

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

State of Arkansas
91st General Assembly
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As Engrossed: S3/16/17 S3/22/17
A Bill

HOUSE BILL 1554

By: Representatives Drown, Vaught, Baltz, D. Douglas, Gonzales, Hillman, Jean, Jett, McNair, Rushing,
Tosh

By: Senators Irvin, Standridge

For An Act To Be Entitled

AN ACT CONCERNING PRIVATE REAL PROPERTY RIGHTS; TO PROTECT NATURAL RESOURCES, AGRICULTURAL RESOURCES, AND HISTORICAL ARTIFACTS; TO DETER CRIMINAL ACTIVITY ON A PERSON'S REAL PROPERTY; TO PROVIDE FOR SEIZURE AND FORFEITURE OF CERTAIN ITEMS AND CONVEYANCES USED IN THE COMMISSION OF CERTAIN OFFENSES; CONCERNING THE OFFENSE OF CRIMINAL TRESPASS; AND FOR OTHER PURPOSES.

Subtitle

CONCERNING PRIVATE REAL PROPERTY RIGHTS; TO PROTECT NATURAL RESOURCES, AGRICULTURAL RESOURCES, AND HISTORICAL ARTIFACTS; TO DETER CRIMINAL ACTIVITY ON A PERSON'S REAL PROPERTY; AND CONCERNING THE OFFENSE OF CRIMINAL TRESPASS.

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

SECTION 1. Arkansas Code § 5-5-201 is amended to read as follows:
5-5-201. Forfeiture requirement – Exceptions.

(a) Upon conviction, any conveyance, including an aircraft, motor vehicle, or vessel is subject to forfeiture under this subchapter if it is used in the commission or attempt of:

- (1) A burglary;
- (2) A robbery;



- (3) A theft;
- (4) An arson; or
- (5) Trafficking of persons, § 5-18-103.

(b) However:

(1) ~~No~~ A conveyance used by any person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture under this subchapter unless it appears that the owner or other person in charge of the conveyance was a consenting party or privy to the commission or attempt to commit the offense;

(2) ~~No~~ A conveyance is not subject to forfeiture under this subchapter by reason of any act or omission established by the owner of the conveyance to have been committed or omitted without his or her knowledge or consent and without the knowledge or consent of any person having possession, care, or control of the conveyance with the owner's permission; and

(3) A forfeiture of a conveyance encumbered by a security interest is subject to the security interest of the secured party if the secured party neither had knowledge of nor consented to the use of the conveyance in the commission or attempt to commit the offense.

~~(c)(1) An all-terrain vehicle used in the commission of~~

(c)(1) A person who uses or possesses one (1) or more of the following items or conveyances in the commission of a second or subsequent offense for criminal trespass, § 5-39-203, or criminal trespass on premises located in an unincorporated area, § 5-39-305, that occurs within five (5) years of a prior offense of criminal trespass, § 5-39-203, or criminal trespass on premises located in an unincorporated area, § 5-39-305, is subject to seizure and forfeiture that item or conveyance being seized and forfeited under this subchapter.:

~~(2) As used in this subsection, "all-terrain vehicle" means the same as defined in § 27-21-102.~~

(A) An all-terrain vehicle, as defined under § 27-21-102;

(B) A conveyance, including an aircraft, motor vehicle, or vessel;

(C) A harvesting device, as defined under § 5-39-101;

(D) A killing device, as defined under § 5-39-101; or

(E) A tool or other implement.

(2) A person or entity that has a valid security interest in an

item or conveyance subject to seizure and forfeiture under this subsection is entitled to notice of any forfeiture proceeding as well as the right to intervene in the forfeiture proceeding in order to secure and represent the person's or entity's interest in the item or conveyance to be forfeited.

SECTION 2. Arkansas Code § 5-39-101, concerning definitions used for the criminal offenses of burglary, trespass, and other intrusions, is amended to add additional subdivisions to read as follows:

(6) "Artifact" means an object produced or shaped by human craft, such as a tool, weapon, coin, or ornament of archaeological, cultural, or historical interest or significance;

(7) "Harvesting device" means a device or object used to collect or accumulate or to assist in the collection or accumulation of an agricultural resource or a natural resource in bulk;

(8) "Killing device" means a firearm, bladed weapon, or other object, when not used in the course of lawful hunting or fishing of wildlife; and

(9) "Natural resource" means materials or substances such as minerals, timber, water, plants, and fertile land that occur in nature and can be used for economic gain.

SECTION 3. Arkansas Code § 5-39-203 is amended to read as follows:

5-39-203. Criminal trespass.

(a) A person commits criminal trespass if he or she purposely enters or remains unlawfully in or upon:

(1) A vehicle of another person; or

(2) *The premises ~~of~~ owned or leased by another person.*

(b) Criminal trespass is a:

(1) Class D felony if the person has two (2) or more convictions for a Class A misdemeanor violation of this section or § 5-39-305;

(2) Class A misdemeanor if:

(A) At the time of the criminal trespass, the person is in possession of one (1) or more of the following:

(i) A killing device;

(ii) A harvesting device;

(iii) A device primarily used for the location and

unearthing of buried or submerged artifacts; or

(iv) A tool designed to gain entry into a structure by breaking a lock or breaking through a fence, including without limitation a boltcutter;

(B) The person is on premises containing a commercial fishing or fish breeding operation and at that time is in possession of a fishing pole or net designed to capture fish; or

(C) The person has a prior conviction for a violation of this section.

~~(1)~~(2) Class B misdemeanor if:

(A) The vehicle or premises involved is an occupiable structure; or

(B) The conduct involves the removal of a posted sign, a fence, or a portion of a fence as defined in § 2-39-102; or

~~(2)~~(3) Class C misdemeanor if otherwise committed.

(c) It is a defense to prosecution under this section that:

(1) The person was a guest or invitee;

(2) The person was required to enter upon the premises of the other person for a business reason or for health and safety reasons;

(3) The person was authorized by law to enter upon the premises;

(4) The privately owned premises were made open to the public;

or

(5) The person owns or is employed by a person or entity that owns property adjoining the premises and is traveling over the premises with good faith or for a legitimate reason.

(d) This section does not apply to the following persons who are acting in the line of duty or within the scope of their employment:

(1) A law enforcement officer;

(2) A firefighter;

(3) An emergency first responder;

(4) An employee of a state agency, court, or school who tasked with monitoring, supervising, or making direct contact with a minor or the parents of a minor concerning the well-being of the minor; or

(5) An employee of a federal, state, or local agency, commission, board, political subdivision, school district, or municipality who has entered onto or remains on the premises for a purpose directly

relating to the employee's employment with the federal, state, or local agency, commission, board, political subdivision, school district, or municipality.

(e)(1) It is an affirmative defense to prosecution under this section if the person who enters the premises of another person is:

(A) Temporarily on the premises of the other person for the sole purpose of recovering livestock, a dog, or any other domesticated animal; and

(B) Either:

(i) The owner of the livestock, dog, or other domesticated animal; or

(ii) An employee or agent of the owner of the livestock, dog, or other domesticated animal.

(2) A person who enters the premises of another person as described in subdivision (e)(1) of this section is subject to civil liability for any property damage that occurs in the course of recovering the livestock, dog, or other domesticated animal.

~~(e)(f)~~ ~~An individual~~ A person aggrieved by a violation of this section is granted a private cause of action against the person who violated this section and is entitled to recover:

- (1) Actual damages caused by the violation;
- (2) Reasonable attorney's fees; and
- (3) Punitive damages.

SECTION 4. Arkansas Code § 5-39-305 is amended to read as follows:

5-39-305. Criminal trespass on ~~land~~ premises located in unincorporated area.

(a)(1) A person shall not purposely enter without written permission of the owner or lessee upon another person's ~~land~~ premises located outside the boundary of any city or town if ~~that land is~~ those premises are either:

- (A) Lawfully posted;
- (B) Crop land or timber land; or
- (C) Enclosed with a fence sufficient under § 2-39-101 et

seq.

(2) The posting of ~~land~~ premises is not a requirement under this section.

~~(b)(1) Any person who violates this section is deemed guilty of a violation and is subject to a fine not to exceed one hundred dollars (\$100).~~

~~(2) However, a violation of this section is a Class B misdemeanor if the property was posted pursuant to the laws of this state.~~

(b) Criminal trespass on premises located in an unincorporated area is a:

(1) Class D felony if the person has two (2) or more convictions for a Class A misdemeanor violation of this section or § 5-39-203;

(2) Class A misdemeanor if:

(A) At the time of the criminal trespass on premises located in an unincorporated area, the person is in possession of one (1) or more of the following:

(i) A killing device;

(ii) A harvesting device;

(iii) A device primarily used for the location and unearthing of buried or submerged artifacts; or

(iv) A tool designed to gain entry into a structure by breaking a lock or breaking through a fence, including without limitation a boltcutter.

(B) The person is on premises containing a commercial fishing or fish breeding operation and at that time is in possession of a fishing pole or net designed to capture fish; or

(C) The person has a prior conviction for a violation of this section.

(2) Class B misdemeanor if:

(A) The premises involved is an occupiable structure; or

(B) The conduct involves the removal of a posted sign, a fence, or a portion of a fence as defined in § 2-39-102; or

(3) Violation with a fine not to exceed one hundred dollars (\$100) if otherwise committed.

(c) It is an affirmative defense to a prosecution that:

~~(1) The person did not knowingly enter upon another person's land;~~

~~(2)(1) The person was a guest or invitee;~~

~~(3)(2) The person was required to enter upon the premises of another the other person for a business reason or for health and safety~~

reasons;

~~(4)~~(3) The person was authorized by law to enter upon the ~~land~~ premises; ~~or~~

~~(5)~~(4) The privately owned ~~land was~~ premises were made open to the public; or

(5) The person owns or is employed by a person or entity that owns property adjoining the premises and is traveling over the premises with good faith or for a legitimate reason.

(d)~~(1)~~ This section does not apply to:

(1) public Public land;

(2) This section does not apply to a A law enforcement or wildlife officer acting in the line of duty; or

(3) The following persons who are acting in the line of duty or within the scope of thier employment:

(A) A law enforcement officer;

(B) A firefighter;

(C) An emergency first responder;

(D) An employee of a state agency, court, or school who is tasked with monitoring, supervising, or making direct contact with a minor or the parents of a minor concerning the well-being of the minor; or

(E) An employee of a federal, state, or local agency, commission, board, political subdivision, school district, or municipality who has entered onto or remains on the premises for a purpose directly relating to the employee's employment with the federal, state, or local agency, commission, board, political subdivision, school district, or municipality.

(e)(1) It is an affirmative defense to prosecution under this section if the person who enters the premises of another person is:

(A) Temporarily on the premises of the other person for the sole purpose of recovering livestock, a dog, or any other domesticated animal; and

(B) Either:

(i) The owner of the livestock, dog, or other domesticated animal; or

(ii) An employee or agent of the owner of the livestock, dog, or other domesticated animal.

(2) A person who enters the premises of another person as described in subdivision (e)(1) of this section is subject to civil liability for any property damage that occurs in the course of recovering the livestock, dog, or other domesticated animal.

~~(e)(f) Nothing in this~~ This section repeals does not repeal any law concerning posting of land or trespass.

/s/Drown