

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 SENATE BILL 964

By: Bergstrom

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5
6 AS INTRODUCED

7 An Act relating to property rights; amending 21 O.S.
8 2011, Sections 1835 and 1835.2, as last amended by
9 Section 1, Chapter 185, O.S.L. 2018 (21 O.S. Supp.
10 2020, Section 1835.2), which relate to trespass on
11 private property; authorizing certain officers or
12 employees to enter land under specified
13 circumstances; modifying certain exceptions; amending
14 22 O.S. 2011, Section 1221, as amended by Section 1,
15 Chapter 75, O.S.L. 2014 (22 O.S. Supp. 2020, Section
16 1221), which relates to search warrants; modifying
17 definition; updating statutory reference; and
18 providing an effective date.

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

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

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

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

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

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

1 be fined in any sum not more than Five Hundred Dollars (\$500.00), or
2 by confinement in the county jail for not less than thirty (30) days
3 nor more than six (6) months, or by both such fine and imprisonment.

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

1 conspicuously and at all places where entry to the property is
2 normally expected.

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

14 F. Notwithstanding the provisions of this section, a peace
15 officer as defined by Section 99 of this title or any government
16 employee may only enter a garden, yard, pasture, field or other land
17 of another that is posted in accordance with this section with the
18 permission of the property owner, with a search warrant authorizing
19 search of the property, or to respond to an emergency that presents
20 an immediate threat to life, property or public health.

21 SECTION 2. AMENDATORY 21 O.S. 2011, Section 1835.2, as
22 last amended by Section 1, Chapter 185, O.S.L. 2018 (21 O.S. Supp.
23 2020, Section 1835.2), is amended to read as follows:
24

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~~ except that peace officers or

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

21 3. The following persons may enter such land of another unless
22 forbidden to do so, either orally or in writing, by the owner or
23 lawful occupier thereof: registered land surveyors and registered
24 professional engineers for the purpose of land surveying in the

1 performance of their professional services, persons making a
2 delivery, selling a product or service, conducting a survey or poll,
3 working on behalf of a candidate for political office, or who
4 otherwise have a legitimate reason for entering and who, immediately
5 upon entering, seek to conduct such business; and

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

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

23 C. 1. It shall be an affirmative defense to prosecution under
24 paragraph 1 of subsection A of this section that the accused had

1 express or implied permission or legal authority to be on the
2 property.

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

- 11 a. the accused has previously pled guilty, nolo
12 contendere, or has been convicted of any act of
13 trespass or has been found civilly liable of any act
14 of trespass, or
15 b. the accused, while the accused was upon the adjoining
16 property, does not have with him or her, on his or her
17 person, the written permission specified in this
18 paragraph.

19 SECTION 3. AMENDATORY 22 O.S. 2011, Section 1221, as
20 amended by Section 1, Chapter 75, O.S.L. 2014 (22 O.S. Supp. 2020,
21 Section 1221), is amended to read as follows:

22 Section 1221. A. A search warrant is an order in writing, in
23 the name of the state, signed by a magistrate, directed to a peace
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1 officer, commanding him to search for personal property and bring it
2 before the magistrate.

3 B. For purposes of Sections 1221 through 1241 of this title,
4 the term "personal property" or "property" shall mean items and
5 information that can be analyzed, seen, weighed, measured, felt or
6 touched or that are in any other manner perceptible to the senses,
7 and that are privately owned. Property includes private land, which
8 shall mean land that is used or occupied, or fenced, posted with
9 signs to prevent trespassing at places where entry to the property
10 is normally expected, or conspicuously marked as private.

11 SECTION 4. This act shall become effective November 1, 2021.

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