

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

State of Arkansas
90th General Assembly
Regular Session, 2015

A Bill

SENATE BILL 462

By: Senator D. Johnson

For An Act To Be Entitled

AN ACT TO CLARIFY THE PENALTIES FOR CERTAIN CRIMINAL OFFENSES NOT CONTAINED IN THE CRIMINAL CODE; TO REORGANIZE CERTAIN CRIMINAL OFFENSES; TO MAKE TECHNICAL CORRECTIONS TO STATUTES INVOLVING CRIMINAL OFFENSES; AND FOR OTHER PURPOSES.

Subtitle

TO CLARIFY THE PENALTIES FOR CERTAIN CRIMINAL OFFENSES NOT CONTAINED IN THE CRIMINAL CODE; TO REORGANIZE CERTAIN CRIMINAL OFFENSES; AND TO MAKE TECHNICAL CORRECTIONS TO STATUTES INVOLVING CRIMINAL OFFENSES.

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

SECTION 1. Arkansas Code § 6-5-202 is amended to read as follows:

6-5-202. Prohibitions.

(a) A student of any school, college, university, or other educational institution in Arkansas shall not knowingly engage in hazing or encourage, aid, or assist any other student in hazing.

(b)(1) ~~No~~ A person shall not knowingly permit, encourage, aid, or assist ~~any~~ another person in committing the offense of hazing, or ~~willfully~~ knowingly acquiesce in the commission of ~~such~~ the offense of hazing, or fail to report promptly his or her knowledge or any reasonable information within his or her knowledge of the presence and practice of hazing in this state to an appropriate administrative official of the school, college, university, or



other educational institution in Arkansas.

(2) ~~Any~~ An act of omission or commission ~~shall be deemed is~~ hazing under ~~the provisions of~~ this subsection ~~(b)~~.

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

(d) In addition to any penalty provided by this section, a student convicted of hazing shall be expelled from the school, college, university, or other educational institution that he or she is attending.

SECTION 2. Arkansas Code § 6-5-203, concerning the penalties for the offense of hazing and recodified elsewhere in this act, is repealed.

~~6-5-203. Penalties.~~

~~(a) The offense of hazing is a Class B misdemeanor.~~

~~(b) Upon conviction of any student of the offense of hazing, he or she shall, in addition to any punishment imposed by the court, be expelled from the school, college, university, or other educational institution he or she is attending.~~

SECTION 3. Arkansas Code § 8-6-404 is amended to read as follows:

8-6-404. Penalties Disposition of fines collected.

~~(a)(1)(A)(i) A person convicted of a violation of § 8-6-406 or § 8-6-407 for a first offense shall be guilty of an unclassified misdemeanor and shall be fined in an amount of not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000).~~

~~(ii) An additional sentence of not more than eight (8) hours of community service shall be imposed under this subdivision (a)(1)(A).~~

~~(B)(i) A person convicted of a violation of § 8-6-406 or § 8-6-407 for a second or subsequent offense within three (3) years of the first offense shall be guilty of an unclassified misdemeanor and shall be fined in an amount of not less than two hundred dollars (\$200) and not more than two thousand dollars (\$2,000).~~

~~(ii) An additional sentence of not more than twenty-four (24) hours of community service may be imposed under this subdivision (a)(1)(B).~~

~~(2) In addition to those penalties, any violator may also be required to remove litter from alongside highways and at other appropriate~~

~~locations for any prescribed period.~~

~~(b) Any person who violates § 8-6-406 or § 8-6-407 and who is found to have committed the prohibited acts in furtherance of or as a part of a commercial enterprise, whether or not that enterprise is the disposal of wastes, shall be guilty of commercial littering and shall be guilty of a Class A misdemeanor. Additionally, those convicted may be required to remove any litter disposed of in violation of this subchapter.~~

~~(c) Any person who violates any provision of § 8-6-408 shall be guilty of:~~

~~(1) An unclassified misdemeanor for a first offense and shall be fined one thousand dollars (\$1,000) and sentenced to one hundred (100) hours of community service; and~~

~~(2) A Class A misdemeanor for a second or subsequent offense.~~

~~(d)(1) All or any portion of the fines, community service, and imprisonment penalties provided by this section may be suspended by the judge if the violator agrees to remove litter from alongside highways and at other appropriate locations for a prescribed period.~~

~~(2) All fines collected under this section §§ 8-6-406 – 8-6-408 shall be deposited as follows:~~

~~(A)(1) If a municipality or county where the offense occurs is a certified affiliate of Keep Arkansas Beautiful or Keep America Beautiful, Inc., and participates in ~~litter control~~ litter-control programs conducted by these organizations, then the moneys from fines collected for offenses in that jurisdiction shall be deposited, according to accounting procedures prescribed by law, into the city general fund or the county general fund to be used for the purpose of community improvement as determined by the municipal or county governing body; or~~

~~(B)(2) If the municipality or county where the offense occurs is not a certified affiliate of Keep Arkansas Beautiful or Keep America Beautiful, Inc., or does not participate in litter-control programs conducted by these organizations, then the moneys from fines collected for offenses in those jurisdictions shall be remitted by the tenth day of each month to the Administration of Justice ~~Fund~~ Funds Section of the Office of Administrative Services of the Department of Finance and Administration, on a form provided by ~~that office~~ the Office of Administrative Services, for deposit in the Keep Arkansas Beautiful Fund Account to be used by the Keep~~

Arkansas Beautiful Commission, as appropriated by the General Assembly, for the purposes of encouraging litter prevention and antilitter education and increasing awareness of litter law enforcement statewide.

~~(e) In addition to all other penalties, any person convicted of a violation of § 8-6-406 or § 8-6-407 who fails to pay any fines assessed in accordance with the findings and orders of the court shall have his or her driver's license suspended for six (6) months by the Department of Finance and Administration, upon receipt of an order of denial of driving privileges from the court pursuant to this section.~~

SECTION 4. Arkansas Code § 8-6-406 is amended to read as follows:

8-6-406. ~~Unlawful to litter~~ Exceptions Littering and commercial littering.

(a) It ~~shall be~~ is unlawful to drop, deposit, discard, or otherwise dispose of litter upon any public or private property in this state or upon or into any river, lake, pond, or other stream or body of water within this state, unless:

(1) The property has been designated by the Arkansas Department of Environmental Quality as a permitted disposal site;

(2) The litter is placed into a receptacle intended by the owner or tenant in lawful possession of that property for the deposit of litter, if it is deposited in such a manner as to prevent the litter from being carried away or deposited by the elements upon any part of the private or public property or waters; or

(3)(A) The person is the owner or tenant in lawful possession of the property and the litter remains upon the property and the act does not create a public health or safety hazard, a public nuisance, or a fire hazard.

(B) However, a property owner shall not be held responsible for the actions of his or her tenant.

(b)(1)(A) A person who violates this section upon conviction is guilty of a violation and shall be fined an amount not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000) and is subject to community service under subdivision (b)(2)(A) of this section.

(B) A person who violates this section for a second or subsequent offense within three (3) years of a prior offense upon conviction is guilty of a violation and shall be fined an amount not less than two

hundred dollars (\$200) and not more than two thousand dollars (\$2,000) and is subject to community service under subdivision (b)(2)(A) of this section.

(2)(A) In addition to any sentence provided for under this subsection, the court upon conviction shall impose the following penalty of community service:

(i) For a first offense, not more than eight (8) hours; or

(ii) For a second or subsequent offense, not more than twenty-four (24) hours.

(B) A person may also be required by the court as a part of his or her sentence to remove litter from alongside highways and at other appropriate locations for any prescribed period.

(3) A person convicted of a violation of this section who fails to pay any fines assessed in accordance with the findings and orders of the court shall have his or her driver's license suspended for six (6) months by the Department of Finance and Administration upon receipt by the Department of Finance and Administration of an order of denial of driving privileges from the court under this section.

(c)(1) A person who violates this section and who is found to have committed the violation in furtherance of or as a part of a commercial enterprise, whether or not that commercial enterprise is the disposal of wastes, upon conviction is guilty of commercial littering and is guilty of a Class A misdemeanor.

(2) A person convicted of commercial littering may be required to remove litter disposed of in violation of this subchapter.

(d) All or any portion of the fines, community service, and imprisonment penalties provided by this section may be suspended by the court if the violator agrees to remove litter from alongside highways and at other appropriate locations for a prescribed period.

SECTION 5. Arkansas Code § 8-6-407 is amended to read as follows:

8-6-407. ~~Commercial refuse~~ Refuse hauling by uncovered vehicles.

~~It shall be unlawful for any~~ (a) A person engaged in commercial or for-hire hauling to operate any who operates a truck or other vehicle within this state ~~to~~ shall not transport litter, trash, or garbage unless the truck or other vehicle is covered to prevent its contents from blowing, dropping,

falling off, or otherwise departing from the truck or other vehicle.

(b)(1) In addition, any A person operating his or her own truck or other vehicle to transport litter, trash, or garbage shall take reasonable steps to prevent its contents from blowing, dropping, falling off, or otherwise departing from the truck or other vehicle.

(2) However, ~~no~~ a vehicle hauling predominately metallic material shall be is not required to be covered if it is loaded in a manner which that will prevent the material from falling or dropping from the vehicle.

(c)(1)(A) A person who violates this section upon conviction is guilty of a violation and shall be fined an amount not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000) and is subject to community service under subdivision (c)(2)(A) of this section.

(B) A person who violates this section for a second or subsequent offense within three (3) years of a prior offense upon conviction is guilty of a violation and shall be fined an amount not less than two hundred dollars (\$200) and not more than two thousand dollars (\$2,000) and is subject to community service under subdivision (c)(2)(A) of this section.

(2)(A) In addition to any sentence provided for under this subsection, the court upon conviction shall impose the following penalty of community service:

(i) For a first offense, not more than eight (8) hours; or

(ii) For a second or subsequent offense, not more than twenty-four (24) hours.

(B) A person may also be required by the court as a part of his or her sentence to remove litter from alongside highways and other appropriate locations for any prescribed period.

(3) A person convicted of a violation of this section who fails to pay any fines assessed in accordance with the findings and orders of the court shall have his or her driver's license suspended for six (6) months by the Department of Finance and Administration upon receipt by the department of an order of denial of driving privileges from the court under this section.

(d)(1) A person who violates this section and who is found to have committed the violation in furtherance of or as a part of a commercial

enterprise, whether or not that commercial enterprise is the disposal of wastes, upon conviction is guilty of a Class A misdemeanor.

(2) A person convicted of commercial littering may be required to remove litter disposed of in violation of this subchapter.

(e) All or any portion of the fines, community service, and imprisonment penalties provided by this section may be suspended by the court if the violator agrees to remove litter from alongside highways and at other appropriate locations for a prescribed period.

SECTION 6. Arkansas Code § 8-6-408 is amended to read as follows:

8-6-408. Discarding certain items prohibited.

(a) It shall be is unlawful for any a person to place or cause to be placed any junk motor vehicle, old vehicle tire, or inoperative or abandoned household appliance, or part thereof of a junk motor vehicle, old vehicle tire, or inoperative or abandoned household appliance, upon the right-of-way of any public highway, upon any other public property, or upon any private property which that he or she does not own, lease, rent, or otherwise control, unless it is at a salvage yard, a permitted disposal site, or at the business establishment of a demolisher.

(b) A person who violates this section upon conviction is guilty of:

(1) A violation for a first offense and shall be fined one thousand dollars (\$1,000) and sentenced to one hundred (100) hours of community service; and

(2) A Class A misdemeanor for a second or subsequent offense.

SECTION 7. Arkansas Code § 8-7-306, concerning the penalties under the Arkansas Resource Reclamation Act of 1979 and recodified elsewhere in this act, is repealed.

~~8-7-306. Penalties.~~

~~(a) Any person who commits any unlawful act under this subchapter shall be guilty of a misdemeanor and upon conviction shall be subject to eriminal penalties consisting of imprisonment for not more than one (1) year or a fine of not more than ten thousand dollars (\$10,000), or by both such fine and imprisonment. Each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.~~

~~(b) Any person who violates any provision of this subchapter or the~~

~~regulations issued pursuant to this subchapter or who violates any condition of a permit issued under this subchapter may, pursuant to administrative procedures and civil penalty regulations of the Arkansas Pollution Control and Ecology Commission, be assessed a civil penalty by the commission. The penalty shall not exceed twenty five thousand dollars (\$25,000) for each violation. Each day of a continuing violation may be deemed as a separate violation for purposes of penalty assessments. However, no civil penalty may be assessed until the person charged with the violation has been given the opportunity for a hearing on such violation pursuant to §§ 8-4-218, 8-4-219, and 8-4-221.~~

SECTION 8. Arkansas Code § 8-7-307 is amended to read as follows:

8-7-307. Unlawful actions – Acts or omissions of third parties.

(a) It ~~shall be~~ is unlawful for ~~any a~~ a person to:

(1) ~~To violate any~~ Violate a provision of this subchapter or of any rule, regulation, permit, or order issued under this subchapter;

(2) ~~To transport~~ Transport hazardous wastes into or out of the state, except as provided by regulations established by the Arkansas Department of Environmental Quality pursuant to the provisions of this subchapter; ~~and or~~

(3) ~~To dispose~~ Dispose of hazardous wastes in the state except as provided by regulations established by the department pursuant to this subchapter.

(b)(1)(A) A person who violates this section upon conviction is guilty of an unclassified misdemeanor and shall be sentenced to not more than one (1) year in the county jail or a fine of not more than ten thousand dollars (\$10,000), or both.

(B) Each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(2)(A) A person who violates this section or the regulations issued under this subchapter, or who violates any condition of a permit issued under this subchapter, may be assessed a civil penalty by the Arkansas Pollution Control and Ecology Commission under administrative procedures and civil penalty regulations of the commission.

(B) The civil penalty shall not exceed twenty-five thousand dollars (\$25,000) for each violation.

(C) Each day of a continuing violation may be considered a separate violation for purposes of civil penalty assessments.

(D) However, a civil penalty assessment shall not be assessed until the person charged with the violation has been given the opportunity for a hearing on the violation under §§ 8-4-218, 8-4-219, and 8-4-221.

~~(b)(c) No person shall be~~ A person is not liable for ~~any violation of any violating a~~ provision of this subchapter or of any rule, regulation, permit, or order issued under this subchapter ~~which~~ if the violation was caused solely by the acts or omissions of a third party.

SECTION 9. Arkansas Code § 19-6-301(203), concerning special revenues, is amended to read as follows:

(203) Littering fines, ~~§ 8-6-404(d)(2)(B)~~ § 8-6-404;

SECTION 10. Arkansas Code § 20-27-1903 is amended to read as follows:
20-27-1903. Tobacco use – Prohibitions.

~~(a) Smoking is prohibited~~ A person shall not knowingly smoke tobacco in ~~any~~ a motor vehicle in which a child who is less than fourteen (14) years of age is a passenger.

(b)(1) A person who violates this section upon conviction is guilty of a violation and shall be punished by a fine of not more than twenty-five dollars (\$25.00).

(2) If a person is convicted, pleads guilty, pleads nolo contendere, or forfeits bond for violation of this section, court costs under § 16-10-305 or other costs or fees shall not be assessed.

(3) A person who proves to the court that he or she has entered into a smoking cessation program may have his or her fine eliminated for a first offense violation of this section.

SECTION 11. Arkansas Code § 20-27-1904, concerning the penalty for smoking in a motor vehicle with a child under the age of fourteen (14) and recodified elsewhere in this act, is repealed.

~~20-27-1904. Penalty.~~

~~(a) A person who violates this subchapter is guilty of a violation and upon conviction shall be punished by a fine not to exceed twenty five dollars~~

~~(\$25.00).~~

~~(b) If a person is convicted, pleads guilty, pleads nolo contendere, or forfeits bond for violation of this subchapter, no court costs pursuant to § 16-10-305 or other costs or fees shall be assessed.~~

~~(c) Any person who proves to the court that he or she has entered into a smoking cessation program may have his or her fine eliminated for a first offense violation of this subchapter.~~