

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 COMMITTEE SUBSTITUTE
4 FOR
5 HOUSE BILL NO. 2159

By: Armes

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7 COMMITTEE SUBSTITUTE

8 An Act relating to agriculture; amending 2 O.S. 2001, Section 16-26, as last
9 amended by Section 1, Chapter 316, O.S.L. 2008 (2 O.S. Supp. 2008, Section
10 16-26), which relates to emergency drought conditions and burning prohibitions;
11 exempting certain act; authorizing use of fireworks in area under declared burn
12 ban in certain circumstances; requiring a retail fireworks license in certain
13 circumstances; specifying procedures for issuance of license; providing certain
14 penalty; and declaring an emergency.

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

16 SECTION 1. AMENDATORY 2 O.S. 2001, Section 16-26, as last amended by Section 1,
17 Chapter 316, O.S.L. 2008 (2 O.S. Supp. 2008, Section 16-26), is amended to read as follows:

18 Section 16-26. A. 1. It is unlawful for any person to set fire to any forest, grass, range, crop, or
19 other wildlands, or to build a campfire or bonfire, or to burn trash or other material that may cause a
20 forest, grass, range, crop or other wildlands fire in any county, counties or area within a county where,
21 because of emergency drought conditions, there is gubernatorially proclaimed extraordinary danger
22 from fire, unless the setting of any backfire during the drought emergency is necessary to afford
23 protection as determined by a representative of the Division of Forestry, or unless it can be established
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1 that the setting of the backfire was necessary for the purpose of saving life or property. The burden of
2 proving the necessity shall rest on the person claiming a defense.

3 2. The Division of Forestry shall advise the Governor when the lands described in paragraph 1
4 of this subsection in any county, counties or area within a county of this state because of emergency
5 drought conditions are in extraordinary danger from fire. The Governor may by proclamation declare
6 a drought emergency to exist and describe the general boundaries of the area affected.

7 3. Any proclamation promulgated by the Governor under authority of this subsection shall be
8 effective immediately upon the Governor's signed approval of the emergency proclamation and shall
9 supersede any resolution passed by a board of county commissioners pursuant to subsection B of this
10 section. Notice of the proclamation shall occur through posting on the Oklahoma Department of
11 Agriculture, Food, and Forestry's website and informing local news media. Evidence of publication or
12 posting as herein provided shall be maintained by the Forestry Division.

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

15 5. Any person who violates this subsection is guilty of a misdemeanor punishable by a fine of
16 not more than One Thousand Dollars (\$1,000.00), by imprisonment for not more than one (1) year, or
17 both.

18 B. 1. It is unlawful for any person to set fire to any forest, grass, range, crop or other wildlands,
19 or to build a campfire or bonfire, or to burn trash or other material that may cause a forest, grass, range,
20 crop or other wildlands fire in any county of this state in which the board of county commissioners of
21 the county has passed a resolution declaring a period of extreme fire danger. As used in this
22 subsection, "extreme fire danger" means:
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- a. moderate, severe or extreme drought conditions exist as determined by the National Oceanic and Atmospheric Administration (NOAA) pursuant to its criteria, and
- b. no more than one-half (1/2) inch of precipitation is forecast for the next three (3) days, and
- c. fire occurrence is significantly greater than normal for the season and/or initial attack on a significant number of wildland fires has been unsuccessful due to extreme fire behavior, and
- d. more than twenty percent (20%) of the wildfires in the county have been caused by escaped debris or controlled burning.

2. A majority of the board of county commissioners may call an emergency meeting at any time to pass or revoke a resolution declaring a period of extreme fire danger in accordance with this section.

3. A board of county commissioners shall have the documented concurrence of a majority of the chiefs, or their designees, of the municipal and certified rural fire departments located in the county that a period of extreme fire danger exists prior to passage of a resolution declaring a period of extreme fire danger in the county. The resolution shall be effective for a period not to exceed seven (7) days from the date of passage by the board of county commissioners, unless the burn ban is removed earlier by the same method by which it was approved. If extreme fire danger conditions persist, subsequent resolutions may be passed by the board of county commissioners in the same manner as provided in this paragraph. The board of county commissioners, in the resolution, may grant exceptions to the fire prohibition based on appropriate precautionary measures.

4. Any resolution passed by a board of county commissioners under authority of this subsection shall be effective immediately upon passage of the resolution. Notice of the resolution shall be

1 submitted to the Forestry Division of the Oklahoma Department of Agriculture, Food, and Forestry, all
2 local news media, local law enforcement officials, and the state headquarters of the Department of
3 Public Safety, the Oklahoma Tourism and Recreation Department and the Department of Wildlife
4 Conservation on the day of passage of the resolution. Evidence of publication or posting as provided
5 in this paragraph shall be maintained by the county.

6 5. The provisions of this subsection may be enforced by any law enforcement officer of this
7 state.

8 6. Any person convicted of violating the provisions of this subsection shall be guilty of a
9 misdemeanor and shall be subject to a fine of not more than Five Hundred Dollars (\$500.00), to
10 imprisonment for not more than one (1) year, or to both such fine and imprisonment.

11 7. The selling of fireworks shall not be considered an act in violation of this subsection. The use
12 of fireworks in an area under a declared burn ban shall be permitted only when all of the following
13 conditions are met:

- 14 a. all licensed retailers selling fireworks in an area under a declared burn ban shall
15 insert a safety message, drafted by the State Fire Marshal's office, in every
16 customer bag when purchases are made,
- 17 b. a safety message shall be prepared by the State Fire Marshal's office, by the board
18 of county commissioners affected by the burn ban, and by industry representatives
19 in areas under a declared burn ban and the message shall be distributed to all local
20 news media, local law enforcement officials, the state headquarters of the
21 Department of Public Safety, the Oklahoma Tourism and Recreation Department,
22 and the Department of Wildlife Conservation, and
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1 c. any fireworks activity is conducted over a nonflammable surface, is at least ten
2 (10) feet from flammable vegetation, wind speeds are less than twenty (20) miles
3 per hour, and a fire watch, other than the fireworks user, is posted at the fireworks
4 site with pressurized water or a fire extinguisher.

5 8. Any person operating a retail location where fireworks are sold directly to the consumer shall
6 be required to purchase a retail fireworks license. The retail license fee shall be Twenty Dollars
7 (\$20.00) annually and may be purchased from any licensed wholesaler, manufacturer, or distributor.
8 All license fees shall be collected by the State Fire Marshal Commission and shall be paid to the State
9 Treasurer to the credit of the State Fire Marshal Revolving Fund. Ten Dollars (\$10.00) of each license
10 fee collected shall be made available for public safety and education messages in areas under a burn
11 ban from June 15 through July 6 and from December 1 to January 2 each year to educate the public on
12 the safe usage of fireworks. Any unused fees from each calendar year shall remain in the State Fire
13 Marshal Revolving Fund to be used for any lawful purpose.

14 9. Serially numbered licenses shall be made available at any time to the licensed wholesalers,
15 manufacturers, or distributors in books of twenty licenses to a book. Retail licenses which are unsold
16 may be exchanged for new licenses. Any person purchasing a retail fireworks license pursuant to this
17 paragraph shall, at the time of purchasing the license, sign an affidavit attesting to the fact that the
18 name, mailing address, and telephone number of the purchaser as it appears on the license are correct
19 and that the purchaser operates a retail location where fireworks are sold directly to the consumer.
20 Any person who knowingly signs a false affidavit, upon conviction, shall be guilty of perjury and
21 punished in accordance with law.

1 SECTION 2. It being immediately necessary for the preservation of the public peace, health and
2 safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in
3 full force from and after its passage and approval.

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