

1 ENGROSSED HOUSE AMENDMENT  
TO  
2 ENGROSSED SENATE BILL NO. 543

By: Henry of the Senate

3 and  
4 Braddock of the House

5  
6  
7  
8 ( torts - landowner liability -  
9 effective date )

10  
11  
12 AUTHOR: Add the following House Coauthor: Pope (Clay)

13 AMENDMENT NO. 1. Strike the stricken title, enacting clause and  
14 entire bill and insert

15 "( torts - landowner liability -  
16 effective date )

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

20 SECTION 1. AMENDATORY 76 O.S. 1991, Section 10, is  
21 amended to read as follows:

22 Section 10. As used in this act:

23 ~~(a) 1.~~ "Land" means ~~land which~~ real property that is used  
24 primarily for farming or ranching activities, and includes roads,  
25 water, watercourses, private ways ~~and,~~ buildings, and structures,  
26 ~~and machinery or equipment when attached to realty which is used~~  
27 ~~primarily for farming or ranching activities.~~ that are appurtenant  
28 to or used in conjunction with the real property;

29 ~~(b) 2.~~ "Owner" means the possessor of a fee interest, a tenant,  
30 lessee, occupant or other person in lawful control of ~~the premises.~~  
31 land;

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1       ~~(e)~~ 3. "Recreational purpose" includes, but is not limited to,  
2 any of the following, or any combination thereof: hunting, fishing,  
3 swimming, boating, camping, picnicking, hiking, horseback riding,  
4 pleasure driving, nature study, water skiing, winter sports, and  
5 viewing or enjoying historical, archaeological, scenic, or  
6 scientific sites.;

7       ~~(d)~~ 4. "Charge" means the admission price or monetary fee asked  
8 in return for ~~invitation or permission to enter or go upon the land~~  
9 the right of an entrant to use land for recreational purpose, but  
10 does not include:

11           a. the sharing of game, fish or other product derived from  
12           the recreational purpose,

13           b. contributions in kind, services, or cash to reduce or  
14           offset the cost of an owner of improving land for its  
15           use as a recreational purpose, or

16           c. any consideration received where land is leased by an  
17           owner to the State of Oklahoma, or a subdivision  
18           thereof;

19       5. "Farming or ranching activities" means the production of  
20 plants, fruits, wood, or farm or ranch animals to be sold off the  
21 premises;

22       6. "Entrant" means any person that is granted permission to use  
23 the land of an owner for a recreational purpose; and

24       7. "Agricultural land" means land that is used for farming or  
25 ranching activities.

26       SECTION 2.        AMENDATORY        76 O.S. 1991, Section 12, is  
27 amended to read as follows:

28       Section 12. Except as ~~specifically recognized by or~~ provided in  
29 Section ~~5~~ 4 of this act, an owner ~~of land which is used primarily~~  
30 ~~for farming or ranching activities, who either directly or~~  
31 ~~indirectly invites or permits without charge any person to use such~~  
32

1 property, who without charge, allows an entrant to use land for  
2 recreational purposes, does not ~~thereby~~:

3 ~~(a)~~ 1. Extend any assurance that the ~~premises are~~ land is safe  
4 for ~~any purpose.~~ the recreational purpose;

5 ~~(b)~~ 2. Confer upon ~~such person~~ the entrant the legal status of  
6 an invitee or licensee-;

7 ~~(c)~~ 3. Assume responsibility for or incur liability for any  
8 injury to ~~person~~ the entrant or property of the entrant caused by ~~an~~  
9 the act or omission of ~~such persons~~ the entrant; or

10 4. Owe a duty of care to the entrant to keep the land free of  
11 dangers, or to give any warning of dangerous or hidden defects in or  
12 upon the land.

13 SECTION 3. AMENDATORY 76 O.S. 1991, Section 13, as  
14 amended by Section 1, Chapter 38, O.S.L. 1994 (76 O.S. Supp. 2000,  
15 Section 13), is amended to read as follows:

16 Section 13. Unless otherwise agreed in writing, the provisions  
17 of ~~Sections 11 and~~ Section 12 of this title shall be deemed  
18 applicable to ~~the duties and liability of an owner of land which is~~  
19 ~~used by the owner primarily for farming or ranching activities, is~~  
20 ~~on or~~ that ~~adjoins land~~ real property entered upon the National  
21 Register of Historic Places ~~and~~ for which an easement has been  
22 granted to the Oklahoma Historical Society, or is leased to the  
23 state or any subdivision thereof ~~for recreational purposes.~~

24 SECTION 4. NEW LAW A new section of law to be codified  
25 in the Oklahoma Statutes as Section 14.1 of Title 76, unless there  
26 is created a duplication in numbering, reads as follows:

27 An owner remains liable for:

28 1. Any injury or damage to an entrant that is caused by the  
29 intentional, willful, or wanton acts of an owner; or

30 2. An injury or damage to an entrant that is charged for the  
31 use of land for a recreational purpose unless the entrant signs a  
32 written release as prescribed in Section 6 of this act.

1 SECTION 5. AMENDATORY 76 O.S. 1991, Section 15, is  
2 amended to read as follows:

3 Section 15. Nothing in this act shall be construed to:

4 ~~(a) 1.~~ Create a new or heightened duty of care or ground of  
5 liability for injury to persons or property ~~;~~ or

6 ~~(b) 2.~~ Relieve ~~any person using the land of another for~~  
7 ~~recreational purposes from any~~ an entrant from the obligation ~~which~~  
8 ~~he may have in the absence of this act~~ to exercise reasonable care  
9 in ~~his~~ the use of ~~such~~ the land and in ~~his~~ the activities of the  
10 entrant thereon, or from the legal consequences of failure to employ  
11 such care.

12 SECTION 6. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 15.2 of Title 76, unless there  
14 is created a duplication in numbering, reads as follows:

15 A. Any owner that charges an entrant for the use of land for a  
16 recreational purpose may limit the liability to the entrant by  
17 obtaining a written release or waiver of liability from the entrant.

18 B. The release or waiver shall be deemed valid if it is signed  
19 by the entrant and includes the definitions contained in Section 1  
20 of this act along with language that substantially conforms to the  
21 following:

22 1. Entrant acknowledges that the use of land for a recreational  
23 purpose exposes the entrant to substantial and serious hazards and  
24 risks of property damage, personal injury or death. In  
25 consideration for the opportunity to use the land for a recreational  
26 purpose, entrant agrees to assume such hazards and risks; and

27 2. Entrant agrees to discharge, waive and release owner from  
28 all claims, demands and liabilities, whether known, unknown,  
29 foreseen or unforeseen, for any and all property damage, personal  
30 injury not resulting in death arising from the use of the land for a  
31 recreational purpose by the entrant.

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1 SECTION 7. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 15.3 of Title 76, unless there  
3 is created a duplication in numbering, reads as follows:

4 A. The liability of an owner, or occupant of agricultural land  
5 used for recreational purposes for an act or omission by the owner,  
6 lessee, or occupant relating to the premises that results in damages  
7 to a person who has entered the premises is limited to a maximum  
8 amount of Five Hundred Thousand Dollars (\$500,000.00) for each  
9 person and One Million Dollars (\$1,000,000.00) for each single  
10 occurrence of bodily injury not resulting in death and One Hundred  
11 Thousand Dollars (\$100,000.00) for each single occurrence for injury  
12 to or destruction of property. In the case of agricultural land,  
13 the total liability of an owner, lessee, or occupant for a single  
14 occurrence is limited to One Million Dollars (\$1,000,000.00), and  
15 the liability is also subject to the limits for each single  
16 occurrence for injury to or destruction of property stated in this  
17 subsection.

18 B. This section does not affect the liability of an insurer or  
19 insurance plan in an action for bad faith conduct, breach of  
20 fiduciary duty, or negligent failure to settle a claim.

21 SECTION 8. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 15.4 of Title 76, unless there  
23 is created a duplication in numbering, reads as follows:

24 A. For purposes of this section "agricultural lessee" means a  
25 lessee of any real property that is used in the production of  
26 plants, fruits, wood, or farm or ranch animals to be sold off the  
27 premises.

28 B. An agricultural lessee shall have the same rights to control  
29 access to the real property which is the subject of the lease as the  
30 owner of such land has with regard to third parties.

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1 SECTION 9. AMENDATORY 21 O.S. 1991, Section 1835, as  
2 amended by Section 1, Chapter 53, O.S.L. 1999 (21 O.S. Supp. 2000,  
3 Section 1835), is amended to read as follows:

4 Section 1835. A. Whoever shall willfully or maliciously enter  
5 the garden, yard, pasture or field of another after being expressly  
6 forbidden to do so or without permission by the owner, lessee or  
7 lawful occupant thereof when such property is posted shall be deemed  
8 guilty of trespass and upon conviction thereof shall be fined in any  
9 sum not to exceed Two Hundred Fifty Dollars (\$250.00); provided,  
10 that this provision shall not apply to registered land surveyors and  
11 registered professional engineers for the purpose of land surveying  
12 in the performance of their professional services; and, provided  
13 further, that anyone who willfully or maliciously enters any such  
14 garden, yard, pasture or field, and therein commits or attempts to  
15 commit waste, theft, or damage shall be deemed guilty of a  
16 misdemeanor and upon conviction thereof shall be fined in any sum  
17 not less than Fifty Dollars (\$50.00) nor more than Five Hundred  
18 Dollars (\$500.00), or by confinement in the county jail for not less  
19 than thirty (30) days nor more than six (6) months, or both such  
20 fine and imprisonment. For purposes of this section, "posted" means  
21 exhibiting signs to read as follows: "PROPERTY RESTRICTED"; "POSTED  
22 - KEEP OUT"; "KEEP OUT"; "NO TRESPASSING"; or similar signs which  
23 are displayed. Property that is fenced or not fenced must have such  
24 signs placed conspicuously and at all places where entry to the  
25 property is normally expected.

26 B. No provisions of this act shall conflict with Section 5-202  
27 or 6-304 of Title 29 of the Oklahoma Statutes.

28 C. Whoever shall willfully enter the pecan grove of another  
29 without the prior consent of the owner, lessee or occupant thereof  
30 to so do shall be deemed guilty of trespass and upon conviction  
31 thereof shall be fined in any sum not to exceed Twenty-five Dollars  
32 (\$25.00); provided, that anyone who willfully enters any such pecan

1 grove and therein commits or attempts to commit waste, theft, or  
2 damage shall be deemed guilty of a misdemeanor and upon conviction  
3 thereof shall be fined in any sum not more than Five Hundred Dollars  
4 (\$500.00), or by confinement in the county jail for not less than  
5 thirty (30) days nor more than six (6) months, or by both such fine  
6 and imprisonment.

7 D. Whoever shall willfully or maliciously enter upon property  
8 owned or managed by the Grand River Dam Authority without permission  
9 when such property is posted shall be deemed guilty of misdemeanor  
10 trespass and upon conviction thereof shall be fined in any sum not  
11 to exceed Two Hundred Fifty Dollars (\$250.00); provided, that this  
12 provision shall not apply to registered land surveyors and  
13 registered professional engineers for the purpose of land surveying  
14 in the performance of their professional services; and, provided  
15 further, that anyone who willfully or maliciously enters upon  
16 property owned or managed by the Grand River Dam Authority without  
17 permission and therein commits or attempts to commit waste, theft,  
18 or damage shall be deemed guilty of misdemeanor trespass, and upon  
19 conviction thereof shall be fined in any sum not less than Fifty  
20 Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00), or by  
21 confinement in the county jail for not less than thirty (30) days  
22 nor more than six (6) months, or both such fine and imprisonment.  
23 For purposes of this section, "posted" means exhibiting signs to  
24 read as follows: "PROPERTY RESTRICTED"; "POSTED - KEEP OUT"; "KEEP  
25 OUT"; "NO TRESPASSING"; or similar signs which are displayed.  
26 Property that is fenced or not fenced must have such signs placed  
27 conspicuously and at all places where entry to the property is  
28 normally expected.

29 SECTION 10. REPEALER 76 O.S. 1991, Sections 11, 14 and  
30 15.1, are hereby repealed.

31 SECTION 11. This act shall become effective November 1, 2001."  
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