

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
89th General Assembly  
Regular Session, 2013

As Engrossed: S4/9/13  
**A Bill**

HOUSE BILL 1735

By: Representatives Williams, Vines

### For An Act To Be Entitled

AN ACT TO REPEAL OBSOLETE STATUTES IN THE CRIMINAL CODE, TITLE 5; TO AMEND STATUTES AFFECTED BY THE OBSOLETE STATUTES BEING REPEALED; AND FOR OTHER PURPOSES.

### Subtitle

TO REPEAL OBSOLETE STATUTES IN THE CRIMINAL CODE, TITLE 5, AND TO AMEND STATUTES AFFECTED BY THE OBSOLETE STATUTES BEING REPEALED.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 5-38-210, which is an outdated statute, is repealed.

~~5-38-210. Allowing animals into enclosures—Division fences.~~

~~(a)(1)(A) Any person who willfully, directly, or indirectly turns loose any horse, mule, hog, sheep, goat, domesticated cattle, or any other animal or so allow any such animal to be turned loose in any enclosure where crops of any kind are growing or have been cultivated and not gathered without the consent of all persons or their agents owning and cultivating the crops is guilty of a violation and upon conviction shall be fined not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100).~~

~~(B) This section shall not be enforced for a trespass occurring after the close of the year in which the crop has been grown.~~

~~(2) Willfully leaving open a gate or a gap in a fence in such manner that an animal will or can enter such cultivated land when the crop is~~



~~not gathered and in the year in which the crop is grown is a violation of this section and shall be punished as provided in this section.~~

~~(b)(1) When different owners or their tenants have cultivated under a common enclosure for one (1) or more years and anyone owning only a part of the land desires to avoid the penalties of this section and will put up half of a division fence by March 1 in any year and give notice in writing before January 1 preceeding March 1 to the owner of the balance of the field, notifying him or her to put up the balance of the division fence, and the owner so notified fails to enclose his or her land by putting up the balance of the division fence or a fence entirely his or her own before April 1 following such notice, the person giving the notice is not liable to a penalty provided in this section for trespass that may occur on the land of the owner so notified.~~

~~(2) When a division fence is put up under a provision of this section or has existed for one (1) year or more by common consent of adjacent owners of land, no person shall break or remove the division fence or any part of the division fence without giving at least nine (9) months' notice of the intention to do so to the owner or agent of the adjoining land enclosed by the division fence, and if done without the notice, the offender shall be punished as provided in this section.~~

~~(c) It is not the purpose of this section to repeal or modify any law of enclosure now existing nor a remedy in the law of enclosure now existing nor to affect or repeal any animal statute or law nor a penalty in the animal statute or law.~~

SECTION 2. Arkansas Code § 5-38-211, which is an outdated statute, is repealed.

~~5-38-211. Seed horse, unaltered mule, or jack running at large.~~

~~(a) If any seed horse or any unaltered mule or jack, over the age of two (2) years, is found running at large, the owner shall be fined, for the first offense, three dollars (\$3.00), and for every subsequent offense, not exceeding ten dollars (\$10.00), to be recovered by action in the name of any person who shall sue:~~

~~(1) One half ( $\frac{1}{2}$ ) to his or her own use; and~~

~~(2) The other one half ( $\frac{1}{2}$ ) to the county's.~~

~~(b) The action may be prosecuted before any justice of the peace of~~

~~the county where the offense is committed, and the owner is also liable for any damage that may be sustained by the running at large of the seed horse, jack, or mule, to be recovered by an action before any court having jurisdiction over the action.~~

SECTION 3. Arkansas Code § 5-38-212, which is an outdated statute, is repealed.

~~5-38-212. Destruction of native growth.~~

~~(a) The wanton and willful destruction of holly or a dogwood, pine, cedar, or other native southern growth is prohibited.~~

~~(b) The cutting or destruction of holly or a dogwood, pine, cedar, or other native southern growth within a distance of fifty yards (50 yds.) of either side of a highway of this state is prohibited except by the owner of the land upon which the growth is found or upon the consent of the owner.~~

~~(c) This section shall not be construed to prevent an owner of real property from clearing his or her land of growth described in subsections (a) and (b) of this section or from cutting and marketing a pine, cedar, or other timber on his or her land.~~

~~(d) Any person violating a provision of this section is guilty of a violation and shall be fined in any sum not less than twenty five dollars (\$25.00) nor more than one hundred dollars (\$100).~~

SECTION 4. Arkansas Code § 5-39-302, which is an outdated statute and is covered by criminal trespass, § 5-39-203, is repealed.

~~5-39-302. Unlawful entry upon enclosed grazing land.~~

~~(a) It is unlawful for any person to enter upon any enclosed grazing land except by way of a gate, gap, or other opening.~~

~~(b) Any person entering upon enclosed grazing land is guilty of a violation and shall be punished by a fine of:~~

~~(1) Not less than one hundred dollars (\$100) for the first offense; or~~

~~(2) Not less than two hundred fifty dollars (\$250) for the second offense.~~

SECTION 5. Arkansas Code § 5-51-206, which may be in conflict with the First Amendment, is repealed.

~~5-51-206. Advocating personal injury, destruction of property, or overthrow of government—Use of symbols.~~

~~(a) It is unlawful for any person to wear, use, exhibit, display, or have in possession any symbol, token, device, or flag, the meaning, object, purpose, or intent of which is to encourage, aid, assist, or abet, with such intent, or incite with such intent to, or which is calculated to encourage, aid, assist, abet, or incite any person in:~~

~~(1) The infliction of personal injury upon any other person;~~

~~(2) The taking of human life;~~

~~(3) The destruction of either public or private property without due process of law; or~~

~~(4) The destruction or overthrow of, or that which tends to destroy or overthrow, the present form of government of either the State of Arkansas or the United States of America.~~

~~(b) Any person violating this section is guilty of a Class A misdemeanor.~~

SECTION 6. Arkansas Code § 5-51-207, which may be overbroad or in conflict with the First Amendment, is repealed.

~~5-51-207. Contempt for or desecration of the United States flag.~~

~~(a)(1) Any person who knowingly mutilates, defaces, physically defiles, burns, maintains on the floor or ground, or tramples upon any flag of the United States shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than one (1) year, or both.~~

~~(2) This subsection does not prohibit any conduct consisting of the disposal of a flag when it has become worn or soiled.~~

~~(b) As used in this section, "flag of the United States" means any flag of the United States, or any part of a flag of the United States, made of any substance, or any size, in a form that is commonly displayed.~~

SECTION 7. Arkansas Code § 5-51-305, which is covered by criminal trespass, § 5-39-203, and burglary, § 5-39-201, is repealed.

~~5-51-305. Unlawful entry on property.~~

~~(a) It is unlawful for any person to enter upon the enclosed premises of another without permission of the owner for the purpose of committing an act declared by this subchapter to be unlawful.~~

~~(b) Any person who violates the provisions of this section is guilty of a Class C misdemeanor.~~

SECTION 8. Arkansas Code § 5-51-306 is repealed.

~~5-51-306. Questioning and detaining suspected persons.~~

~~It is not lawful for any private employee acting as a watchperson, guard, or in a supervisory capacity, or any individual, partnership, association, or corporation engaged in the manufacture, production, transportation, or storage of any article or thing described in § 5-51-303 to arrest or detain any person found on any premises to which entry without permission is forbidden by § 5-51-305.~~

SECTION 9. Arkansas Code § 5-51-308, which may be in conflict with Fifth Amendment due process, is repealed.

~~5-51-308. Witnesses' privileges.~~

~~(a) No person is excused from testifying as a witness in any court of competent jurisdiction concerning any thing made unlawful by this subchapter and a person may be compelled to produce any book, paper, or document in his or her possession in connection with his or her testimony or for use at the trial, as is now provided by law.~~

~~(b) However, the testimony given by the witness pursuant to subsection (a) of this section or the books, papers, or document produced by him or her pursuant to subsection (a) of this section shall not be used as evidence against him or her, nor form the basis of a criminal charge against him or her.~~

SECTION 10. Arkansas Code § 5-51-309, which is an outdated statute and is addressed by the First Amendment, is repealed.

~~5-51-309. Rights of labor not impaired.~~

~~(a) Nothing in this subchapter shall be construed as impairing, curtailing, or destroying any right of employees and their representatives to self-organization to form, join, or assist labor unions or to bargain collectively through representatives of their own choosing or to engage in concerted activities.~~

~~(b) It is not intended by this subchapter that the members of labor unions, their officers and representatives, be deprived of any legal rights~~

~~which they now have or may have hereafter.~~

SECTION 11. Arkansas Code § 5-62-112, which is covered by Rule 13 of the Arkansas Rules of Criminal Procedure, is repealed.

~~5-62-112. Search warrant.~~

~~A search warrant related to an investigation under this subchapter may be:~~

~~(1) Issued by a judge or magistrate if he or she has reasonable cause to believe that the search will discover persons or things specified in the application and subject to seizure; and~~

~~(2) Executed by any law enforcement officer.~~

SECTION 12. Arkansas Code § 5-62-113, which is covered by Rule 4 of the Arkansas Rules of Criminal Procedure, is repealed.

~~5-62-113. Authority to make arrests.~~

~~A law enforcement officer may make an arrest under the Arkansas Rules of Criminal Procedure and bring before a court or magistrate having jurisdiction any person alleged to have violated this subchapter.~~

SECTION 13. Arkansas Code § 5-62-123, which is an outdated statute, is repealed.

~~5-62-123. Larceny of animals including carcasses and flesh.~~

~~Upon an indictment for the larceny of any animal that it is a felony to steal, a conviction may be had for the larceny of the carcass of the animal, or of the flesh of the animal, if the carcass has been dismembered, as the evidence in the case may warrant.~~

SECTION 14. Arkansas Code § 5-66-102, which is covered by Rules 4 through 9 of the Arkansas Rules of Criminal Procedure, is repealed.

~~5-66-102. Duty of officer.~~

~~When it comes to the knowledge of any sheriff, coroner, or constable, or any of their deputies, that any person is guilty of any offense created or prohibited by this section and §§ 5-66-101, 5-66-104—5-66-107, and 5-66-109, it is their duty to give notice of the offense to any judge or justice of the peace for the county who shall:~~

~~(1) Issue his or her warrant and cause the offender to be brought~~

~~before him or her;~~

~~(2) Examine the matter in a summary manner; and~~

~~(3) Discharge, bail, or commit the offender, as the circumstances and the right of the case may require.~~

SECTION 15. Arkansas Code § 5-66-108, which is covered by Rule 13 of the Arkansas Rules of Criminal Procedure, is repealed.

~~5-66-108. Gaming devices—Search warrants.~~

~~(a) It is made and declared to be the duty and required of the judges of the circuit courts, the presiding judges of the county courts, and also of the justices of the peace, on information given or on their own knowledge, or when they have reasonable ground to suspect, that they issue their warrant to the sheriff, coroner, or constable as the case may be most convenient, directing in the warrant a search for gaming tables, or devices mentioned or referred to in § 5-66-104, and, directing that on finding any, the devices shall be publicly burned by the officer executing the warrant.~~

~~(b) The officer executing a warrant, and burning, by virtue of the warrant, any gaming device, as required in subsection (a) of this section, on making his return to the judge or justice who issued the warrant, and getting the statement of the judge or justice that the warrant had been returned to the judge or justice duly executed by the burning of the gaming device, stating or describing the gaming device burnt, endorsed on the warrant, the officer is entitled to his or her fees for the service, to be paid by the person keeping the gambling table.~~

SECTION 16. Arkansas Code § 5-66-109, which is an outdated statute, is repealed.

~~5-66-109. Gaming devices—Vagrants.~~

~~(a) Any keeper or exhibitor of any gaming table, bank, or other gambling device and any person who travels or remains in a steamboat, or goes about from place to place for the purpose of gaming is deemed and treated as a vagrant.~~

~~(b) Any keeper or exhibitor of either of the gaming tables, called "A. B. C." or "E. O." or any other table distinguished or known by any other name, letter, or figure, such as faro bank, rouge et noir, or any gaming bank, of the same or like kind, with, or without a name, is deemed and rated~~

~~as a vagrant.~~

SECTION 17. Arkansas Code § 5-71-216, which is covered by criminal mischief, §§ 5-38-203 and 5-38-204, is repealed.

~~5-71-216. Defacing public buildings.~~

~~(a) A person commits the offense of defacing a public building if he or she purposely defaces, mars, or otherwise damages a public building.~~

~~(b) Defacing a public building is a Class A misdemeanor.~~

SECTION 18. Arkansas Code § 5-73-210, which is covered by Rule 13 of the Arkansas Rules of Criminal Procedure, is repealed.

~~5-73-210. Search warrants.~~

~~Warrant to search any house or place and seize any machine gun adapted to use pistol cartridges of 30 (.30 in. or 7.63 mm ) or larger caliber possessed in violation of this subchapter may issue in the same manner and under the same restrictions as provided by law for stolen property, and any court of record upon application of the prosecuting attorney shall have jurisdiction and power to order any illegal machine gun, thus legally seized, to be confiscated and either destroyed or delivered to a law enforcement officer of the state or a political subdivision of the state.~~

SECTION 19. DO NOT CODIFY. The enactment and adoption of this act shall not repeal, expressly or impliedly, the acts passed at the regular session of the Eighty-Ninth General Assembly. All such acts shall have full force and effect, and so far as those acts intentionally vary from or conflict with any provision contained in this act, those acts shall have the effect of subsequent acts amending or repealing the appropriate parts of the Arkansas Code of 1987.

*/s/Williams*