# An Act

ENROLLED SENATE
BILL NO. 494

By: Barrington and Sparks of the Senate

and

McNiel and Roberts (Sean) of the House

An Act relating to trespass; creating the Oklahoma Private Lands and Public Recreation Act; providing short title; defining terms; allowing prima facie evidence to be used in certain circumstances; stating certain prohibitions; providing for penalties; allowing any law enforcement official to issue citation to persons in violation of certain law; stating certain offenses to be aggravated in certain circumstances; providing penalty for aggravated violation; authorizing certain licenses to be revoked for certain reasons; exempting certain property owners from certain duty; providing exceptions; defining term; providing scope of applicability; clarifying liability; and providing for codification.

SUBJECT: Oklahoma Private Lands and Public Recreation Act

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The following acts are prohibited:

1. Recreational trespass;

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

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

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

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

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

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

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

Any person convicted of a trespass violation pursuant to Section 4 of this act shall be punished by a fine of Two Hundred Fifty Dollars ($250.00) or imprisonment for not more than ten (10) days; for a second conviction within one (1) year after the first conviction, a fine of Five Hundred Dollars ($500.00) or by imprisonment for not more than twenty (20) days; and upon a third or subsequent conviction within one (1) year after the first conviction, a fine of Two Thousand Five Hundred Dollars ($2,500.00) or by imprisonment for not more than six (6) months, or by both such

fine and imprisonment. A violation of each paragraph of Section 4 of this act shall not be a separate offense.

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

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

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

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

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

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

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

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

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

8. Any other pertinent information.

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

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

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

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

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

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

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

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

Under certification by a court that a conviction or a guilty or no contest plea respecting any violation of the Oklahoma Private Lands and Public Recreation Act has been recorded, any governmental

entity which has issued a hunting, fishing, or other license for recreational activity may revoke the license and deny permission to reapply for a replacement license for a period of up to one (1) year from the date of the violation.

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

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

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

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

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

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

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

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

d. the child lacked the ability to appreciate or realize the risk,

e. the utility to the possessor of maintaining the condition and the burden of eliminating the danger were slight as compared with the risk to the child involved, and

f. the child's injury was directly caused by the possessor's failure to exercise reasonable care to eliminate the danger or otherwise protect the child.

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

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

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

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

Passed the Senate the 5th day of May, 2011.

Presiding Officer of the Senate

Passed the House of Representatives the 26th day of April, 2011.

Presiding Officer of the House
of Representatives

**OFFICE OF THE GOVERNOR**

**Received by the Governor this** 9th
**day of** May, **20** 11,
**at** 3:32 **o'clock** P **M.**

**By:** Jessica R. Byers

**Approved by the Governor of the State of Oklahoma the** 13th **day of**
May, **20** 11, **at** 10:55 **o'clock** a **M.**

**Governor of the State of Oklahoma**

**OFFICE OF THE SECRETARY OF STATE**

**Received by the Secretary of State this**
13th **day of** May, **20** 11,
**at** 1:45 **o'clock** P **M.**

**By:** Michelle R. Day