

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

State of Arkansas  
90th General Assembly  
Regular Session, 2015

As Engrossed: S3/18/15 S3/27/15  
**A Bill**

SENATE BILL 459

By: Senator D. Johnson

### **For An Act To Be Entitled**

AN ACT TO CLARIFY THE PENALTIES FOR CERTAIN OFFENSES  
IN THE CRIMINAL CODE; TO REORGANIZE CERTAIN CRIMINAL  
OFFENSES; TO MAKE TECHNICAL CORRECTIONS TO TITLE 5 OF  
THE ARKANSAS CODE; AND FOR OTHER PURPOSES.

### **Subtitle**

TO CLARIFY THE PENALTIES FOR CERTAIN  
OFFENSES IN THE CRIMINAL CODE; TO  
REORGANIZE CERTAIN CRIMINAL OFFENSES; AND  
TO MAKE TECHNICAL CORRECTIONS TO TITLE 5  
OF THE ARKANSAS CODE.

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

SECTION 1. Arkansas Code § 5-36-101 is amended to add a new definition  
to read as follows:

(14) "Antishoplifting or inventory control device" means a mechanism  
or other device designed and operated for the purpose of detecting the  
removal from a store or business establishment or from a protected area  
within a store or business establishment.

SECTION 2. Arkansas Code § 5-36-102 is amended to read as follows:

5-36-102. Consolidation of offenses — ~~Shoplifting presumption~~ — Theft  
by deception presumption at auction of livestock — Amount of theft.

(a) Conduct denominated theft in this chapter constitutes a single  
offense embracing the separate offenses known before January 1, 1976, as:

(1) Larceny;



- (2) Embezzlement;
- (3) False pretense;
- (4) Extortion;
- (5) Blackmail;
- (6) Fraudulent conversion;
- (7) Receiving stolen property; and
- (8) Other similar offenses.

(b) Notwithstanding the specification of a different manner in the indictment or information, a criminal charge of theft may be supported by evidence that it was committed in any manner that would be theft under this chapter subject only to the power of the court to ensure a fair trial by granting a continuance or other appropriate relief if the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

~~(c) The knowing concealment, upon an actor's person or the person of another, of an unpurchased good or merchandise offered for sale by any store or other business establishment, gives rise to a presumption that the actor took the good or merchandise with the purpose of depriving the owner or another person having an interest in the good or merchandise.~~

~~(d)~~(c) A person who is subject to 7 U.S.C. § 181 et seq. that obtains livestock from a commission merchant by representing that the person will make prompt payment is presumed to have obtained the livestock by deception if the person fails to make payment in accordance with 7 U.S.C. § 228b.

~~(e)(1)~~(d)(1) The amount involved in a theft is deemed to be the highest value, by any reasonable standard, of the property or service that the actor obtained or attempted to obtain.

(2) An amount involved in a theft committed pursuant to one (1) scheme or course of conduct, whether from one (1) or more persons, may be aggregated in determining the grade of the offense.

SECTION 3. Arkansas Code § 5-36-116 is amended to read as follows:

*5-36-116. Shoplifting presumption – Detention and arrest of person under shoplifting presumption.*

*(a)(1) The knowing concealment by a person on his or her own person or on the person of another of an unpurchased tangible personal property offered for sale by a store or business establishment gives rise to a presumption that the person took the tangible personal property with the purpose of*

depriving the owner of the store or business establishment or another person having an interest in the tangible personal property.

~~(a)(1)(2)(A)~~ A person engaging in conduct giving rise to a the presumption under § 5-36-102(e) subdivision (a)(1) of this section may be detained in a reasonable manner and for a reasonable length of time by a law enforcement officer, merchant owner of the store or business establishment, or merchant's employee or agent of the store or business establishment in order ~~that recovery of a good may be effected~~ to ensure the recovery of the tangible personal property.

~~(2)(B)~~ The detention by a law enforcement officer, merchant owner of the store or business establishment, or merchant's employee or agent of the store or business establishment does not render the law enforcement officer, merchant owner of the store or business establishment, or merchant's employee or agent of the store or business establishment criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.

(b)(1) If sufficient notice has been posted to advise patrons that an antishoplifting or inventory control device is being utilized, the activation of an antishoplifting or inventory control device as a result of a person's exiting ~~an~~ a store or business establishment or a protected area within the store or business establishment constitutes reasonable cause for the detention of the person so exiting by a law enforcement officer, the owner or operator of the store or business establishment, or by an agent or employee of the owner ~~or operator.~~

(2) Any detention under subdivision (b)(1) of this section shall be made only in a reasonable manner and only for a reasonable period of time sufficient for any inquiry into the circumstances surrounding the activation of the antishoplifting or inventory control device or for the recovery of ~~a good~~ the tangible personal property offered for sale.

(3) A detention under subdivision (b)(1) of this section by a law enforcement officer, merchant owner of the store or business establishment, or merchant's employee or agent of the store or business establishment does not render the law enforcement officer, merchant owner of the store or business establishment, or merchant's employee or agent of the store or business establishment criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.

~~(c) As used in this section, "antishoplifting or inventory control device" means a mechanism or other device designed and operated for the purpose of detecting the removal from a mercantile establishment or similar enclosure or from a protected area within a mercantile establishment or similar enclosure.~~

~~(d)(1) Upon probable cause for believing a suspect has committed the offense of shoplifting, a law enforcement officer may arrest the person without a warrant.~~

~~(2) The (c) A law enforcement officer, merchant owner of the store or business establishment, or merchant's employee or agent of the store or business establishment who has observed the person accused of committing the offense of shoplifting engaging in conduct giving rise to the presumption under subdivision (a)(1) of this section shall provide a written statement that serves as probable cause to justify the an arrest if a law enforcement officer arrests the person for theft of property, § 5-36-103.~~

~~(3) The accused person shall be brought immediately before a magistrate and afforded an opportunity to make a bond or recognizance as in other criminal cases.~~

SECTION 4. Arkansas Code § 5-36-115(a)-(e), concerning the offense of theft of leased, rented, or entrusted property, is amended to read as follows:

(a) A person is guilty of ~~theft and subject to a punishment prescribed by § 5-36-103~~ theft of leased, rented, or entrusted property if the person:

(1) Intentionally, fraudulently, Purposely, with a purpose to defraud, or by false pretense takes, carries, leads, drives away, destroys, sells, secretes, converts, or appropriates in any wrongful manner any personal property of another person that is leased, rented, or entrusted to the actor; or

(2) Falsely reports of his or her wealth or mercantile credit and by the false report fraudulently obtains possession of personal property or the labor or service of another person.

(b) The amount involved in the ~~theft~~ theft of leased, rented, or entrusted property is deemed to be the highest value by any reasonable standard of the personal property, or service, or labor ~~that the person stole or attempted to steal.~~

(c) It is prima facie evidence of ~~intent~~ purpose to commit ~~theft~~ theft of leased or rented property if a person who has leased or rented the personal property of another person:

(1) Fails to return or make an arrangement acceptable with the lessor to return the personal property to ~~its~~ the owner within five (5) days, excluding Saturday, Sunday, or a state or federal holiday, after proper notice following the expiration of the lease or rental agreement; or

(2) Presents identification to the lessor or renter of the personal property that is false, fictitious, or not current with respect to name, address, place of employment, or other appropriate item.

(d) Proper notice by the lessor or renter of the personal property shall consist of a written demand addressed and mailed by certified or registered mail to the lessee or rentee at the address given at the time of making the lease or rental agreement.

(e) The following factors constitute an affirmative defense to prosecution for ~~theft~~ theft of leased or rented property:

(1) That the lessee or rentee accurately stated his or her name and address at the time of lease or rental;

(2) That the lessee's or rentee's failure to return the ~~item~~ personal property at the expiration date of the lease or rental ~~contract~~ agreement was lawful;

(3) That the lessee or rentee failed to receive the lessor's or renter's notice personally unless notice was waived; and

(4) That the lessee or rentee returned the personal property to the ~~owner or lessor~~ lessor, renter, or owner within forty-eight (48) hours of the commencement of prosecution, together with any charges for the overdue period and the value of damages to the personal property, if any.

SECTION 5. Arkansas Code § 5-36-115, concerning the offense of theft of leased, rented, or entrusted property, is amended to add a new subsection to read as follows:

(g) A violation of this section is a:

(1) Class B felony if:

(A) The value of the property, service, or labor is twenty-five thousand dollars (\$25,000) or more;

(B) The property, service, or labor is obtained by the

threat of serious physical injury to any person or destruction of the occupiable structure of another person; or

(C) The property, service, or labor is obtained by threat and the actor stands in a confidential or fiduciary relationship to the person threatened;

(2) Class C felony if:

(A) The value of the property, service, or labor is less than twenty-five thousand dollars (\$25,000) but more than five thousand dollars (\$5,000);

(B) The property, service, or labor is obtained by threat;

(C) The property is a firearm valued at two thousand five hundred dollars (\$2,500) or more; or

(D) The value of the property, service, or labor is five hundred dollars (\$500) or more and the theft occurred in an area declared to be under a state of emergency pursuant to proclamation by the President of the United States, the Governor, or the executive officer of a city or county;

(3) Class D felony if:

(A) The value of the property, service, or labor is five thousand dollars (\$5,000) or less but more than one thousand dollars (\$1,000);

(B) The property is a firearm valued at less than two thousand five hundred dollars (\$2,500);

(C) The value of the property, service, or labor is at least one hundred dollars (\$100) or more but less than five hundred dollars (\$500) and the theft occurred in an area declared to be under a state of emergency pursuant to proclamation by the President of the United States, the Governor, or the executive officer of a city or county;

(D) The property is livestock and the value of the livestock is in excess of two hundred dollars (\$200); or

(E) The property is an electric power line, gas line, water line, wire or fiber insulator, electric motor, or other similar apparatus connected to a farm shop, on-farm grain drying and storage complex, heating and cooling system, environmental control system, animal production facility, irrigation system, or dwelling; or

(4) Class A misdemeanor if:

(A) The value of the property, service, or labor is one thousand dollars (\$1,000) or less; or

(B) The property has inherent, subjective, or idiosyncratic value to its owner or possessor even if the property has no market value or replacement cost.

SECTION 6. Arkansas Code § 5-36-123 is amended to read as follows:  
5-36-123. Theft of scrap metal.

(a) As used in this section:

(1) "Building material" means scrap metal used in the construction or rebuilding of a building or a structure;

(2) "Costs of incidental damage" means the total amount of money damages suffered by an owner of scrap metal as a direct result of the theft of the scrap metal, including lost income, lost profits, and costs of repair or replacement of property damage;

(3) "Incidental damage" means loss of income, loss of profit, or property damage;

(4) "Permitted construction site" means the site of construction, alteration, painting, or repair of a building or a structure for which a building permit has been issued by a city of the first class, a city of the second class, an incorporated town, or a county;

(5) "Public safety agency" means an agency of the State of Arkansas or a functional division of a political subdivision that provides:

(A) Firefighting and rescue;

(B) Response to natural or human-caused disaster or a major emergency;

(C) Law enforcement; or

(D) Ambulance or emergency medical services;

(6) "Public safety device" includes, but is not limited to, a traffic-signaling device or a railroad-crossing device;

(7) "Scrap metal" means copper, copper alloy, copper utility wire, any bronze, or any aluminum as described in § 17-44-101 et seq.;

(8) "Utility" means any person or entity providing to the public gas, electricity, water, sewer, telephone, telegraph, radio, radio common carrier, railway, railroad, cable and broadcast television, video, or Internet services; and

(9) "Utility property" means any component that is reasonably necessary to provide utility services, including without limitation any wire, pole, facility, machinery, tool, equipment, cable, insulator, switch, signal, duct, fiber optic cable, conduit, plant, work, system, substation, transmission or distribution structure, line, street lighting fixture, generating plant, equipment, pipe, main, transformer, underground line, gas compressor, meter, or any other building or structure or part of a building or structure that a utility uses in the production or use of its services.

~~(a)(b)~~ A person commits theft of scrap metal if he or she commits, aids, or is an accomplice to a commission of theft of property under § 5-36-103(a) and the property is scrap metal.

~~(b) Except as provided in subsection (c) of this section, the classification and penalty range for theft of scrap metal is the same as theft of property under § 5-36-103(b).~~

(c) Theft of scrap metal is a:

(1) Class B felony if:

(A) The value of the property is twenty-five thousand dollars (\$25,000) or more;

(B) The property is obtained by the threat of serious physical injury to any person or destruction of the occupiable structure of another person;

(C) The property is obtained by threat and the actor stands in a confidential or fiduciary relationship to the person threatened;  
or

(D) The property is utility property and the value of the property is five hundred dollars (\$500) or more;

(2) Class C felony if:

(A) The value of the property is less than twenty-five thousand dollars (\$25,000) but more than five thousand dollars (\$5,000);

(B) The property is obtained by threat;

(C) The property is building material obtained from a permitted construction site and the value of the building material is five hundred dollars (\$500) or more; or

(D) The value of the property is five hundred dollars (\$500) or more and the theft occurred in an area declared to be under a state of emergency pursuant to proclamation by the President of the United States,

the Governor, or the executive officer of a city or county;

(3) Class D felony if:

(A) The value of the property is five thousand dollars (\$5,000) or less but more than one thousand dollars (\$1,000);

(B) The value of the property is at least one hundred dollars (\$100) but less than five hundred dollars (\$500) and the theft occurred in an area declared to be under a state of emergency pursuant to proclamation by the President of the United States, the Governor, or the executive officer of a city or county; or

(C) The property is an apparatus connected to a farm shop, on-farm grain drying and storage complex, heating and cooling system, environmental control system, animal production facility, irrigation system, or dwelling; or

(4) Class A misdemeanor if:

(A) The value of the property is one thousand dollars (\$1,000) or less; or

(B) The property has inherent, subjective, or idiosyncratic value to its owner or possessor even if the property has no market value or replacement cost.

(d)(1) The penalty for theft of scrap metal is enhanced if, upon the proclamation of a state of emergency by the President of the United States or the Governor or upon the declaration of a local emergency by the executive officer of any city or county and for a period of thirty (30) days following that declaration, the property is:

(A) A generator intended for use by:

(i) A public facility;

(ii) A nursing home or hospital;

(iii) An airport;

(iv) A public safety device;

(v) A communication tower or facility;

(vi) A public utility;

(vii) A water system or sewer system;

(viii) A public safety agency; or

(ix) Any other facility or entity providing a vital service; or

(B) Any other equipment used in the transmission of

electric power or telephone service.

(2) The penalty is enhanced as follows:

(A)(i) The fine for the offense shall be at least five thousand dollars (\$5,000) and not more than fifty thousand dollars (\$50,000).

(ii) The fine is mandatory; and

(B) The offense is a Class D felony if it otherwise would have been a Class A misdemeanor.

(e) Upon conviction of a person for theft of scrap metal, the classification and penalty range in § 5-36-103(b) shall be increased by one (1) classification if:

(1) The person caused incidental damage to the owner of the scrap metal or the property of the owner of the scrap metal while committing the theft of scrap metal and the costs of incidental damage were more than two hundred fifty dollars (\$250); or

(2) The person transported the scrap metal across state lines to sell or dispose of the scrap metal.

~~(d) As used in this section:~~

~~(1) "Costs of incidental damage" means the total amount of money damages suffered by an owner of scrap metal as a direct result of the theft of the scrap metal, including lost income, lost profits, and costs of repair or replacement of property damage;~~

~~(2) "Incidental damage" means loss of income, loss of profit, or property damage; and~~

~~(3) "Scrap metal" means copper, copper alloy, copper utility wire, any bronze, or any aluminum as described in § 17-44-101 et seq.~~

SECTION 7. Arkansas Code § 5-36-202 is amended to read as follows:

5-36-202. Theft of public benefits.

(a) A person commits theft of public benefits if the person:

(1) Obtains or retains a public benefit from the Department of Human Services or any other state agency administering the distribution of a public benefit:

(A) By means of any false statement, misrepresentation, or impersonation; or

(B) Through failure to disclose a material fact used in making a determination as to the person's qualification to receive a public

benefit; or

(2) Receives, retains, or disposes of a public benefit knowing or having reason to know that the public benefit was obtained in violation of this subchapter.

(b) Presentation of false or fictitious information or failure to disclose a material fact in the process of obtaining or retaining public benefits is prima facie evidence of ~~intent~~ purpose to commit theft of public benefits.

(c) Theft of public benefits is a:

(1) Class B felony if the value of the public benefit is two thousand five hundred dollars (\$2,500) or more;

(2) Class C felony if the value of the public benefit is less than two thousand five hundred dollars (\$2,500) but more than five hundred dollars (\$500); or

(3) Class A misdemeanor if the value of the public benefit is five hundred dollars (\$500) or less.

(d) In addition to an extended term of imprisonment provided by § 5-4-501 for a habitual offender, any person who pleads guilty or nolo contendere to or is found guilty of violating this section shall be imprisoned:

(1) For no less than seven (7) days for a second offense occurring within five (5) years of a prior offense;

(2) For no less than ninety (90) days for a third offense occurring within five (5) years of a prior offense; and

(3) For at least one (1) year for a fourth or subsequent offense occurring within five (5) years of a prior offense.

(e) In addition to restitution, any person who pleads guilty or nolo contendere to or is found guilty of violating this section shall be fined no less than:

(1) One hundred fifty dollars (\$150) for the first offense;

(2) Four hundred dollars (\$400) for a second offense occurring within five (5) years of a prior offense; and

(3) Nine hundred dollars (\$900) for a third or subsequent offense occurring within five (5) years of a prior offense.

SECTION 8. Arkansas Code § 5-36-203, concerning penalties for theft of public benefits and recodified elsewhere in this act, is repealed.

~~5-36-203. Penalties.~~~~Theft of public benefits is a:~~

- ~~(1) Class B felony if the value of the public benefit is two thousand five hundred dollars (\$2,500) or more;~~
- ~~(2) Class C felony if the value of the public benefit is less than two thousand five hundred dollars (\$2,500) but more than five hundred dollars (\$500); or~~
- ~~(3) Class A misdemeanor if the value of the public benefit is five hundred dollars (\$500) or less.~~

SECTION 9. Arkansas Code § 5-36-204, concerning imprisonment and fines for theft of public benefits and recodified elsewhere in this act, is repealed.

~~5-36-204. Terms of imprisonment — Fines.~~

~~(a) In addition to an extended term of imprisonment provided by § 5-4-501 for a habitual offender, any person who pleads guilty or nolo contendere or is found guilty of violating § 5-36-202(a) shall be imprisoned:~~

- ~~(1) For no less than seven (7) days for the second offense of any felony or misdemeanor set forth in § 5-36-203 occurring within five (5) years of the first offense of any felony or misdemeanor set forth in § 5-36-203;~~
- ~~(2) For no less than ninety (90) days for a third offense of any felony or misdemeanor set forth in § 5-36-203 occurring within five (5) years of the first offense of any felony or misdemeanor set forth in § 5-36-203;~~  
and
- ~~(3) For at least one (1) year for a fourth or subsequent offense of any felony or misdemeanor set forth in § 5-36-203 occurring within five (5) years of the first offense of any felony or misdemeanor set forth in § 5-36-203.~~

~~(b) In addition to restitution, any person who pleads guilty or nolo contendere or is found guilty of a felony or misdemeanor set forth in § 5-36-203 shall be fined no less than:~~

- ~~(1) One hundred fifty dollars (\$150) for the first offense;~~
- ~~(2) Four hundred dollars (\$400) for a second offense occurring within five (5) years of the first offense; and~~
- ~~(3) Nine hundred dollars (\$900) for a third or subsequent~~

~~offense occurring within five (5) years of the first offense.~~

SECTION 10. Arkansas Code § 5-37-302 is amended to read as follows:

5-37-302. Unlawful acts.

(a) It is unlawful for any person:

(1) To procure any article or thing of value or to secure possession of any personal property to which a lien has attached or to make payment of rent or to make payment of a child support payment or to make payment of any taxes, licenses, or fees, or any fine or court costs, or for any other purpose to make or draw or utter or deliver, with the intent to defraud, any check, draft, order, or any other form of presentment involving the transmission of account information for the payment of money upon any in-state or out-of-state bank, person, firm, or corporation, knowing at the time of such making, drawing, uttering, or delivering that the maker or drawer has not sufficient funds in, or on deposit with, such bank, person, firm, or corporation for the payment of such check, draft, order, or other form of presentment involving the transmission of account information in full, and any other check, draft, order, or other form of presentment involving the transmission of account information upon such funds then outstanding;

(2) To make, draw, utter, or deliver or to cause or direct the making, drawing, uttering, or delivering of any check, draft, order, or any other form of presentment involving the transmission of account information for the payment of money on any in-state or out-of-state bank, person, firm, or corporation in payment of wages or salaries for personal services rendered, knowing that the maker, drawer, or payor does not have sufficient funds in or on deposit with such bank, person, firm, or corporation for the payment in full of such check, draft, order, or other form of presentment involving the transmission of account information as well as any other then-outstanding check, draft, order, or other form of presentment involving the transmission of account information upon such funds, and with no good reason to believe the check, draft, order, or other form of presentment involving the transmission of account information would be paid upon presentation to the person or bank upon which same was drawn; or

(3) After he or she has made, drawn, uttered, or delivered a check, draft, order, or any other form of presentment involving the transmission of account information for the payment of money upon any in-

state or out-of-state bank, to withdraw or cause to be withdrawn, with intent to defraud, the funds or any part of the funds that have been deposited in the bank before presentment of the check, draft, order, or any other form of presentment involving the transmission of account information for payment, without leaving sufficient funds in the bank for payment in full of the check, draft, order, or other form of presentment involving the transmission of account information and any other check, draft, or order upon the funds then outstanding.

(b)(1) Upon a determination of guilt of a person under this section, in the event that the order, draft, check, or other form of presentment involving the transmission of account information is one thousand dollars (\$1,000) or less, the penalties shall be as follows:

(A) For a first offense, the person is guilty of an unclassified misdemeanor and shall receive a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) or imprisonment in the county jail or regional detention facility not to exceed thirty (30) days, or both;

(B) For a second offense, the person is guilty of an unclassified misdemeanor and shall receive a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or imprisonment in the county jail or regional detention facility not to exceed ninety (90) days, or both; and

(C) For a third or subsequent offense, the person is guilty of an unclassified misdemeanor and shall receive a fine of not less than two hundred dollars (\$200) nor more than two thousand dollars (\$2,000) or imprisonment in the county jail or regional detention facility not to exceed one (1) year, or both.

(2) Making, uttering, or delivering one (1) or more instruments or transactions drawn on insufficient funds or drawn on a nonexistent account is a Class B felony if:

(A) The amount of any one (1) instrument or transaction is twenty-five thousand dollars (\$25,000) or more; or

(B) More than one (1) instrument or transaction has been drawn within a ninety-day period, each instrument or transaction is in an amount less than twenty-five thousand dollars (\$25,000), and the total amount of all such instruments or transactions is twenty-five thousand dollars

(\$25,000) or more.

(3) Making, uttering, or delivering one (1) or more instruments or transactions drawn on insufficient funds or drawn on nonexistent accounts is a Class C felony if:

(A) The amount of any one (1) instrument or transaction is less than twenty-five thousand dollars (\$25,000) but more than five thousand dollars (\$5,000); or

(B) More than one (1) instrument or transaction has been drawn within a ninety-day period, each instrument or transaction is in an amount of five thousand dollars (\$5,000) or less, and the total amount of all such instruments or transactions is more than five thousand dollars (\$5,000).

(4) Making, uttering, or delivering one (1) or more instruments or transactions drawn on insufficient funds or drawn on nonexistent accounts is a Class D felony if:

(A) The amount of any one (1) instrument or transaction is five thousand dollars (\$5,000) or less but more than one thousand dollars (\$1,000); or

(B) More than one (1) instrument or transaction has been drawn within a ninety-day period, each instrument or transaction is in an amount of one thousand dollars (\$1,000) or less, and the total amount of all such instruments or transactions is more than one thousand dollars (\$1,000).

(5) Under subdivision (b)(2)(B), subdivision (b)(3)(B), and subdivision (b)(4)(B) of this section, each instrument or transaction may be added together in a single prosecution.

SECTION 11. Arkansas Code § 5-37-305 is amended to read as follows:

5-37-305. ~~Penalties~~ Restitution and court costs.

~~(a) Upon a determination of guilt of a person under § 5-37-302, in the event that the order, draft, check, or other form of presentment involving the transmission of account information is one thousand dollars (\$1,000) or less, the penalties shall be as follows:~~

~~(1) For a first offense, the person is guilty of an unclassified misdemeanor and shall receive a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) or imprisonment in the county jail or regional detention facility not to exceed thirty (30) days, or both;~~

~~(2) For a second offense, the person is guilty of an~~

~~unclassified misdemeanor and shall receive a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or imprisonment in the county jail or regional detention facility not to exceed ninety (90) days, or both; and~~

~~(3) For a third or subsequent offense, the person is guilty of an unclassified misdemeanor and shall receive a fine of not less than two hundred dollars (\$200) nor more than two thousand dollars (\$2,000) or imprisonment in the county jail or regional detention facility not to exceed one (1) year, or both.~~

~~(b)(1) Making, uttering, or delivering one (1) or more instruments or transactions drawn on insufficient funds or drawn on a nonexistent account is a Class B felony if:~~

~~(A) The amount of any one (1) instrument or transaction is twenty-five thousand dollars (\$25,000) or more; or~~

~~(B) More than one (1) instrument or transaction has been drawn within a ninety-day period, each instrument or transaction is in an amount less than twenty-five thousand dollars (\$25,000), and the total amount of all such instruments or transactions is twenty-five thousand dollars (\$25,000) or more.~~

~~(2) Making, uttering, or delivering one (1) or more instruments or transactions drawn on insufficient funds or drawn on nonexistent accounts is a Class C felony if:~~

~~(A) The amount of any one (1) instrument or transaction is less than twenty-five thousand dollars (\$25,000) but more than five thousand dollars (\$5,000); or~~

~~(B) More than one (1) instrument or transaction has been drawn within a ninety-day period, each instrument or transaction is in an amount of five thousand dollars (\$5,000) or less, and the total amount of all such instruments or transactions is more than five thousand dollars (\$5,000).~~

~~(3) Making, uttering, or delivering one (1) or more instruments or transactions drawn on insufficient funds or drawn on nonexistent accounts is a Class D felony if:~~

~~(A) The amount of any one (1) instrument or transaction is five thousand dollars (\$5,000) or less but more than one thousand dollars (\$1,000); or~~

~~(B) More than one (1) instrument or transaction has been~~

~~drawn within a ninety day period, each instrument or transaction is in an amount of one thousand dollars (\$1,000) or less, and the total amount of all such instruments or transactions is more than one thousand dollars (\$1,000).~~

~~(4) Under subdivisions (b)(1)(B), (b)(2)(B), and (b)(3)(B) of this section, each instrument or transaction may be added together in a single prosecution.~~

~~(e)(1)(a) Any court passing sentence upon a person convicted of any offense under §§ 5-37-301—5-37-306 the Arkansas Hot Check Law, § 5-37-301 et seq., may also order the person to make full restitution to the plaintiff or complaining party.~~

~~(2)(b) All court costs may be taxed to the convicted defendant.~~

SECTION 12. Arkansas Code § 5-37-402, concerning the offense of theft of communication services, is amended to add new subsections to read as follows:

(c)(1) A person who violates subdivision (a)(1) or subdivision (a)(2) of this section upon conviction is guilty of a Class B misdemeanor.

(2) A person who violates one (1) or more of subdivisions (a)(3)-(6) of this section upon conviction is guilty of a Class D felony.

(3) An offense under this section is a Class C felony if:

(A) The defendant has been convicted previously on two (2) or more occasions for an offense under this subchapter or for any similar crime in this state or any federal or other state jurisdiction; or

(B) The violation of this subchapter involves possession of more than fifty (50) communication devices or unlawful access devices.

(d) The penalty for an offense under this section when based upon a prior conviction includes without limitation a felony offense involving theft of service or fraud under this subchapter or a violation of the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, as in effect on March 1, 2003.

(e) The court shall sentence a person convicted of violating this subchapter to make restitution as authorized by law, in addition to any other sentence authorized by law.

(f) Upon conviction of a defendant under this section, the court may direct that the defendant forfeit any communication device or unlawful access device in the defendant's possession or control that was involved in the

violation for which the defendant was convicted, in addition to any other sentence authorized by law.

SECTION 13. Arkansas Code § 5-37-403, concerning the penalties for theft of communications services and recodified elsewhere in this act, is repealed.

~~5-37-403. Penalties.~~

~~(a)(1) Upon conviction, any person violating a provision of § 5-37-402(a)(1) or (2) is guilty of a Class B misdemeanor.~~

~~(2) Upon conviction, any person violating a provision of § 5-37-402(a)(3)-(6) is guilty of a Class D felony.~~

~~(3) An offense under this subchapter is a Class C felony if:~~

~~(A) The defendant has been convicted previously on two (2) or more occasions for an offense under this subchapter or for any similar crime in this state or any federal or other state jurisdiction; or~~

~~(B) The violation of this subchapter involves possession of more than fifty (50) communication devices or unlawful access devices.~~

~~(b) The penalty for an offense under this section when based upon a prior conviction, includes, but is not limited to, a felony offense involving theft of service or fraud under this subchapter or a violation of the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779, as in effect on March 1, 2003.~~

~~(c) The court shall sentence a person convicted of violating this subchapter to make restitution as authorized by law, in addition to any other sentence authorized by law.~~

~~(d) Upon conviction of a defendant under this subchapter, the court may direct that the defendant forfeit any communication device or unlawful access device in the defendant's possession or control that was involved in the violation for which the defendant was convicted, in addition to any other sentence authorized by law.~~

SECTION 14. Arkansas Code § 5-62-202, concerning definitions for criminal offenses involving farm animal and research facilities, is amended to add a new subdivision to read as follows:

(9) "Notice" means:

(A) Oral or written communication by the owner or a person with

apparent authority to act for the owner;

(B) Fencing or other enclosure obviously designed to exclude persons or to contain animals; or

(C) A sign or signs posted on property or at the entrance to a building, reasonably likely to come to the attention of a person, indicating that entry is forbidden.

SECTION 15. Arkansas Code § 5-62-203 is amended to read as follows:  
5-62-203. Offenses.

(a)(1) A person commits an offense if, without the effective consent of the owner, the person acquires or otherwise exercises control over an animal facility, an animal from an animal facility, or other property from an animal facility, with the ~~intent~~ purpose to:

~~(1)~~(A) Deprive the owner of the animal facility, animal, or property; and

~~(2)~~(B) Disrupt or damage the enterprise conducted at the animal facility.

~~(b)~~(2) A person commits an offense if, without the effective consent of the owner and with the ~~intent~~ purpose to disrupt or damage the enterprise conducted at the animal facility, the person damages or destroys:

~~(1)~~(A) An animal facility; or

~~(2)~~(B) Any animal or property in or on an animal facility.

~~(c)~~(3) A person commits an offense if, without the effective consent of the owner and with the ~~intent~~ purpose to disrupt or damage the enterprise conducted at the animal facility, the person:

~~(1)~~(A) Enters an animal facility, not then open to the public, with the ~~intent~~ purpose to commit an act prohibited by this section;

~~(2)~~(B) Remains concealed, with the ~~intent~~ purpose to commit an act prohibited by this section, in an animal facility; or

~~(3)~~(C) Enters an animal facility and commits or attempts to commit an act prohibited by this section.

~~(d)~~(1)(4) A person commits an offense if, without the effective consent of the owner and with the ~~intent~~ purpose to disrupt or damage the enterprise conducted at the animal facility, the person:

(A) Enters or remains in an animal facility; and

(B) Had notice that the entry was forbidden or received

notice to depart but failed to depart.

~~(2) As used in this subsection, "notice" means:~~

~~(A) Oral or written communication by the owner or someone with apparent authority to act for the owner;~~

~~(B) Fencing or other enclosure obviously designed to exclude intruders or to contain animals; or~~

~~(C) A sign or signs posted on the property or at the entrance to the building, reasonably likely to come to the attention of intruders, indicating that entry is forbidden.~~

(b) A person who violates this section upon conviction is guilty of a Class D felony.

(c) A person convicted of violating this section shall be ordered to make restitution to the animal facility in the full amount of the reasonable cost of:

(1) Replacing materials, data, equipment, or animals, and records that may have been damaged or cannot be returned; and

(2) Repeating any experimentation that may have been interrupted or invalidated as a result of the violation.

(d) This subchapter does not affect any other right of a person that has been damaged by reason of a violation of this subchapter.

SECTION 16. Arkansas Code § 5-62-204, concerning the penalties for violating certain offenses involving farm animals and research facilities and recodified elsewhere in this act, is repealed.

~~5-62-204. Penalties.~~

~~(a) Any person who violates any provision of this subchapter is deemed guilty of a Class D felony.~~

~~(b) Any persons convicted of violating any provision of this subchapter shall be ordered to make restitution to the animal facility in the full amount of the reasonable cost of:~~

~~(1) Replacing materials, data, equipment, or animals, and records that may have been damaged or cannot be returned; and~~

~~(2) Repeating any experimentation that may have been interrupted or invalidated as a result of the violation.~~

~~(c) Nothing in this subchapter shall be construed to affect any other right of a person that has been damaged by reason of a violation of this~~

~~subchapter.~~

SECTION 17. Arkansas Code § 5-63-302 is amended to read as follows:

5-63-302. Debt adjusting – Prohibition.

(a) No person A person shall not engage in, or offer to or attempt to engage in, the business or practice of debt adjusting in this state.

(b) A violation of subsection (a) of this section is a Class A misdemeanor.

SECTION 18. Arkansas Code § 5-63-304, concerning the penalties for debt adjusting and recodified elsewhere in this act, is repealed.

~~5-63-304. Debt adjusting – Penalties.~~

~~Any person who acts or offers to act as a debt adjuster in this state is guilty of a Class A misdemeanor.~~

SECTION 19. Arkansas Code § 5-68-502 is amended to read as follows:

5-68-502. ~~Unlawful acts~~ Selling, loaning, or displaying pornography to minors.

(a) It is unlawful for any person, including, but not limited to, without limitation any person having custody, control, or supervision of any commercial establishment, to knowingly:

(1)(A) Display material that is harmful to minors in such a way that the material is exposed to the view of a minor as part of the invited general public.

(B) However, a person is deemed not to have displayed material harmful to minors if:

(i) The material is kept behind devices commonly known as “blinder racks” so that the lower two-thirds (2/3) of the material is not exposed to view; or

(ii) Material harmful to minors is not contained on the front cover, back cover, or binding of the displayed material;

(2)(A) Sell, furnish, present, distribute, allow to view, or otherwise disseminate to a minor with or without consideration any material that is harmful to minors.

(B) However, the prohibition under subdivision ~~(2)(A)~~ (a)(2)(A) of this section does not apply to any dissemination:

(i) By a parent, guardian, or relative within the third degree ~~or~~ of consanguinity of the minor; or

(ii) With the consent of a parent or guardian of the minor; or

(3)(A) Present to a minor or participate in presenting to a minor with or without consideration any performance that is harmful to minors.

(B) However, the prohibition under subdivision ~~(3)(A)~~ (a)(3)(A) of this section does not apply to any dissemination:

(i) By a parent, guardian, or relative within the third degree of consanguinity to the minor; or

(ii) With the consent of a parent or guardian of the minor.

(b) A violation of subsection (a) of this section is a Class B misdemeanor.

SECTION 20. Arkansas Code § 5-68-503, concerning the penalties for selling or loaning pornography to minors and recodified elsewhere in this act, is repealed.

~~5-68-503. Penalties.~~

~~Any person violating any provision of this subchapter is guilty of a Class B misdemeanor.~~

SECTION 21. Arkansas Code § 6-17-414(b)(29), concerning offenses which will make a person ineligible to be employed by a educational entity, is amended to read as follows:

(29) Felony theft as prohibited in §§ 5-36-103 – 5-36-106 and § ~~5-36-203~~ 5-36-202;

*/s/D. Johnson*