

THE HOUSE OF REPRESENTATIVES
Tuesday, February 24, 2009

Committee Substitute for
House Bill No. 2159

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 2159 - By: ARMES of the House and BARRINGTON of the Senate.

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

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

1 SECTION 1. AMENDATORY 2 O.S. 2001, Section 16-26, as last amended by
2 Section 1, Chapter 316, O.S.L. 2008 (2 O.S. Supp. 2008, Section 16-26), is amended to
3 read as follows:
4 Section 16-26. A. 1. It is unlawful for any person to set fire to any forest, grass,
5 range, crop, or other wildlands, or to build a campfire or bonfire, or to burn trash or other
6 material that may cause a forest, grass, range, crop or other wildlands fire in any county,
7 counties or area within a county where, because of emergency drought conditions, there
8 is gubernatorially proclaimed extraordinary danger from fire, unless the setting of any
9 backfire during the drought emergency is necessary to afford protection as determined by
10 a representative of 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 or property. The
2 burden of 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
4 paragraph 1 of this subsection in any county, counties or area within a county of this
5 state because of emergency drought conditions are in extraordinary danger from fire.
6 The Governor may by proclamation declare a drought emergency to exist and describe
7 the general boundaries of the area affected.

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

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

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

21 B. 1. It is unlawful for any person to set fire to any forest, grass, range, crop or
22 other wildlands, or to build a campfire or bonfire, or to burn trash or other material that

1 may cause a forest, grass, range, crop or other wildlands fire in any county of this state
2 in which the board of county commissioners of the county has passed a resolution
3 declaring a period of extreme fire danger. As used in this subsection, “extreme fire
4 danger” means:

- 5 a. moderate, severe or extreme drought conditions exist as determined by
6 the National Oceanic and Atmospheric Administration (NOAA)
7 pursuant to its criteria, and
- 8 b. no more than one-half (1/2) inch of precipitation is forecast for the next
9 three (3) days, and
- 10 c. fire occurrence is significantly greater than normal for the season
11 and/or initial attack on a significant number of wildland fires has been
12 unsuccessful due to extreme fire behavior, and
- 13 d. more than twenty percent (20%) of the wildfires in the county have
14 been caused by escaped debris or controlled burning.

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

18 3. A board of county commissioners shall have the documented concurrence of a
19 majority of the chiefs, or their designees, of the municipal and certified rural fire
20 departments located in the county that a period of extreme fire danger exists prior to
21 passage of a resolution declaring a period of extreme fire danger in the county. The
22 resolution shall be effective for a period not to exceed seven (7) days from the date of

1 passage by the board of county commissioners, unless the burn ban is removed earlier by
2 the same method by which it was approved. If extreme fire danger conditions persist,
3 subsequent resolutions may be passed by the board of county commissioners in the same
4 manner as provided in this paragraph. The board of county commissioners, in the
5 resolution, may grant exceptions to the fire prohibition based on appropriate
6 precautionary measures.

7 4. Any resolution passed by a board of county commissioners under authority of
8 this subsection shall be effective immediately upon passage of the resolution. Notice of
9 the resolution shall be submitted to the Forestry Division of the Oklahoma Department
10 of Agriculture, Food, and Forestry, all local news media, local law enforcement officials,
11 and the state headquarters of the Department of Public Safety, the Oklahoma Tourism
12 and Recreation Department and the Department of Wildlife Conservation on the day of
13 passage of the resolution. Evidence of publication or posting as provided in this
14 paragraph shall be maintained by the county.

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

17 6. Any person convicted of violating the provisions of this subsection shall be guilty
18 of a misdemeanor and shall be subject to a fine of not more than Five Hundred Dollars
19 (\$500.00), to imprisonment for not more than one (1) year, or to both such fine and
20 imprisonment.

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

4 a. all licensed retailers selling fireworks in an area under a declared burn
5 ban shall insert a safety message, drafted by the State Fire Marshal's
6 office, in every customer bag when purchases are made,

7 b. a safety message shall be prepared by the State Fire Marshal's office,
8 by the board of county commissioners affected by the burn ban, and by
9 industry representatives in areas under a declared burn ban and the
10 message shall be distributed to all local news media, local law
11 enforcement officials, the state headquarters of the Department of
12 Public Safety, the Oklahoma Tourism and Recreation Department, and
13 the Department of Wildlife Conservation, and

14 c. any fireworks activity is conducted over a nonflammable surface, is at
15 least ten (10) feet from flammable vegetation, wind speeds are less
16 than twenty (20) miles per hour, and a fire watch, other than the
17 fireworks user, is posted at the fireworks site with pressurized water
18 or a fire extinguisher.

19 8. Any person operating a retail location where fireworks are sold directly to the
20 consumer shall be required to purchase a retail fireworks license. The retail license fee
21 shall be Twenty Dollars (\$20.00) annually and may be purchased from any licensed
22 wholesaler, manufacturer, or distributor. All license fees shall be collected by the State

1 Fire Marshal Commission and shall be paid to the State Treasurer to the credit of the
2 State Fire Marshal Revolving Fund. Ten Dollars (\$10.00) of each license fee collected
3 shall be made available for public safety and education messages in areas under a burn
4 ban from June 15 through July 6 and from December 1 to January 2 each year to educate
5 the public on the safe usage of fireworks. Any unused fees from each calendar year shall
6 remain in the State Fire Marshal Revolving Fund to be used for any lawful purpose.

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

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

19 COMMITTEE REPORT BY: COMMITTEE ON AGRICULTURE AND RURAL
20 DEVELOPMENT, dated 02-23-09 - DO PASS, As Amended and Coauthored.