

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 57th Legislature (2020)

4 HOUSE BILL 4044

 By: McCall

7 AS INTRODUCED

8 An Act relating to trespass; amending 21 O.S. 2011,
9 Sections 1835, 1835.1 and 1835.2, as last amended by
10 Section 1, Chapter 185, O.S.L. 2018 (21 O.S. Supp.
11 2019, Section 1835.2), which relate to trespass;
 allowing parties to recover certain nominal damages;
 and providing an effective date.

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

15 SECTION 1. AMENDATORY 21 O.S. 2011, Section 1835, is
16 amended to read as follows:

17 Section 1835. A. Whoever shall willfully or maliciously enter
18 the garden, yard, pasture or field of another after being expressly
19 forbidden to do so or without permission by the owner or lawful
20 occupant thereof when such property is posted shall be deemed guilty
21 of trespass and upon conviction thereof shall be fined in any sum
22 not to exceed Two Hundred Fifty Dollars (\$250.00); provided, that
23 this provision shall not apply to registered land surveyors and
24 registered professional engineers for the purpose of land surveying

1 in the performance of their professional services; and, provided
2 further, that anyone who willfully or maliciously enters any such
3 garden, yard, pasture or field, and therein commits or attempts to
4 commit waste, theft, or damage shall be deemed guilty of a
5 misdemeanor and upon conviction thereof shall be fined in any sum
6 not less than Fifty Dollars (\$50.00) nor more than Five Hundred
7 Dollars (\$500.00), or by confinement in the county jail for not less
8 than thirty (30) days nor more than six (6) months, or both such
9 fine and imprisonment. For purposes of this section, "posted" means
10 exhibiting signs to read as follows: "PROPERTY RESTRICTED"; "POSTED
11 - KEEP OUT"; "KEEP OUT"; "NO TRESPASSING"; or similar signs which
12 are displayed. Property that is fenced or not fenced must have such
13 signs placed conspicuously and at all places where entry to the
14 property is normally expected.

15 B. No provisions of this act shall conflict with Section 5-202
16 or 6-304 of Title 29 of the Oklahoma Statutes.

17 C. Whoever shall willfully enter the pecan grove of another
18 without the prior consent of the owner or occupant thereof to so do
19 shall be deemed guilty of trespass and upon conviction thereof shall
20 be fined in any sum not to exceed Twenty-five Dollars (\$25.00);
21 provided, that anyone who willfully enters any such pecan grove and
22 therein commits or attempts to commit waste, theft, or damage shall
23 be deemed guilty of a misdemeanor and upon conviction thereof shall
24 be fined in any sum not more than Five Hundred Dollars (\$500.00), or

1 by confinement in the county jail for not less than thirty (30) days
2 nor more than six (6) months, or by both such fine and imprisonment.

3 D. Whoever shall willfully or maliciously enter upon property
4 owned or managed by the Grand River Dam Authority without permission
5 when such property is posted shall be deemed guilty of misdemeanor
6 trespass and upon conviction thereof shall be fined in any sum not
7 to exceed Two Hundred Fifty Dollars (\$250.00); provided, that this
8 provision shall not apply to registered land surveyors and
9 registered professional engineers for the purpose of land surveying
10 in the performance of their professional services; and, provided
11 further, that anyone who willfully or maliciously enters upon
12 property owned or managed by the Grand River Dam Authority without
13 permission and therein commits or attempts to commit waste, theft,
14 or damage shall be deemed guilty of misdemeanor trespass, and upon
15 conviction thereof shall be fined in any sum not less than Fifty
16 Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00), or by
17 confinement in the county jail for not less than thirty (30) days
18 nor more than six (6) months, or both such fine and imprisonment.
19 For purposes of this section, "posted" means exhibiting signs to
20 read as follows: "PROPERTY RESTRICTED"; "POSTED - KEEP OUT"; "KEEP
21 OUT"; "NO TRESPASSING"; or similar signs which are displayed.
22 Property that is fenced or not fenced must have such signs placed
23 conspicuously and at all places where entry to the property is
24 normally expected.

1 E. Notwithstanding the provisions of this section, the
2 Governor's Mansion and its grounds and appurtenances shall not be
3 required to be posted with signs warning against trespass. Any
4 person who shall willfully or maliciously enter the grounds of the
5 Governor's Mansion within the State Capitol Park, as defined in
6 Section 1811.4 of Title 74 of the Oklahoma Statutes, except at a
7 place where entry to the property is normally expected shall be
8 deemed guilty of a misdemeanor and upon conviction shall be fined in
9 a sum not more than Five Hundred Dollars (\$500.00), or by
10 confinement in the county jail for not less than thirty (30) days
11 nor more than six (6) months, or by both fine and imprisonment.

12 F. If a party to a trespass action proves a trespass occurred,
13 the party is entitled to recover nominal damages, even if the party
14 has not suffered any actual loss or damage to the property.

15 SECTION 2. AMENDATORY 21 O.S. 2011, Section 1835.1, is
16 amended to read as follows:

17 Section 1835.1 A. Every person, partnership, corporation or
18 other legal entity engaged in any public business, trade, or
19 profession of any kind wherein merchandise, goods or services are
20 offered for sale may forbid the entry or presence of any person upon
21 the premises of the place of business, if the person has been
22 convicted of a crime involving entry onto or criminal acts occurring
23 upon any real property owned, leased, or under the control of such
24 person, partnership, corporation or other legal entity. Such crimes

1 shall include, but are not limited to, shoplifting, vandalism, and
2 disturbing the peace while upon the premises of any place of
3 business of the person, partnership, corporation, or other legal
4 entity.

5 B. In order to exercise the authority conferred by subsection A
6 of this section, the owner or an agent of the owner of a public
7 business, trade, or profession must notify the person whom the owner
8 or agent desires to prohibit from such owner's place of business.

9 C. No person shall willfully enter or remain upon the premises
10 after being expressly forbidden to do so in the manner provided for
11 in this section. Any person convicted of violating the provisions
12 of this section, upon conviction, shall be guilty of trespass and
13 shall be punished by a fine of not more than Two Hundred Fifty
14 Dollars (\$250.00) or by confinement in the county jail for a term of
15 not more than thirty (30) days, or by both such fine and
16 imprisonment.

17 D. The provisions of this act shall not preclude any other
18 remedy allowed by law.

19 E. If a party to a trespass action proves a trespass occurred,
20 the party is entitled to recover nominal damages, even if the party
21 has not suffered any actual loss or damage to the property.

22 SECTION 3. AMENDATORY 21 O.S. 2011, Section 1835.2, as
23 last amended by Section 1, Chapter 185, O.S.L. 2018 (21 O.S. Supp.
24 2019, Section 1835.2), is amended to read as follows:

1 Section 1835.2 A. Notwithstanding the provisions of Section
2 1835 of this title, the following provisions apply to private land
3 that is primarily devoted to farming, ranching, or forestry
4 purposes:

5 1. Except as provided in this section, whoever willfully enters
6 private land of another that is primarily devoted to farming,
7 ranching, or forestry purposes without permission by the surface
8 owner, surface lessee, hunting lessee, or lawful occupant thereof
9 shall be deemed guilty of trespass and, upon conviction thereof,
10 shall be fined in any sum not less than Seven Hundred Fifty Dollars
11 (\$750.00) nor more than Two Thousand Dollars (\$2,000.00), and in
12 addition, the court shall order restitution for actual damages
13 incurred. Persons convicted of a second or subsequent offense under
14 this paragraph shall be guilty of a misdemeanor and shall be
15 punished by a fine in any sum not less than One Thousand Five
16 Hundred Dollars (\$1,500.00) nor more than Two Thousand Five Hundred
17 Dollars (\$2,500.00), or by confinement in the county jail for not
18 less than thirty (30) days nor more than six (6) months, or by both
19 such fine and imprisonment, and in addition, the court shall order
20 restitution for actual damages incurred;

21 2. The provisions of paragraph 1 of this subsection shall not
22 apply to peace officers as defined in Section 99 of this title or
23 any federal, state, or local government employees engaged in the
24 performance of their duties, or to any firefighters, emergency

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

17 3. The following persons may enter such land of another unless
18 forbidden to do so, either orally or in writing, by the owner or
19 lawful occupier thereof: registered land surveyors and registered
20 professional engineers for the purpose of land surveying in the
21 performance of their professional services, persons making a
22 delivery, selling a product or service, conducting a survey or poll,
23 working on behalf of a candidate for political office, or who
24

1 otherwise have a legitimate reason for entering and who, immediately
2 upon entering, seek to conduct such business; and

3 4. Anyone who willfully or maliciously enters any such land of
4 another and therein commits or attempts to commit waste, theft, or
5 damage shall be deemed guilty of a misdemeanor and, upon conviction
6 thereof, shall be fined not less than One Thousand Dollars
7 (\$1,000.00), or by confinement in the county jail for not less than
8 thirty (30) days nor more than six (6) months, or by both such fine
9 and imprisonment, and in addition, the court shall order restitution
10 for actual damages incurred. Persons convicted of a second or
11 subsequent offense under this paragraph shall be guilty of a
12 misdemeanor and shall be punished by a fine of not less than Two
13 Thousand Five Hundred Dollars (\$2,500.00), or by confinement in the
14 county jail for not less than thirty (30) days nor more than six (6)
15 months, or by both such fine and imprisonment, and in addition, the
16 court shall order restitution for actual damages.

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

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

24

1 2. If an accused reasonably believed he or she was upon
2 property for which they had permission to be upon, it shall be an
3 affirmative defense to prosecution under paragraph 1 of subsection A
4 of this section that the accused had with him or her, on his or her
5 person, written permission from the surface owner, surface lessee,
6 hunting lessee, or lawful occupant to be upon such person's land
7 while the accused was upon any adjoining property. This defense
8 shall not be available to the accused if:

9 a. the accused has previously pled guilty, nolo
10 contendere, or has been convicted of any act of
11 trespass or has been found civilly liable of any act
12 of trespass, or

13 b. the accused, while the accused was upon the adjoining
14 property, does not have with him or her, on his or her
15 person, the written permission specified in this
16 paragraph.

17 D. If a party to a trespass action proves a trespass occurred,
18 the party is entitled to recover nominal damages, even if the party
19 has not suffered any actual loss or damage to the property.

20 SECTION 4. This act shall become effective November 1, 2020.

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22 COMMITTEE REPORT BY: COMMITTEE ON RULES, dated 02/11/2020 - DO PASS.
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