

1 **SENATE FLOOR VERSION**

2 March 1, 2011

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 494

By: Barrington of the Senate

and

McNiel of the House

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9 An Act relating to trespass; amending Section 4,
10 Chapter 268, O.S.L. 2006, as last amended by Section
11 2, Chapter 458, O.S.L. 2009 (21 O.S. Supp. 2010,
12 Section 1835.2), which relates to trespassing upon
13 private lands; adding statutory reference; creating
14 the Oklahoma Private Lands and Public Recreation Act;
15 providing short title; defining terms; allowing prima
16 facie evidence to be used in certain circumstances;
17 stating certain prohibitions; providing for
18 penalties; allowing any law enforcement official to
19 issue citation to persons in violation of certain
20 law; providing for restitution; stating certain
21 offenses to be aggravated in certain circumstances;
22 providing penalty for aggravated violation;
23 authorizing certain licenses to be revoked for
24 certain reasons; exempting certain property owners
from certain duty; providing exceptions; defining
term; providing scope of applicability; clarifying
liability; providing for codification; providing an
effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 4, Chapter 268, O.S.L.
2006, as last amended by Section 2, Chapter 458, O.S.L. 2009 (21
O.S. Supp. 2010, Section 1835.2), is amended to read as follows:

1 Section 1835.2 A. Notwithstanding the provisions of Section
2 1835 of this title and Sections 2 through 11 of this act, the
3 following provisions apply to private land that is primarily devoted
4 to farming, ranching, or forestry purposes:

5 1. Except as provided in this section, whoever willfully enters
6 private land of another that is primarily devoted to farming,
7 ranching, or forestry purposes without permission by the owner or
8 lawful occupant thereof shall be deemed guilty of trespass and, upon
9 conviction thereof, shall be fined in any sum not less than Five
10 Hundred Dollars (\$500.00) nor more than One Thousand Five Hundred
11 Dollars (\$1,500.00), and in addition, the court shall order
12 restitution for actual damages incurred. Persons convicted of a
13 second or subsequent offense under this paragraph shall be guilty of
14 a misdemeanor and shall be punished by a fine in any sum not less
15 than One Thousand Five Hundred Dollars (\$1,500.00) nor more than Two
16 Thousand Five Hundred Dollars (\$2,500.00), or by confinement in the
17 county jail for not less than thirty (30) days nor more than six (6)
18 months, or by both such fine and imprisonment, and in addition, the
19 court shall order restitution for actual damages incurred;

20 2. This provision shall not apply to peace officers as defined
21 in Section 99 of this title or any federal, state, or local
22 government employees engaged in the performance of their duties, or
23 to any firefighters, emergency medical personnel, or public utility
24 employees engaged in addressing an emergency that presents an

1 | imminent danger to health, safety, or the environment in the
2 | performance of their duties, or to parties engaged in oil and gas
3 | operations, which shall include, without limitation, exploration,
4 | drilling, production and sales activities, under authority of
5 | mineral ownership, an oil and gas lease, seismic agreement or
6 | permit, gas gathering, purchase, transportation, or treating
7 | contracts, Corporation Commission order, or other lawful authority
8 | from persons entitled to give the same. The provisions of this
9 | section shall not prohibit railroad employees and emergency
10 | equipment from entering such land to restore rail service following
11 | an accident, derailment or natural disaster; nor the entrance of
12 | utility employees or contractors while acting in the scope of their
13 | employment; nor employees or contractors of valid easement or
14 | license holders while acting in the scope of their employment;

15 | 3. The following persons may enter such land of another unless
16 | forbidden to do so, either orally or in writing, by the owner or
17 | lawful occupier thereof: registered land surveyors and registered
18 | professional engineers for the purpose of land surveying in the
19 | performance of their professional services; persons in the sole
20 | process of retrieving their domestic livestock or other animals;
21 | persons making a delivery, selling a product or service, conducting
22 | a survey or poll, working on behalf of a candidate for political
23 | office, or who otherwise have a legitimate reason for entering and
24 | who, immediately upon entering, seek to conduct such business; and

1 4. Anyone who willfully or maliciously enters any such land of
2 another and therein commits or attempts to commit waste, theft, or
3 damage shall be deemed guilty of a misdemeanor and, upon conviction
4 thereof, shall be fined in any sum not less than Two Hundred Fifty
5 Dollars (\$250.00) nor more than Five Hundred Dollars (\$500.00), or
6 by confinement in the county jail for not less than thirty (30) days
7 nor more than six (6) months, or by both such fine and imprisonment,
8 and in addition, the court shall order restitution for actual
9 damages incurred. Persons convicted of a second or subsequent
10 offense under this paragraph shall be guilty of a misdemeanor and
11 shall be punished by a fine in any sum not less than Seven Hundred
12 Dollars (\$700.00) nor more than One Thousand Five Hundred Dollars
13 (\$1,500.00), or by confinement in the county jail for not less than
14 thirty (30) days nor more than six (6) months, or by both such fine
15 and imprisonment, and in addition, the court shall order restitution
16 for actual damages.

17 B. This section shall not be construed to prohibit acts that
18 are permitted pursuant to Section 5-202 or 6-304 of Title 29 of the
19 Oklahoma Statutes.

20 C. 1. It shall be an affirmative defense to prosecution under
21 paragraph 1 of subsection A of this section that the accused had
22 express or implied permission or legal authority to be on the
23 property.

24

1 2. If an accused reasonably believed he or she was upon
2 property for which they had permission to be upon, it shall be an
3 affirmative defense to prosecution under paragraph 1 of subsection A
4 of this section that the accused had with him or her, on his or her
5 person, written permission from the owner or lawful occupant to be
6 upon such person's land while the accused was upon any adjoining
7 property. This defense shall not be available to the accused if:

8 a. the accused has previously pled guilty, nolo
9 contendre, or has been convicted of any act of
10 trespass or has been found civilly liable of any act
11 of trespass, or

12 b. the accused, while the accused was upon the adjoining
13 property, does not have with him or her, on his or her
14 person, the written permission specified in this
15 paragraph.

16 SECTION 2. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1835.3 of Title 21, unless there
18 is created a duplication in numbering, reads as follows:

19 This act shall be known and may be cited as the "Oklahoma
20 Private Lands and Public Recreation Act".

21 SECTION 3. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1835.4 of Title 21, unless there
23 is created a duplication in numbering, reads as follows:

24 As used in the Oklahoma Private Lands and Public Recreation Act:

1 1. "Land" means all real property, land and water, and all
2 structures, fixtures, equipment, and machinery thereon;

3 2. "Owner" means any individual, legal entity, or governmental
4 agency that has any ownership or security interest, or lease or
5 right of possession in land;

6 3. "Recreational use" means any activity undertaken for
7 exercise, education, relaxation, or pleasure on land owned by
8 another; and

9 4. "Recreational trespass" means remaining on land for a
10 recreational use after being asked to leave by the owner, or the
11 entry on land for a recreational use without the express or implied
12 consent of the owner.

13 SECTION 4. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1835.5 of Title 21, unless there
15 is created a duplication in numbering, reads as follows:

16 It shall be prima facie evidence that a person is on land for a
17 recreational use if the person is on the land of another without
18 other explanation.

19 1. The absence of posting shall not by itself be sufficient to
20 imply consent.

21 2. Consent shall not be implied if the land is posted.

22 3. It shall be the obligation of the recreational user to
23 establish implied consent as an affirmative defense;

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1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1835.6 of Title 21, unless there
3 is created a duplication in numbering, reads as follows:

4 The following acts are prohibited:

5 1. Recreational trespass;

6 2. Any activity in which a vehicle is used to engage in mud
7 bogging. Mud bogging includes, without limitation, traveling across
8 terrain:

9 a. that has not been improved or designed to facilitate
10 conventional vehicles, or

11 b. that is chosen for such travel because of its wet or
12 muddy characteristics.

13 3. The destruction or removal of any property of the owner or
14 vandalism of any sort while engaged in recreational use of the land
15 of another;

16 4. Littering while engaged in recreational use of the land of
17 another; and

18 5. Failure to leave any gates, doors, fences, road blocks and
19 obstacles or signs in the condition in which they were found, while
20 engaged in the recreational use of the land of another.

21 SECTION 6. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1835.7 of Title 21, unless there
23 is created a duplication in numbering, reads as follows:

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1 Any person convicted of a trespass violation pursuant to Section
2 5 of this act shall be punished by a fine of Two Hundred Fifty
3 Dollars (\$250.00) or imprisonment for not more than ten (10) days;
4 for a second conviction within one (1) year after the first
5 conviction, a fine of Five Hundred Dollars (\$500.00) or by
6 imprisonment for not more than twenty (20) days; and upon a third or
7 subsequent conviction within one (1) year after the first
8 conviction, a fine of Two Thousand Five Hundred Dollars (\$2,500.00)
9 or by imprisonment for not more than six (6) months, or by both such
10 fine and imprisonment. A violation of each paragraph of Section 5
11 of this act shall be a separate offense.

12 SECTION 7. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1835.8 of Title 21, unless there
14 is created a duplication in numbering, reads as follows:

15 A. Any local, county, or state law enforcement officer may
16 issue a citation to a person believed with probable cause to have
17 violated Section 5 of this act. The citation shall include the
18 following information:

19 1. The name, address, and hunting or fishing license, driver
20 license, or other recreational activity license number, if any, and
21 the date of birth of the alleged violator;

22 2. The name of the issuing law enforcement officer and the name
23 and address of the department;

24

1 3. The violations alleged to have been committed by the
2 defendant, with specific reference to the paragraphs of Section 5 of
3 this act involved and a brief description of the activities alleged
4 to be in violation;

5 4. The amount of the penalty or forfeiture payable under
6 Section 6 of this act, together with the costs that may be
7 applicable;

8 5. A date, time, and place for the defendant to appear in court
9 and notice to appear;

10 6. Provisions for a payment of the citation and stipulation by
11 the defendant in lieu of a court appearance;

12 7. Notice that if the defendant neither pays the citation nor
13 appears in court at the time fixed in the citation, the court may
14 issue a summons or an arrest warrant; and

15 8. Any other pertinent information.

16 B. If a person is cited, the person may pay the amount
17 specified in the citation any time, up to the date specified in the
18 citation for court appearance, by:

19 1. Mailing the amount and a copy of the citation to the court
20 clerk in the county where the offense occurred; or

21 2. Going to the court clerk in the county where the offense
22 occurred.

23 C. The citation shall serve as the initial pleading and, not
24 withstanding any other provision of law, shall be deemed adequate

1 process to give the appropriate court jurisdiction over the
2 defendant upon filing of the citation with the court.

3 SECTION 8. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1835.9 of Title 21, unless there
5 is created a duplication in numbering, reads as follows:

6 A court to which any penalty is paid pursuant to Section 7 of
7 this act shall apply all of the amount paid minus costs to the owner
8 of the land in question to recompense to the owner for damages or
9 attorney fees or inconvenience suffered due to the violations of the
10 Oklahoma Private Lands and Public Recreation Act that gave rise to
11 the penalty. The restitutionary payment shall not prejudice or
12 affect any other civil action which the owner may have for the
13 damages or inconvenience.

14 SECTION 9. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 1835.10 of Title 21, unless
16 there is created a duplication in numbering, reads as follows:

17 A. A violation of paragraph 1 of Section 5 of this act shall be
18 aggravated where in the course of the violation there occurs the
19 driving of any automobile, motorcycle, trail bicycle, or any other
20 motorized vehicle in a way as to endanger others or to cause damage
21 to the land.

22 B. The penalty for a violation of this section shall consist of
23 a fine of Five Hundred Dollars (\$500.00) or imprisonment for not
24 more than ten (10) days; for a second conviction within one (1) year

1 after the first conviction, by imprisonment for not more than twenty
2 (20) days; and upon a third or subsequent conviction within one (1)
3 year after the first conviction, by imprisonment for not more than
4 six (6) months, or by both such fine and imprisonment. A person may
5 not be charged for the same offense under this section and paragraph
6 1 of Section 5 of this act.

7 SECTION 10. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1835.11 of Title 21, unless
9 there is created a duplication in numbering, reads as follows:

10 Under certification by a court that a conviction or a guilty or
11 no contest plea respecting any violation of the Oklahoma Private
12 Lands and Public Recreation Act has been recorded, any governmental
13 entity which has issued a hunting, fishing, or other license for
14 recreational activity may revoke the license and deny permission to
15 reapply for a replacement license for a period of up to one (1) year
16 from the date of the violation.

17 SECTION 11. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 80 of Title 76, unless there is
19 created a duplication in numbering, reads as follows:

20 A. A possessor of land, including an owner, lessee, or other
21 occupant, has no duty to make its premises safe for a trespasser and
22 is not subject to liability for any injury to a trespasser.

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1 B. Notwithstanding subsection A of this section, a possessor of
2 land may be subject to liability for physical injury or death to a
3 trespasser in the following situations:

4 1. A land possessor who knows or reasonably should know of a
5 trespasser's presence on the premises has a duty not to injure that
6 trespasser by a wanton or intentional act, except as permitted by
7 Sections 643 and 1289.25 of Title 21 of the Oklahoma Statutes.

8 2. A land possessor may be subject to liability for physical
9 injury or death to a child trespasser from a highly dangerous
10 artificial condition on the land if the plaintiff establishes all of
11 the following:

12 a. the possessor knew or had reason to know that children
13 were likely to trespass at the location of the
14 condition,

15 b. the condition is one the possessor knew or reasonably
16 should have known was unusually attractive to children
17 and involved an unreasonable risk of death or serious
18 bodily harm,

19 c. the injured child was attracted onto the premises by
20 the condition,

21 d. the child lacked the ability to appreciate or realize
22 the risk,

23 e. the utility to the possessor of maintaining the
24 condition and the burden of eliminating the danger

1 were slight as compared with the risk to the child
2 involved, and

3 f. the child's injury was directly caused by the
4 possessor's failure to exercise reasonable care to
5 eliminate the danger or otherwise protect the child.

6 As a matter of law, a child under seven (7) years of age has no
7 ability to appreciate the risk from highly dangerous artificial
8 conditions. A child between seven (7) and fourteen (14) years of
9 age is presumed to lack the ability to appreciate the risk from
10 highly dangerous artificial conditions; this presumption may be
11 overcome if the possessor proves by the greater weight of the
12 evidence that the child had the ability to appreciate the danger on
13 the premises at the time of the harm. A child trespasser who is
14 fourteen (14) years of age or older has the burden of proving by the
15 greater weight of the evidence that the child lacked the ability to
16 appreciate the danger on the premises at the time of the harm.

17 C. "Trespasser" means a person who enters the real estate of
18 another without the permission of the person lawfully entitled to
19 possession. Permission may be either expressed or implied.

20 D. 1. This section shall not affect Section 16-71.7 of Title 2
21 of the Oklahoma Statutes relating to trespass upon agricultural land
22 or Section 10.1 of Title 76 of the Oklahoma Statutes relating to
23 trespass upon land used for recreational purposes not for profit.

1 2. This section shall not create or increase the liability of
2 any person or entity.

3 SECTION 12. This act shall become effective July 1, 2011.

4 SECTION 13. It being immediately necessary for the preservation
5 of the public peace, health and safety, an emergency is hereby
6 declared to exist, by reason whereof this act shall take effect and
7 be in full force from and after its passage and approval.

8 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY, dated 2-24-11 - DO
9 PASS, As Amended and Coauthored.

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