

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                               STATE OF OKLAHOMA

3                               1st Session of the 56th Legislature (2017)

4   HOUSE BILL 1291

                              By: Fetgatter

7                               AS INTRODUCED

8           An Act relating to agriculture; amending 2 O.S. 2011,  
9           Section 16-26, as last amended by Section 1, Chapter  
10          351, O.S.L. 2016 (2 O.S. Supp. 2016, Section 16-26),  
11          which relates to burning prohibitions during extreme  
12          drought conditions; eliminating requirement to submit  
          a written prescribed burn plan to local fire  
          departments; eliminating procedure for local fire  
          department to approve and amend burn plan; and  
          providing an effective date.

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

16           SECTION 1.        AMENDATORY        2 O.S. 2011, Section 16-26, as  
17           last amended by Section 1, Chapter 351, O.S.L. 2016 (2 O.S. Supp.  
18           2016, Section 16-26), is amended to read as follows:

19           Section 16-26.   A.   1.   It is unlawful for any person to set  
20           fire to any forest, grass, range, crop, or other wildlands, or to  
21           build a campfire or bonfire, or to burn trash or other material that  
22           may cause a forest, grass, range, crop or other wildlands fire in  
23           any county, counties or area within a county where, because of  
24           emergency drought conditions, there is gubernatorially proclaimed

1 extraordinary danger from fire, unless the setting of any backfire  
2 during the drought emergency is necessary to afford protection as  
3 determined by a representative of the Division of Forestry, or  
4 unless it can be established that the setting of the backfire was  
5 necessary for the purpose of saving life or property. The burden of  
6 proving the necessity shall rest on the person claiming a defense.

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

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

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

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

5        B. 1. It is unlawful for any person to set fire to any forest,  
6 grass, range, crop or other wildlands, or to build a campfire or  
7 bonfire, or to burn trash or other material that may cause a forest,  
8 grass, range, crop or other wildlands fire in any county of this  
9 state in which the board of county commissioners of the county has  
10 passed a resolution declaring a period of extreme fire danger. As  
11 used in this subsection, "extreme fire danger" means:

12            a. severe, extreme, or exceptional drought conditions  
13                exist as determined by the National Oceanic and  
14                Atmospheric Administration (NOAA) pursuant to its  
15                criteria,

16            b. no more than one-half (1/2) inch of precipitation is  
17                forecast for the next three (3) days, and

18            c. either of the following:

19                (1) fire occurrence is significantly greater than  
20                    normal for the season and/or initial attack on a  
21                    significant number of wildland fires has been  
22                    unsuccessful due to extreme fire behavior, or  
23  
24

1           (2) where data is available, more than twenty percent  
2                   (20%) of the wildfires in the county have been  
3                   caused by escaped debris or controlled burning.

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

8       3. A board of county commissioners shall have the documented  
9 concurrence of a majority of the chiefs, or their designees, of the  
10 municipal and certified rural fire departments located in the county  
11 that a period of extreme fire danger exists prior to passage of a  
12 resolution declaring a period of extreme fire danger in the county.  
13 The resolution shall be effective for a period not to exceed  
14 fourteen (14) days from the date of passage by the board of county  
15 commissioners, unless the burn ban is removed earlier by the same  
16 method by which it was approved. If extreme fire danger conditions  
17 persist, subsequent resolutions may be passed by the board of county  
18 commissioners in the same manner as provided in this paragraph. The  
19 board of county commissioners, in the resolution, may grant  
20 exceptions to the fire prohibition based on appropriate  
21 precautionary measures.

22       4. Agricultural producers burning cropland, rangeland, forests  
23 or pastures as a preferred method of managing their property shall  
24 be exempt from any resolution passed by a board of county

1 commissioners that declares a period of extreme fire danger so long  
2 as the agricultural producers have complied with the following  
3 procedures:

4 a. ~~submit~~ develop a written prescribed burn plan ~~to the~~  
5 ~~local fire department~~ and, if within a protection  
6 area, submit the plan to the local office or local  
7 representative of the Forestry Division of the  
8 Oklahoma Department of Agriculture, Food, and Forestry  
9 nearest the land to be burned ~~that~~. The written plan  
10 shall include the following information:

- 11 (1) the name and telephone number of the agricultural  
12 producer conducting the burn,
- 13 (2) the address and legal description of the area to  
14 be burned,
- 15 (3) the objective and purpose of the burn,
- 16 (4) a list of fire departments and sheriff's offices  
17 that are required to be notified pursuant to  
18 subparagraph c of this paragraph,
- 19 (5) a list of adjoining landowners required to be  
20 notified pursuant to Section 16-28.2 of this  
21 title,
- 22 (6) a description of any firebreaks used to define  
23 the boundary of the prescribed burn,
- 24 (7) a statement of prescribed weather conditions,

1 (8) a description of any smoke-management  
2 considerations, and

3 (9) an ignition plan for the burn,

4 b. keep a copy of the written prescribed burn plan  
5 provided for in subparagraph a of this paragraph on  
6 site when conducting the prescribed burn,

7 c. notify the county sheriff and the dispatch center of  
8 the local fire department prior to conducting the  
9 prescribed burn, and

10 d. comply with the notification procedures outlined in  
11 Section 16-28.2 of this title.

12 5. ~~The prescribed burn plan provided for in paragraph 4 of this~~  
13 ~~subsection shall be deemed approved seventy-two (72) hours after~~  
14 ~~submission to the local fire department; provided, that the local~~  
15 ~~fire department may amend the submitted burn plan within seventy-two~~  
16 ~~(72) hours after submission.~~

17 ~~6.~~ The prescribed burn plan provided for in paragraph 4 of this  
18 subsection shall not include campfires, household trash, debris or  
19 pile burning.

20 ~~7.~~ 6. Nothing in paragraph 4 of this subsection shall supersede  
21 requirements set by a proclamation promulgated by the Governor under  
22 authority of this section, interfere with the authority of the  
23 Oklahoma Department of Agriculture, Food, and Forestry to enforce  
24 burning laws or change the burner's liability as prescribed by law.

1       ~~8.~~ 7. Any resolution passed by a board of county commissioners  
2 under authority of this subsection shall be effective immediately  
3 upon passage of the resolution. Notice of the resolution shall be  
4 submitted to the Forestry Division of the Oklahoma Department of  
5 Agriculture, Food, and Forestry, all local news media, local law  
6 enforcement officials, and the state headquarters of the Department  
7 of Public Safety, the Oklahoma Tourism and Recreation Department and  
8 the Department of Wildlife Conservation on the day of passage of the  
9 resolution. Evidence of publication or posting as provided in this  
10 paragraph shall be maintained by the county.

11       ~~9.~~ 8. The provisions of this subsection may be enforced by any  
12 law enforcement officer of this state.

13       ~~10.~~ 9. Any person convicted of violating the provisions of this  
14 subsection shall be guilty of a misdemeanor and shall be subject to  
15 a fine of not more than Five Hundred Dollars (\$500.00), to  
16 imprisonment for not more than one (1) year, or to both such fine  
17 and imprisonment.

18       ~~11.~~ 10. The selling of fireworks shall not be considered an act  
19 in violation of this subsection.

20       SECTION 2. This act shall become effective November 1, 2017.

21  
22       COMMITTEE REPORT BY: COMMITTEE ON RULES, dated 03/01/2017 - DO PASS,  
23       As Coauthored.  
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