

State of Arkansas  
90th General Assembly  
Regular Session, 2015

# A Bill

HOUSE BILL 1564

By: Representative C. Fite

## For An Act To Be Entitled

AN ACT TO ENCOURAGE BEAUTIFICATION OF PUBLIC AND PRIVATE PROPERTY BY ENCOURAGING THE INVESTIGATION AND PROSECUTION OF PERSONS ENGAGING IN ILLEGAL DUMPING; AND FOR OTHER PURPOSES.

### Subtitle

TO ENCOURAGE BEAUTIFICATION OF PUBLIC AND PRIVATE PROPERTY BY ENCOURAGING THE INVESTIGATION AND PROSECUTION OF PERSONS ENGAGING IN ILLEGAL DUMPING.

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

SECTION 1. Arkansas Code § 8-6-506 is amended to read as follows:

8-6-506. Criminal, civil, and administrative penalties.

(a) In addition to the proceedings described in § 8-6-505, ~~every a~~ person convicted of a violation of this subchapter ~~shall be~~ is subject to ~~the criminal, civil, or administrative penalties as specified in~~ penalties under this section and civil and administrative penalties under § 8-6-204.

(b)(1) A person that violates this subchapter or a rule, regulation, or order promulgated under this subchapter by the Arkansas Pollution Control and Ecology Commission or the Arkansas Department of Environmental Quality upon conviction is guilty of an unclassified misdemeanor with the following penalties:

(A) Imprisonment for not more than one (1) year;

(B) A fine of not less than two thousand dollars (\$2,000) but not more than twenty-five thousand dollars (\$25,000); or



(C) Both imprisonment and a fine.

(2)(A) A person convicted under subdivision (b)(1) of this section is subject to restitution to a state agency with environmental regulation and enforcement authority, local law enforcement agency, person, or other entity in an amount equal to all costs, expenses, and damages incurred in the investigation, remediation, and prosecution of the offense.

(B) Restitution as required by subdivision (b)(2)(A) of this section is mandatory and may not be waived by the sentencing court.

(C)(i) An order of restitution under this subsection shall be supported by testimony and other evidence provided by the prosecution during the sentencing phase of the trial, and the amount ordered shall be set by the finder of fact.

(ii) Testimony and evidence may be offered at the option of the defendant as mitigating evidence regarding an order of restitution.

(D)(i) Restitution ordered under this subsection that has been paid shall be credited to any civil penalty or administrative penalty assessed under this section.

(ii) Restitution that has been ordered but not yet paid may be credited to a civil penalty or administrative penalty assessed under this section.

(c)(1) A person that violates this subchapter or a rule, regulation, or order promulgated under this subchapter by the commission or the department upon conviction is guilty of an unclassified felony if:

(A) After violating this subchapter, the person leaves the state or removes his or her person from the jurisdiction of this state for the purpose of avoiding prosecution;

(B) The person recklessly causes pollution of the waters or air of the state in a manner not otherwise permitted by law and thereby creates a substantial likelihood of adversely affecting human health, animal or plant life, or property; or

(C) The person knowingly makes a false statement, representation, or certification in any document required to be maintained under this subchapter or falsifies, tampers with, or renders inaccurate a monitoring device, testing method, or record required to be maintained under this subchapter.

(2) An unclassified felony under subdivision (c)(1) of this section has the following penalties:

(A) Imprisonment for not more than five (5) years;

(B) A fine of not less than two thousand dollars (\$2,000) but not more than fifty thousand dollars (\$50,000); or

(C) Both imprisonment and a fine.

(3)(A) A person convicted under subdivision (c)(1) of this section is subject to restitution to a state agency with environmental regulation and enforcement authority, local law enforcement agency, person, or other entity in an amount equal to all costs, expenses, and damages incurred in the investigation, remediation, and prosecution of the offense.

(B) Restitution as required by subdivision (c)(3)(A) of this section is mandatory and may not be waived by the sentencing court.

(C)(i) An order of restitution under this subsection shall be supported by testimony and other evidence provided by the prosecution during the sentencing phase of the trial, and the amount ordered shall be set by the finder of fact.

(ii) Testimony and evidence may be offered at the option of the defendant as mitigating evidence regarding an order of restitution.

(D)(i) Restitution ordered under this subsection that has been paid shall be credited to any civil damage award or administrative penalty assessed under this section.

(ii) Restitution that has been ordered but not yet paid may be credited to a civil damage award or administrative penalty assessed under this section.

(d)(1) For the purpose of the assessment of fines under subsections (b) and (c) of this section, each day or part of a day during which the violation is continued or repeated constitutes a separate offense.

(2) If it is shown that a person has derived or will derive pecuniary gain from the commission of an offense under this subchapter, then the person may be sentenced to pay a fine not to exceed two (2) times the amount of the pecuniary gain.

(e)(1) A person that knowingly solicits or conspires with another person to commit an offense under this subchapter shall be subject to one-half (1/2) of the sentence for which the person would have been criminally

liable if the person had been a principal offender.

(2) As used in this section:

(A) "Conspires" means the same as criminal conspiracy as defined under § 5-3-401 et seq.; and

(B) "Solicits" means the same as criminal solicitation as defined under § 5-3-301 et seq.

(f) In a case considering suspension of sentence or probation, efforts or commitments by the defendant to remediate any adverse environmental effects caused by the defendant's activities may be considered by the court to be restitution as contemplated by § 5-4-301(b)(4).

(g) A business organization and its agents or officers may be found criminally liable under this section under the standards set forth in § 5-2-501 et seq. and sentenced to pay fines under § 5-4-201(d) and (e).

(h) Money collected as restitution or reimbursement for expenses, costs, or damages to the department under this section shall be deposited into the Hazardous Substance Remedial Action Trust Fund, § 8-7-509.