SENATE FLOOR VERSION
April 3, 2012
As Amended

ENGROSSED HOUSE
BILL NO. 2356

By: Kouplen, Vaughan, Shoemake and Hickman of the House

and

Fields and Wyrick of the Senate

[crimes and punishments - property rights - retrieving loose animals - effective date]

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

SECTION 1. AMENDATORY 21 O.S. 2011, Section 1835.2, is amended to read as follows:

Section 1835.2 A. Notwithstanding the provisions of Section 1835 of this title, the following provisions apply to private land that is primarily devoted to farming, ranching, or forestry purposes:

1. Except as provided in this section, whoever willfully enters private land of another that is primarily devoted to farming, ranching, or forestry purposes without permission by the surface owner, surface lessee, hunting lessee, or lawful occupant thereof shall be deemed guilty of trespass and, upon conviction thereof, shall be fined in any sum not less than Five Hundred Dollars

($500.00) nor more than One Thousand Five Hundred Dollars ($1,500.00), and in addition, the court shall order restitution for actual damages incurred. Persons convicted of a second or subsequent offense under this paragraph shall be guilty of a misdemeanor and shall be punished by a fine in any sum not less than One Thousand Five Hundred Dollars ($1,500.00) nor more than Two Thousand Five Hundred Dollars ($2,500.00), or by confinement in the county jail for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment, and in addition, the court shall order restitution for actual damages incurred;

2. This provision shall not apply to peace officers as defined in Section 99 of this title or any federal, state, or local government employees engaged in the performance of their duties, or to any firefighters, emergency medical personnel, or public utility employees engaged in addressing an emergency that presents an imminent danger to health, safety, or the environment in the performance of their duties, or to parties engaged in oil and gas operations, which shall include, without limitation, exploration, drilling, production and sales activities, under authority of mineral ownership, an oil and gas lease, seismic agreement or permit, gas gathering, purchase, transportation, or treating contracts, Corporation Commission order, or other lawful authority from persons entitled to give the same. The provisions of this section shall not prohibit railroad employees and emergency

equipment from entering such land to restore rail service following an accident, derailment or natural disaster; nor the entrance of utility employees or contractors while acting in the scope of their employment; nor employees or contractors of valid easement or license holders while acting in the scope of their employment;

3. The following persons may enter such land of another unless forbidden to do so, either orally or in writing, by the owner or lawful occupier thereof: registered land surveyors and registered professional engineers for the purpose of land surveying in the performance of their professional services; persons ~~in the sole process of retrieving their domestic livestock or other animals~~ who are unable to contact the owner or if the owner is unknown, for the sole purpose of timely recovery of their animals if, prior to entry, they notify the county sheriff who shall record the name, driver license number, and location given by the person; persons making a delivery, selling a product or service, conducting a survey or poll, working on behalf of a candidate for political office, or who otherwise have a legitimate reason for entering and who, immediately upon entering, seek to conduct such business; and

4. Anyone who willfully or maliciously enters any such land of another 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 Two Hundred Fifty Dollars ($250.00) 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 by both such fine and imprisonment, and in addition, the court shall order restitution for actual damages incurred. Persons convicted of a second or subsequent offense under this paragraph shall be guilty of a misdemeanor and shall be punished by a fine in any sum not less than Seven Hundred Dollars ($700.00) nor more than One Thousand Five Hundred Dollars ($1,500.00), or by confinement in the county jail for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment, and in addition, the court shall order restitution for actual damages.

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

C. 1. It shall be an affirmative defense to prosecution under paragraph 1 of 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 paragraph 1 of 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.

SECTION 2. This act shall become effective November 1, 2012.

COMMITTEE REPORT BY: COMMITTEE ON AGRICULTURE & RURAL DEVELOPMENT, dated 4-2-12 - DO PASS, As Amended and Coauthored.