability burn
10 who is found by a court of law to have caused damages or injury as a
11 result of accident or by ordinary negligence shall only be civilly
12 liable for actual damages resulting from the prescribed burn.

13 2. Any owner conducting a ~~prescribed~~ limited liability burn who
14 is found by a court of law to have committed gross negligence in
15 conducting the prescribed burn may be found to be both civilly
16 liable for the amount of damage done by the fire, and criminally
17 liable pursuant to 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 9. REPEALER 2 O.S. 2001, Section 1301-208, as
4 amended by Section 4, Chapter 208, O.S.L. 2001 and 2 O.S. 2001,
5 Section 16-28 are hereby repealed.

6 SECTION 10. This act shall become effective November 1, 2007.

7 COMMITTEE REPORT BY: COMMITTEE ON AGRICULTURE & RURAL DEVELOPMENT,
8 dated 2-19-07 - DO PASS, As Coauthored.