STATE OF OKLAHOMA

1st Session of the 51st Legislature (2007)

SENATE BILL 517 By: Wilson

AS INTRODUCED

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

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

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

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

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

2. “Division” means the Forestry Division of the State Department of Agriculture;

3. “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. “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. “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. <u>“Lawful burning” means the controlled application by the owner of croplands, rangelands, grasslands, forestlands, or other wild lands of fire to naturally occurring vegetative fuel in compliance with Section 16-24.1 and 16-28.1 of this title;</u>

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

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

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

~~8.~~ 10. "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~~ undeveloped lands regardless of kind of vegetative plant cover including forests, prairies, marshes, and swamps.

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

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

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

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

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

2. To prevent, detect, extinguish, and investigate ~~forest fires~~ wildfires in this state;

3. To provide ~~forest fire~~ wildfire fighting crews, who shall be under the control and direction of forest rangers and other designated agents of the Division ~~in specified protection areas~~;

4. To appoint district foresters, assistant district foresters, investigators, rangers, and other employees;

5. To use the resources of the Division on state-owned parks and other state-administered lands to prevent and suppress fires and to establish fire fighting crews who shall be authorized to suppress fires on state lands;

6. To be reimbursed on an actual cost basis for all services provided to state parks and other lands administered by the State of Oklahoma;

7. To investigate cases of forest timber theft;

8. To make available for sale surplus state vehicles directly to rural fire departments or municipal fire departments, in cities or towns under ten thousand (10,000) population. State vehicles may be offered for sale only after approval is given in writing by the Department of Central Services and an evaluation is made of each vehicle and a price set by the Department of Central Services. The Forestry Division may only receive the amount authorized by the Department of Central Services for the sale of the vehicle; and

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

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

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

D. 1. The Director may appoint, subject to the approval of the Board, special officers who shall have the power and authority to arrest. The special officers shall have power and authority throughout the state, under the direction and control of the Division, to enforce the criminal provisions contained in the Oklahoma Forestry Code, ~~and in~~ other laws relating to forests and ~~forest fires~~ wildfires, and the Oklahoma Agricultural Code.

2. The special officers shall have power and authority to make arrests with or without warrants for violations of the criminal provisions of the Oklahoma Forestry Code, ~~and of~~ other laws relating

to forests and ~~forest fires~~ wildfires, and the Oklahoma Agricultural Code to the same extent and under the same limitations and duties as peace officers under the provisions of Title 22, Chapter 3 of the Oklahoma Statutes.

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

SECTION 4. 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, grasslands, ~~or~~ forestlands, or other wild lands to set the croplands, rangelands, grasslands, ~~or~~ forestlands, or other wild lands 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, grasslands, ~~or~~ forestlands, or other wild lands; 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 5. AMENDATORY 2 O.S. 2001, Section 16-25, is amended to read as follows:

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

B. Any person 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. 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)~~ Five Thousand Dollars ($5,000.00), by imprisonment for not more than three (3) years, or by both.

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

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

Section 16-26. A. It is unlawful for any person to set fire to any forest, grass, ~~woods~~ range, crop, or other wild lands ~~or marshes~~, or to build a campfire or bonfire, or to burn trash or other material that may cause a forest, grass, range, crop or ~~woods~~ other wild lands fire in any county, counties or area within a county where, because of emergency drought conditions, there is gubernatorially proclaimed extraordinary danger from fire, unless the setting of any backfire during the drought emergency is necessary to afford protection as determined by a representative of the Division of Forestry, or unless it can be established that the setting of the backfire was necessary for the purpose of saving life or property. The burden of proving the necessity shall rest on the person claiming a defense.

B. The Division of Forestry shall advise the Governor when the lands described in subsection A of this section in any county,

counties or area within a county of this state because of emergency drought conditions are in extraordinary danger from fire. The Governor may by proclamation declare a drought emergency to exist and describe the general boundaries of the area affected.

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

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

E. Any person who 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.

SECTION 7. 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. The provisions of this section shall apply to a lawful burn.

B. 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, or other wild lands, 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 limited liability burn in a protected area shall comply with the provisions of Section 16-28.2 of this title; or

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.

C. 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.

D. 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.

E. 1. Except as otherwise provided by Section 16-28.2 of this title, 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.

F. 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 8. AMENDATORY 2 O.S. 2001, Section 16-28.2, as amended by Section 2, Chapter 410, O.S.L. 2003 (2 O.S. Supp. 2006, 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. <u>While limited liability burns are not mandatory</u>

to conduct a lawful burn, compliance with the procedures set forth in this section shall limit the potential criminal liability of a property owner if damage or injury results from the prescribed burn.

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

B. 1. Within sixty (60) days prior to conducting a ~~prescribed~~ limited liability 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~~ limited liability 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~~ limited liability burn shall complete ~~this form,~~ a prescribed burn notification plan designated and 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:~~

_____

_____

_____

_____

~~You need to file the~~ The original copy of the form must be filed with the rural fire department nearest to the land to be burned. If ~~you are~~ conducting a ~~prescribed~~ limited liability burn within a protection area, ~~you also need to file~~ a copy of the prescribed burn notification plan must be filed 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~~ limited liability burn, notify the rural fire department receiving a copy of the prescribed burn notification plan that the ~~prescribed~~ limited liability 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 conducting a ~~prescribed~~ limited liability 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.

2. Any owner conducting a ~~prescribed~~ limited liability 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 9. REPEALER 2 O.S. 2001, Section 1301-208, as amended by Section 4, Chapter 208, O.S.L. 2001 and 2 O.S. 2001, Section 16-28 are hereby repealed.

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

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