

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 53rd Legislature (2011)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 494

By: Barrington and Sparks of
the Senate

and

McNiel of the House

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10 COMMITTEE SUBSTITUTE

11 An Act relating to trespass; creating the Oklahoma
12 Private Lands and Public Recreation Act; providing
13 short title; defining terms; allowing prima facie
14 evidence to be used in certain circumstances; stating
15 certain prohibitions; providing for penalties;
16 allowing any law enforcement official to issue
17 citation to persons in violation of certain law;
18 stating certain offenses to be aggravated in certain
19 circumstances; providing penalty for aggravated
20 violation; authorizing certain licenses to be revoked
21 for certain reasons; exempting certain property
22 owners from certain duty; providing exceptions;
23 defining term; providing scope of applicability;
24 clarifying liability; providing for codification;
providing an effective date; and declaring an
emergency.

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

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1835.3 of Title 21, unless there
3 is created a duplication in numbering, reads as follows:

4 Sections 1 through 8 of this act shall be known and may be cited
5 as the "Oklahoma Private Lands and Public Recreation Act".

6 SECTION 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1835.4 of Title 21, unless there
8 is created a duplication in numbering, reads as follows:

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

10 1. "Land" means all private land that is primarily devoted to
11 farming, ranching, or forestry purposes including real property,
12 land and water, and all structures, fixtures, equipment, and
13 machinery thereon;

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

17 3. "Recreational use" means any activity undertaken for
18 exercise, education, relaxation, or pleasure on land owned by
19 another; and

20 4. "Recreational trespass" means remaining on land for a
21 recreational use after being asked to leave by the owner, or the
22 entry on land for a recreational use without the express or implied
23 consent of the owner.

1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1835.5 of Title 21, unless there
3 is created a duplication in numbering, reads as follows:

4 It shall be prima facie evidence that a person is on land for a
5 recreational use if the person is on the land of another without
6 other explanation.

7 1. The absence of posting shall not by itself be sufficient to
8 imply consent.

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

10 3. It shall be the obligation of the recreational user to
11 establish implied consent as an affirmative defense.

12 SECTION 4. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1835.6 of Title 21, unless there
14 is created a duplication in numbering, reads as follows:

15 The following acts are prohibited:

16 1. Recreational trespass;

17 2. Any activity in which a vehicle is used to engage in mud
18 bogging. Mud bogging includes, without limitation, traveling across
19 terrain:

20 a. that has not been improved or designed to facilitate
21 conventional vehicles, or

22 b. that is chosen for such travel because of its wet or
23 muddy characteristics;

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

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

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

9 SECTION 5. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1835.7 of Title 21, unless there
11 is created a duplication in numbering, reads as follows:

12 Any person convicted of a trespass violation pursuant to Section
13 4 of this act shall be punished by a fine of Two Hundred Fifty
14 Dollars (\$250.00) or imprisonment for not more than ten (10) days;
15 for a second conviction within one (1) year after the first
16 conviction, a fine of Five Hundred Dollars (\$500.00) or by
17 imprisonment for not more than twenty (20) days; and upon a third or
18 subsequent conviction within one (1) year after the first
19 conviction, a fine of Two Thousand Five Hundred Dollars (\$2,500.00)
20 or by imprisonment for not more than six (6) months, or by both such
21 fine and imprisonment. A violation of each paragraph of Section 4
22 of this act shall not be a separate offense.

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UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1835.8 of Title 21, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Any local, county, or state law enforcement officer may
5 issue a citation to a person believed with probable cause to have
6 violated Section 4 of this act. The citation shall include the
7 following information:

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

11 2. The name of the issuing law enforcement officer and the name
12 and address of the department;

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

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

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

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

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

4 8. Any other pertinent information.

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

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

10 2. Going to the court clerk in the county where the offense
11 occurred.

12 C. The citation shall serve as the initial pleading and,
13 notwithstanding any other provision of law, shall be deemed adequate
14 process to give the appropriate court jurisdiction over the
15 defendant upon filing of the citation with the court.

16 SECTION 7. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1835.9 of Title 21, unless there
18 is created a duplication in numbering, reads as follows:

19 A. A violation of paragraph 1 of Section 4 of this act shall be
20 aggravated where in the course of the violation there occurs the
21 driving of any automobile, motorcycle, trail bicycle, or any other
22 motorized vehicle in a way as to endanger others or to cause damage
23 to the land.

1 B. The penalty for a violation of this section shall consist of
2 a fine of Five Hundred Dollars (\$500.00) or imprisonment for not
3 more than ten (10) days; for a second conviction within one (1) year
4 after the first conviction, by imprisonment for not more than twenty
5 (20) days; and upon a third or subsequent conviction within one (1)
6 year after the first conviction, by imprisonment for not more than
7 six (6) months, or by both such fine and imprisonment. A person may
8 not be charged for the same offense under this section and paragraph
9 1 of Section 4 of this act.

10 SECTION 8. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 1835.10 of Title 21, unless
12 there is created a duplication in numbering, reads as follows:

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

20 SECTION 9. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 80 of Title 76, unless there is
22 created a duplication in numbering, reads as follows:

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

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

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

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

15 a. the possessor knew or had reason to know that children
16 were likely to trespass at the location of the
17 condition,

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

22 c. the injured child was attracted onto the premises by
23 the condition,

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- 1 d. the child lacked the ability to appreciate or realize
2 the risk,
3 e. the utility to the possessor of maintaining the
4 condition and the burden of eliminating the danger
5 were slight as compared with the risk to the child
6 involved, and
7 f. the child's injury was directly caused by the
8 possessor's failure to exercise reasonable care to
9 eliminate the danger or otherwise protect the child.

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

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

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

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

7 SECTION 10. This act shall become effective July 1, 2011.

8 SECTION 11. It being immediately necessary for the preservation
9 of the public peace, health and safety, an emergency is hereby
10 declared to exist, by reason whereof this act shall take effect and
11 be in full force from and after its passage and approval.

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13 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 04-12-2011 - DO
14 PASS, As Amended.

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