

ENGROSSED HOUSE
BILL NO. 2707

By: Hickman, Duncan, Blackwell,
Jackson, DeWitt,
Richardson, Martin,
Braddock, Sweeden and
McMullen of the House

and

Lawler of the Senate

An Act relating to crimes and punishments; amending 21 O.S. 2001, Section 1835, which relates to trespass on posted property after being forbidden or without permission; clarifying scope of prohibited act; providing an affirmative defense; authorizing certain persons to enter or remain on certain property; authorizing certain persons to enter or remain on certain property unless specifically forbidden; providing penalty; updating language; stating circumstances in which certain persons may be answerable to damages; prohibiting the arrest, detainment, or apprehension of certain persons; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 2001, Section 1835, is amended to read as follows:

Section 1835. A. ~~Whoever~~ It shall ~~willfully or maliciously enter the garden, yard, pasture or field of another after being expressly forbidden to do so or~~ be unlawful for any person to:

1. Enter any structure or movable owned by another without permission by the owner or lawful occupant thereof when such property is posted shall be deemed guilty of trespass and upon conviction thereof shall be fined in any sum not to exceed Two Hundred Fifty Dollars (\$250.00); provided, that this provision shall not apply to registered land surveyors and registered professional engineers for the purpose of land surveying in the performance of their professional services; and, provided further, that anyone who willfully or maliciously enters any such garden, yard, pasture or

~~field, and therein commits or attempts to commit waste, theft, or damage shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00), or by confinement in the county jail for not less than thirty (30) days nor more than six (6) months, or both such fine and imprisonment. For purposes of this section, "posted" means exhibiting signs to read as follows: "PROPERTY RESTRICTED"; "POSTED - KEEP OUT"; "KEEP OUT"; "NO TRESPASSING"; or similar signs which are displayed. Property that is fenced or not fenced must have such signs placed conspicuously and at all places where entry to the property is normally expected express, legal, or implied authorization;~~

2. Enter upon immovable property owned by another without express, legal, or implied authorization; or

3. Remain in or upon property, movable or immovable, owned by another without express, legal, or implied authorization.

B. It shall be an affirmative defense to prosecution for a violation of subsection A of this section, that the accused had express, legal, or implied authority to be in the movable or on the immovable property.

C. The following persons may enter or remain upon the structure, movable, or immovable property of another:

1. Any peace officer, as defined in Section 99 of this title, in the performance of his or her duties;

2. Any volunteer, full-time, or part-time firefighter, when performing duties for a fire department, and any employee of the Oklahoma State Department of Agriculture, Food, and Forestry engaged in locating and suppressing a fire;

3. Emergency medical personnel engaged in the rendering of medical assistance to an individual;

4. Any federal, state, or local government employee, public utility employee or agent engaged in suppressing or dealing with an

emergency that presents an imminent danger to human safety or health or to the environment;

5. Any federal, state, or local government employee, public utility employee or agent in the performance of his or her duties when otherwise authorized by law to enter or remain on movable or immovable property;

6. Any person authorized by a court of law to enter or remain on immovable property; or

7. Any person exercising the mere right of passage to an enclosed estate, as otherwise provided by law.

D. The following persons may enter or remain upon immovable property of another, unless specifically forbidden to do so by the owner or other person with authority, either orally or in writing:

1. A registered land surveyor or registered professional engineer for the purpose of land surveying in the performance of their professional services;

2. A person, affiliate, employee, agent, or contractor of any business which is regulated by the Corporation Commission, by a local franchising authority, the Federal Communication Commission under the Cable Reregulation Act of 1992, or of a municipal or public utility, while acting in the course and scope of his or her employment or agency relating to the operation, repair, or maintenance of a facility, servitude, or any property located on the immovable property which belongs to such a business;

3. Any person making a delivery, soliciting, selling any product or service, conducting a survey or poll, a real estate licensee or other person who has a legitimate reason for making a delivery, conducting business or communicating with the owner, lessee, custodian, or a resident of the immovable property and who, immediately upon entry, seeks to make the delivery, to conduct business, or to conduct the communication;

4. An employee of the owner, lessee, or custodian of the immovable property while performing his or her duties, functions, and responsibilities in the course and scope of his or her employment;

5. The owner of domestic livestock or his or her employees or agents while in the process of retrieving the domestic livestock that have escaped from an area fenced to retain such domestic livestock;

6. The owner of a domestic animal while in the sole process of merely retrieving the domestic animal from immovable property and not having a firearm or other weapon on his or her person; or

7. Any candidate for political office or any person working on behalf of a candidate for a political office.

E. Any person violating the provisions of subsection A of this section shall, upon conviction, be guilty of a misdemeanor punishable by a fine of not more than Two Hundred Fifty Dollars (\$250.00). Any person violating the provisions of subsection A of this section and who commits or attempts to commit waste, theft, or damage shall, upon conviction, be guilty of a misdemeanor punishable by a fine of not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00), or by imprisonment in the county jail for not less than thirty (30) days nor more than one hundred eighty (180) days, or by both such fine and imprisonment.

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

~~C.~~ G. Whoever shall willfully enter the pecan grove of another without the prior consent of the owner or occupant thereof to so do shall be deemed guilty of trespass and upon conviction thereof shall be fined ~~in any sum not to exceed~~ more than Twenty-five Dollars (\$25.00); ~~provided, that anyone.~~ Any person who willfully enters any ~~such~~ pecan grove and ~~therein~~ commits or attempts to commit waste, theft, or damage shall be deemed guilty of a misdemeanor and

upon conviction ~~thereof~~ shall be fined ~~in any sum~~ not more than Five Hundred Dollars (\$500.00), or by ~~confinement~~ imprisonment in the county jail for not less than thirty (30) days nor more than ~~six (6) months~~ one hundred eighty (180) days, or by both such fine and imprisonment.

D. H. Whoever shall willfully or maliciously enter upon property owned or managed by the Grand River Dam Authority without permission when such property is posted shall be deemed guilty of misdemeanor trespass and upon conviction ~~thereof~~ shall be fined ~~in any sum~~ not ~~to exceed~~ more than Two Hundred Fifty Dollars (\$250.00) ~~provided, that this provision.~~ The provisions of this subsection shall not apply to registered land surveyors and registered professional engineers for the purpose of land surveying in the performance of their professional services; and, provided further, that anyone. Any person who willfully or maliciously enters upon property owned or managed by the Grand River Dam Authority without permission and ~~therein~~ commits or attempts to commit waste, theft, or damage shall be deemed guilty of misdemeanor trespass, and upon conviction ~~thereof~~ shall be fined ~~in any sum~~ not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00), or by ~~confinement~~ imprisonment in the county jail for not less than thirty (30) days nor more than ~~six (6) months~~ one hundred eighty (180) days, or by both such fine and imprisonment. For purposes of this section, "posted" means exhibiting signs to read as follows:

"PROPERTY RESTRICTED"; "POSTED - KEEP OUT"; "KEEP OUT"; "NO TRESPASSING"; or similar signs which are displayed. Property that is fenced or not fenced must have such signs placed conspicuously and at all places where entry to the property is normally expected.

I. Except as otherwise provided by law, owners, lessees, and custodians of structures, movable, or immovable property shall not be answerable for damages sustained by any person who enters upon the structure, movable, or immovable property without express,

legal, or implied authorization, or who without legal authorization, remains upon the structure, movable, or immovable property after being forbidden by the owner, or other person with authority to do so; however, the owner, lessee, or custodian of the property may be answerable for damages only upon a showing that the damages sustained were the result of the intentional acts or gross negligence of the owner, lessee, or custodian.

J. A minor ten (10) years of age or younger shall not be arrested, detained, or apprehended for the crime of trespass.

SECTION 2. This act shall become effective November 1, 2006.

Passed the House of Representatives the 9th day of March, 2006.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2006.

Presiding Officer of the Senate