An Act

ENROLLED SENATE
BILL NO. 828

By: Sparks of the Senate

and

Armes of the House

An Act relating to trespassing; amending 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), which relates to trespassing on land devoted to agriculture; modifying permission requirement for entering certain land; deleting authorization for certain persons to enter upon certain land; amending 29 O.S. 2001, Section 5-204, which relates to hunting near public places and shooting from across the highway; modifying penalties; amending Section 2, Chapter 63, O.S.L. 2008, as amended by Section 1, Chapter 266, O.S.L. 2009 (29 O.S. Supp. 2010, Section 7-209), which relates to trespass on certain lands; making shooting from a public road, highway or railroad right-of-way onto certain licensed facilities or big game commercial hunting areas a trespass; and providing an effective date.

SUBJECT: Trespassing

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, 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; 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 <u>surface</u> owner<u>, surface lessee,</u>

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. AMENDATORY 29 O.S. 2001, Section 5-204, is amended to read as follows:

Section 5-204. A. No person may hunt, pursue game or discharge firearms within four hundred and forty (440) yards of any church, schoolhouse, or other public place where people may assemble, so as to disturb such assemblage.

B. No person may shoot from or across a public road or highway or right-of-way thereof, or railroad right-of-way.

C. Any person convicted of violating the provisions of this section shall be punished by a fine of not less than ~~Twenty five Dollars ($25.00)~~ Five Hundred Dollars ($500.00) nor more than ~~Three Hundred Dollars ($300.00)~~ One Thousand Five Hundred Dollars ($1,500.00). Persons convicted of a second or subsequent offense under this section shall be punished by 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 thirty (30) days, or by both imprisonment and fine.

D. The provisions of this section shall not apply to any peace officer in the performance of their duties.

SECTION 3. AMENDATORY Section 2, Chapter 63, O.S.L. 2008, as amended by Section 1, Chapter 266, O.S.L. 2009 (29 O.S. Supp. 2010, Section 7-209), is amended to read as follows:

Section 7-209. A. Any person who willfully enters a facility licensed pursuant to the Oklahoma Farmed Cervidae Act or a commercial hunting area licensed pursuant to Section 4-106 of this title without permission by the owner shall be deemed guilty of trespass and, upon conviction thereof, shall be fined in any sum not to exceed Two Hundred Fifty Dollars ($250.00).

B. Any person who willfully enters a facility licensed pursuant to the Oklahoma Farmed Cervidae Act or a big game commercial hunting area licensed pursuant to Section 4-106 of this title <u>or willfully shoots from or across a public road, highway or railroad right-of-way onto the facility or big game commercial hunting area</u> and hunts, takes or attempts to take a cervidae or wildlife without permission by the owner shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than Two Thousand Five Hundred Dollars ($2,500.00) nor more than Ten Thousand Dollars ($10,000.00) or by imprisonment in the county jail not to exceed sixty (60) days, or by both such fine and imprisonment, and in addition, the court shall order restitution for actual damages incurred. For purposes of this subsection, "actual damages" includes, but is not limited to, damages to real or personal property wherein the person willfully entering a licensed facility hunts, shoots, shoots at, kills, attempts to kill, disturbs, hazes, takes, or attempts to take any personal property of the owner without permission from the owner.

SECTION 4. This act shall become effective November 1, 2011.

Passed the Senate the 16th day of March, 2011.

Presiding Officer of the Senate

Passed the House of Representatives the 20th day of April, 2011.

Presiding Officer of the House of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 25th

day of April, **20** 11,

at 4:33 **o'clock** P **M.**

By: Jessica R Pegoss

Approved by the Governor of the State of Oklahoma the 29th **day of** April, **20** 11, **at** 1:40 **o'clock** P **M.**

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 29th **day of** April, **20** 11,

at 2:51 **o'clock** P **M.**

By: Lucinelle R Day