ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE
BILL NO. 2573

By: Ownbey and Vaughan of the House

and

Simpson of the Senate

An Act relating to game and fish; amending 29 O.S. 2011, Section 5-202, which relates to the Oklahoma Wildlife Conservation Code; prohibiting catching upon land of another; classifying offense for certain violations as a misdemeanor; providing penalties; mandating revocation of hunting or fishing license after certain poaching convictions; permitting court to set period of revocation within certain time; providing default revocation period; prohibiting Department of Wildlife Conservation from issuing license during revocation; requiring surrender of license to court upon conviction; directing court to send Department surrendered license and copy of judgment of conviction; defining term; providing for codification; and providing an effective date.

AMENDMENT NO. 1. Page 1, strike the title, enacting clause and entire bill and insert

"An Act relating to game and fish; amending 29 O.S. 2011, Section 5-202, which relates to the Oklahoma Wildlife Conservation Code; prohibiting taking upon land of another; classifying offense for certain violations as a misdemeanor; providing for affirmative defense; providing penalties; mandating revocation of hunting or fishing license after certain poaching convictions; permitting court to set period of revocation within certain time; providing default revocation period; prohibiting

Department of Wildlife Conservation from issuing license during revocation; requiring surrender of license to court upon conviction; directing court to send Department surrendered license and copy of judgment of conviction; defining term; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 29 O.S. 2011, Section 5-202, is amended to read as follows:

Section 5-202. A. Except as otherwise provided, no person may hunt <u>or take by any means or method</u> upon the land of another without the consent of the owner, lessee or occupant of such land.

B. For purposes of this section, consent shall be presumed to be valid for not more than one (1) year, unless the owner, lessee, or occupant specifically grants consent for a specified period of time.

C. Excluding land primarily devoted to farming, ranching, or forestry purposes as set forth in Section 1835.2 of Title 21 of the Oklahoma Statutes, areas exempt from the provisions of subsection A of this section are~~:~~

~~1. Lands not occupied by a resident thereon, unless notice of objection is conspicuously posted upon the premises by the owner or an agent of the owner; and~~

~~2. Land~~ <u>lands</u> belonging to this state which ~~is~~ <u>are</u> not leased and occupied by a resident, excluding school land.

D. Any game warden investigating a hunter in the field has the duty to inform the hunter that it is necessary to obtain the consent of the landowner, lessee or occupant to hunt or take on the particular property. Prosecution for violations of the provisions of this section may be commenced only upon written complaint of such owner, lessee or occupant filed before any court authorized to punish such violation, or upon written complaint to any game warden or officer authorized to make arrest for such offenses.

E. No person shall operate a motor-driven conveyance on lands that are fenced and posted or are in cultivation without permission of the landowner, lessee or occupant.

F. The consent of any owner, lessee or occupant of land authorizing a person to hunt, take, fish or engage in any recreational activity upon the land of any such owner, lessee or occupant shall not be construed to create any additional duty of care or impose any additional liability other than specified by Sections 16-71.2 and 16-71.3 of Title 2 of the Oklahoma Statutes.

G. The obtaining of consent from any owner, lessee or occupant of land authorizing a person to hunt, take, fish or engage in any recreational activity shall not relieve the authorized person using the land from any obligation which the person may have in the absence of obtaining such consent to exercise care in the use of such land and in activities thereon, or from the legal consequences of failure to employ such care.

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

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

a. the accused has previously pled guilty, nolo contendere, or has been convicted of any act of trespass or has been found civilly liable of any act of trespass, or

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

I. Any person convicted for the first time of violating any provisions of this section shall be guilty of a misdemeanor and punished by the imposition of a fine of not less than ~~Fifty Dollars ($50.00)~~ Five Hundred Dollars ($500.00) nor more than ~~Five Hundred Dollars ($500.00)~~ One Thousand Five Hundred Dollars ($1,500.00), or

by imprisonment in the county jail for thirty (30) days, or by both ~~said~~ fine and imprisonment.

J. Any person convicted for the second or subsequent time of violating any provisions of this section shall be guilty of a misdemeanor and punished by the imposition of a fine of not less than One Thousand Five Hundred Dollars ($1,500.00) nor more than Two Thousand Five Hundred Dollars ($2,500.00), or by imprisonment in the county jail for not less than six (6) months, or by both fine and imprisonment.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-202.1 of Title 29, unless there is created a duplication in numbering, reads as follows:

A. Any hunting or fishing license issued to a person by the Department of Wildlife Conservation shall be automatically revoked on final conviction of the person of an offense under subsection J of Section 5-202 of Title 29 of the Oklahoma Statutes. The revocation shall be for a period set by the court of not less than one (1) year or more than ten (10) years. If the court does not set a period, the revocation shall be for one (1) year from the date the conviction becomes final. During this period of revocation, the Department shall not issue that person a hunting or fishing license. If the court does not set a period, the Department shall not issue that person a license before the first anniversary of the date the conviction becomes final.

B. A person who has a license or permit revoked under this section shall surrender the revoked license or permit to the court. The court shall send the Department of Wildlife Conservation the revoked license and a copy of the judgment of conviction.

C. For purposes of this section, “final conviction” shall include a plea of guilty or nolo contendere to or the imposition of deferred adjudication for an offense.

SECTION 3. This act shall become effective November 1, 2012."

Passed the Senate the 10th day of April, 2012.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2012.

_____
Presiding Officer of the House of Representatives

ENGROSSED HOUSE
BILL NO. 2573

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An Act relating to game and fish; amending 29 O.S. 2011, Section 5-202, which relates to the Oklahoma Wildlife Conservation Code; prohibiting catching upon land of another; classifying offense for certain violations as a misdemeanor; providing penalties; mandating revocation of hunting or fishing license after certain poaching convictions; permitting court to set period of revocation within certain time; providing default revocation period; prohibiting Department of Wildlife Conservation from issuing license during revocation; requiring surrender of license to court upon conviction; directing court to send Department surrendered license and copy of judgment of conviction; defining term; providing for codification; and providing an effective date.

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

SECTION 4. AMENDATORY 29 O.S. 2011, Section 5-202, is amended to read as follows:

Section 5-202. A. Except as otherwise provided, no person may hunt <u>or catch by any means or method</u> upon the land of another without the consent of the owner, lessee or occupant of such land.

B. For purposes of this section, consent shall be presumed to be valid for not more than one (1) year, unless the owner, lessee, or occupant specifically grants consent for a specified period of time.

C. Excluding land primarily devoted to farming, ranching, or forestry purposes as set forth in Section 1835.2 of Title 21 of the Oklahoma Statutes, areas exempt from the provisions of subsection A of this section are~~:~~

~~1. Lands not occupied by a resident thereon, unless notice of objection is conspicuously posted upon the premises by the owner or an agent of the owner; and~~

~~2. Land~~ lands belonging to this state which ~~is~~ are not leased and occupied by a resident, excluding school land.

D. Any game warden investigating a hunter in the field has the duty to inform the hunter that it is necessary to obtain the consent of the landowner, lessee or occupant to hunt or catch on the particular property. Prosecution for violations of the provisions of this section may be commenced only upon written complaint of such owner, lessee or occupant filed before any court authorized to punish such violation, or upon written complaint to any game warden or officer authorized to make arrest for such offenses.

E. No person shall operate a motor-driven conveyance on lands that are fenced and posted or are in cultivation without permission of the landowner, lessee or occupant.

F. The consent of any owner, lessee or occupant of land authorizing a person to hunt, catch, fish or engage in any recreational activity upon the land of any such owner, lessee or occupant shall not be construed to create any additional duty of care or impose any additional liability other than specified by Sections 16-71.2 and 16-71.3 of Title 2 of the Oklahoma Statutes.

G. The obtaining of consent from any owner, lessee or occupant of land authorizing a person to hunt, catch, fish or engage in any recreational activity shall not relieve the authorized person using the land from any obligation which the person may have in the absence of obtaining such consent to exercise care in the use of such land and in activities thereon, or from the legal consequences of failure to employ such care.

H. Any person convicted for the first time of violating any provisions of this section shall be guilty of a misdemeanor and punished by the imposition of a fine of not less than ~~Fifty Dollars ($50.00)~~ Five Hundred Dollars ($500.00) nor more than ~~Five Hundred Dollars ($500.00)~~ One Thousand Five Hundred Dollars ($1,500.00), or by imprisonment in the county jail for thirty (30) days, or by both ~~said~~ fine and imprisonment.

I. Any person convicted for the second or subsequent time of violating any provisions of this section shall be guilty of a misdemeanor and punished by the imposition of a fine of not less than One Thousand Five Hundred Dollars ($1,500.00) nor more than Two

Thousand Five Hundred Dollars ($2,500.00), or by imprisonment in the county jail for not less than six (6) months, or by both fine and imprisonment.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-202.1 of Title 29, unless there is created a duplication in numbering, reads as follows:

A. Any hunting or fishing license issued by the Department of Wildlife Conservation to a person shall be automatically revoked on final conviction of the person of an offense under subsection I of Section 5-202 of Title 29 of the Oklahoma Statutes. The revocation shall be for a period set by the court of not less than one (1) year or more than ten (10) years. If the court does not set a period, the revocation shall be for one (1) year from the date the conviction becomes final. During this period of revocation, the Department shall not issue that person a hunting or fishing license. If the court does not set a period, the Department shall not issue that person a license before the first anniversary of the date the conviction becomes final.

B. A person who has a license or permit revoked under this section shall surrender the revoked license or permit to the court. The court shall send the Department of Wildlife Conservation the revoked license and a copy of the judgment of conviction.

C. For purposes of this section, “final conviction” shall include a plea of guilty or nolo contendere to or the imposition of deferred adjudication for an offense.

SECTION 6. This act shall become effective November 1, 2012.

Passed the House of Representatives the 20th day of February, 2012.

_____
Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2012.

_____
Presiding Officer of the Senate