

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SENATE BILL 494

By: Barrington

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5  
6 AS INTRODUCED

7 An Act relating to the Oklahoma Private Lands and  
8 Public Recreation Act; amending Section 4, Chapter  
9 268, O.S.L. 2006, as last amended by Section 2,  
10 Chapter 458, O.S.L. 2009 (21 O.S. Supp. 2010, Section  
11 1835.2), which relates to trespassing upon private  
12 lands; adding statutory reference; creating the  
13 Oklahoma Private Lands and Public Recreation Act;  
14 providing short title; defining terms; allowing prima  
15 facie evidence to be used in certain circumstances;  
16 stating certain prohibitions; providing for  
17 penalties; allowing any law enforcement official to  
18 issue citation to persons in violation of certain  
19 law; providing for restitution; stating certain  
20 offenses to be aggravated in certain circumstances;  
21 providing penalty for aggravated violation;  
22 authorizing certain licenses to be revoked for  
23 certain reasons; providing for codification;  
24 providing an effective date; and declaring an  
emergency.

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

SECTION 1. AMENDATORY Section 4, Chapter 268, O.S.L.  
2006, as last amended by Section 2, Chapter 458, O.S.L. 2009 (21  
O.S. Supp. 2010, Section 1835.2), is amended to read as follows:

Section 1835.2 A. Notwithstanding the provisions of Section  
1835 of this title and Sections 2 through 11 of this act, the

1 following provisions apply to private land that is primarily devoted  
2 to farming, ranching, or forestry purposes:

3 1. Except as provided in this section, whoever willfully enters  
4 private land of another that is primarily devoted to farming,  
5 ranching, or forestry purposes without permission by the owner or  
6 lawful occupant thereof shall be deemed guilty of trespass and, upon  
7 conviction thereof, shall be fined in any sum not less than Five  
8 Hundred Dollars (\$500.00) nor more than One Thousand Five Hundred  
9 Dollars (\$1,500.00), and in addition, the court shall order  
10 restitution for actual damages incurred. Persons convicted of a  
11 second or subsequent offense under this paragraph shall be guilty of  
12 a misdemeanor and shall be punished by a fine in any sum not less  
13 than One Thousand Five Hundred Dollars (\$1,500.00) nor more than Two  
14 Thousand Five Hundred Dollars (\$2,500.00), or by confinement in the  
15 county jail for not less than thirty (30) days nor more than six (6)  
16 months, or by both such fine and imprisonment, and in addition, the  
17 court shall order restitution for actual damages incurred;

18 2. This provision shall not apply to peace officers as defined  
19 in Section 99 of this title or any federal, state, or local  
20 government employees engaged in the performance of their duties, or  
21 to any firefighters, emergency medical personnel, or public utility  
22 employees engaged in addressing an emergency that presents an  
23 imminent danger to health, safety, or the environment in the  
24 performance of their duties, or to parties engaged in oil and gas

1 operations, which shall include, without limitation, exploration,  
2 drilling, production and sales activities, under authority of  
3 mineral ownership, an oil and gas lease, seismic agreement or  
4 permit, gas gathering, purchase, transportation, or treating  
5 contracts, Corporation Commission order, or other lawful authority  
6 from persons entitled to give the same. The provisions of this  
7 section shall not prohibit railroad employees and emergency  
8 equipment from entering such land to restore rail service following  
9 an accident, derailment or natural disaster; nor the entrance of  
10 utility employees or contractors while acting in the scope of their  
11 employment; nor employees or contractors of valid easement or  
12 license holders while acting in the scope of their employment;

13 3. The following persons may enter such land of another unless  
14 forbidden to do so, either orally or in writing, by the owner or  
15 lawful occupier thereof: registered land surveyors and registered  
16 professional engineers for the purpose of land surveying in the  
17 performance of their professional services; persons in the sole  
18 process of retrieving their domestic livestock or other animals;  
19 persons making a delivery, selling a product or service, conducting  
20 a survey or poll, working on behalf of a candidate for political  
21 office, or who otherwise have a legitimate reason for entering and  
22 who, immediately upon entering, seek to conduct such business; and

23 4. Anyone who willfully or maliciously enters any such land of  
24 another and therein commits or attempts to commit waste, theft, or

1 damage shall be deemed guilty of a misdemeanor and, upon conviction  
2 thereof, shall be fined in any sum not less than Two Hundred Fifty  
3 Dollars (\$250.00) nor more than Five Hundred Dollars (\$500.00), or  
4 by confinement in the county jail for not less than thirty (30) days  
5 nor more than six (6) months, or by both such fine and imprisonment,  
6 and in addition, the court shall order restitution for actual  
7 damages incurred. Persons convicted of a second or subsequent  
8 offense under this paragraph shall be guilty of a misdemeanor and  
9 shall be punished by a fine in any sum not less than Seven Hundred  
10 Dollars (\$700.00) nor more than One Thousand Five Hundred Dollars  
11 (\$1,500.00), or by confinement in the county jail for not less than  
12 thirty (30) days nor more than six (6) months, or by both such fine  
13 and imprisonment, and in addition, the court shall order restitution  
14 for actual damages.

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

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

22 2. If an accused reasonably believed he or she was upon  
23 property for which they had permission to be upon, it shall be an  
24 affirmative defense to prosecution under paragraph 1 of subsection A

1 of this section that the accused had with him or her, on his or her  
2 person, written permission from the owner or lawful occupant to be  
3 upon such person's land while the accused was upon any adjoining  
4 property. This defense shall not be available to the accused if:

5 a. the accused has previously pled guilty, nolo  
6 contendre, or has been convicted of any act of  
7 trespass or has been found civilly liable of any act  
8 of trespass, or

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

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

16 This act shall be known and may be cited as the "Oklahoma  
17 Private Lands and Public Recreation Act".

18 SECTION 3. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 1835.4 of Title 21, unless there  
20 is created a duplication in numbering, reads as follows:

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

22 1. "Land" means all real property, land and water, and all  
23 structures, fixtures, equipment, and machinery thereon;

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

4           3. "Recreational use" means any activity undertaken for  
5 exercise, education, relaxation, or pleasure on land owned by  
6 another; and

7           4. "Recreational trespass" means remaining on land for a  
8 recreational use after being asked to leave by the owner, or the  
9 entry on land for a recreational use without the express or implied  
10 consent of the owner.

11           SECTION 4.           NEW LAW           A new section of law to be codified  
12 in the Oklahoma Statutes as Section 1835.5 of Title 21, unless there  
13 is created a duplication in numbering, reads as follows:

14           It shall be prima facie evidence that a person is on land for a  
15 recreational use if the person is on the land of another without  
16 other explanation.

17           1. The absence of posting shall not by itself be sufficient to  
18 imply consent.

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

20           3. It shall be the obligation of the recreational user to  
21 establish implied consent as an affirmative defense;

22           SECTION 5.           NEW LAW           A new section of law to be codified  
23 in the Oklahoma Statutes as Section 1835.6 of Title 21, unless there  
24 is created a duplication in numbering, reads as follows:

1 The following acts are prohibited:

2 1. Recreational trespass;

3 2. Any activity in which a vehicle is used to engage in mud  
4 bogging. Mud bogging includes, without limitation, traveling across  
5 terrain:

6 a. that has not been improved or designed to facilitate  
7 conventional vehicles, or

8 b. that is chosen for such travel because of its wet or  
9 muddy characteristics.

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

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

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

18 SECTION 6. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 1835.7 of Title 21, unless there  
20 is created a duplication in numbering, reads as follows:

21 Any person convicted of a trespass violation pursuant to Section  
22 5 of this act shall be punished by a fine of Two Hundred Fifty  
23 Dollars (\$250.00) or imprisonment for not more than ten (10) days;  
24 for a second conviction within one (1) year after the first

1 conviction, a fine of Five Hundred Dollars (\$500.00) or by  
2 imprisonment for not more than twenty (20) days; and upon a third or  
3 subsequent conviction within one (1) year after the first  
4 conviction, a fine of Two Thousand Five Hundred Dollars (\$2,500.00)  
5 or by imprisonment for not more than six (6) months, or by both such  
6 fine and imprisonment. A violation of each subsection of Section 5  
7 of this act shall be a separate offense.

8 SECTION 7. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 1835.8 of Title 21, unless there  
10 is created a duplication in numbering, reads as follows:

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

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

18 2. The name of the issuing law enforcement officer and the name  
19 and address of the department;

20 3. The violations alleged to have been committed by the  
21 defendant, with specific reference to the paragraphs of Section 5 of  
22 this act involved and a brief description of the activities alleged  
23 to be in violation;

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1 4. The amount of the penalty or forfeiture payable under  
2 Section 6 of this act, together with the costs that may be  
3 applicable;

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

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

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

11 8. Any other pertinent information.

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

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

17 2. Going to the court clerk in the county where the offense  
18 occurred.

19 C. The citation shall serve as the initial pleading and, not  
20 withstanding any other provision of law, shall be deemed adequate  
21 process to give the appropriate court jurisdiction over the  
22 defendant upon filing of the citation with the court.

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1 SECTION 8. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 1835.9 of Title 21, unless there  
3 is created a duplication in numbering, reads as follows:

4 A court to which any penalty is paid pursuant to Section 7 of  
5 this act shall apply all of the amount paid minus costs to the owner  
6 of the land in question to recompense to the owner for damages or  
7 attorney fees or inconvenience suffered due to the violations of the  
8 Oklahoma Private Lands and Public Recreation Act that gave rise to  
9 the penalty. The restitutionary payment shall not prejudice or  
10 affect any other civil action which the owner may have for the  
11 damages or inconvenience.

12 SECTION 9. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 1835.10 of Title 21, unless  
14 there is created a duplication in numbering, reads as follows:

15 A. A violation of paragraph 1 of Section 5 of this act shall be  
16 aggravated where in the course of the violation there occurs the  
17 driving of any automobile, motorcycle, trail bicycle, or any other  
18 motorized vehicle in such a way as to endanger others or to cause  
19 damage to the land.

20 B. The penalty for a violation of this section shall consist of  
21 a fine of Five Hundred Dollars (\$500.00) or imprisonment for not  
22 more than ten (10) days; for a second conviction within one (1) year  
23 after the first conviction, by imprisonment for not more than twenty  
24 (20) days; and upon a third or subsequent conviction within one (1)

1 year after the first conviction, by imprisonment for not more than  
2 six (6) months, or by both such fine and imprisonment. A person may  
3 not be charged for the same offense under this section and paragraph  
4 1 of Section 5 of this act.

5 SECTION 10. NEW LAW A new section of law to be codified  
6 in the Oklahoma Statutes as Section 1835.11 of Title 21, unless  
7 there is created a duplication in numbering, reads as follows:

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

15 SECTION 11. This act shall become effective July 1, 2011.

16 SECTION 12. It being immediately necessary for the preservation  
17 of the public peace, health and safety, an emergency is hereby  
18 declared to exist, by reason whereof this act shall take effect and  
19 be in full force from and after its passage and approval.

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