

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

State of Arkansas
94th General Assembly
Regular Session, 2023

As Engrossed: S3/7/23
A Bill

SENATE BILL 238

By: Senator A. Clark

For An Act To Be Entitled

AN ACT TO CREATE THE OFFENSE OF AGGRAVATED TRESPASS;
TO MAKE TECHNICAL CORRECTIONS; AND FOR OTHER
PURPOSES.

Subtitle

TO CREATE THE OFFENSE OF AGGRAVATED
TRESPASS; AND TO MAKE TECHNICAL
CORRECTIONS.

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

SECTION 1. Arkansas Code § 5-5-201(c), concerning forfeiture requirements, is amended to read as follows:

(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 or aggravated 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 or aggravated criminal trespass, § 5-39-203, or criminal trespass on premises located in an unincorporated area, § 5-39-305, is subject to that item's or conveyance's being seized and forfeited under this subchapter:

- (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 § 5-39-203 is amended to read as follows:

5-39-203. Criminal trespass – Aggravated 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;
- (2) ~~The premises~~ Premises owned or leased by another person; or
- (3) Critical infrastructure.

(b) Criminal trespass is a:

- (1) Class D felony if:
 - (A) The person has two (2) or more convictions for a Class A misdemeanor violation of this section or § 5-39-305; or
 - (B) The premises is critical infrastructure;
- (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;
- (3) 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

(4) Class C misdemeanor if otherwise committed.

(c)(1) A person commits aggravated criminal trespass if he or she purposely enters or remains unlawfully in a residential occupiable structure, an outbuilding that is directly connected with and in close proximity to a residential occupiable structure, or a vehicle, that is owned or leased by another person.

(2) Aggravated criminal trespass is a Class D felony.

~~(e)~~(d) 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)~~(e) 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 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
- (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)(f)(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)~~(f)(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.

~~(f)~~(g) 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 3. Arkansas Code § 11-5-115(a)(3), concerning workplace violence, is amended to read as follows:

(3) Been stalked or harassed at the work site as defined by § 5-71-213, loitering; § 5-39-203, criminal trespass or aggravated criminal trespass; § 5-71-208, harassment; or § 5-71-229, stalking, the employer may, in addition to, or instead of, filing criminal charges against the individual, seek a temporary restraining order, a preliminary injunction, or an injunction under Rule 65 of the Arkansas ~~Rule~~ Rules of Civil Procedure ~~65~~ prohibiting further unlawful acts by that individual at the work site, which shall include any place at which work is being performed on behalf of the employer.

/s/A. Clark