

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

A Bill

SENATE BILL 238

5 By: Senator A. Clark
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For An Act To Be Entitled

8 AN ACT TO CREATE THE OFFENSE OF AGGRAVATED TRESPASS;
9 TO MAKE TECHNICAL CORRECTIONS; AND FOR OTHER
10 PURPOSES.
11

Subtitle

12
13 TO CREATE THE OFFENSE OF AGGRAVATED
14 TRESPASS; AND TO MAKE TECHNICAL
15 CORRECTIONS.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code § 5-5-201(c), concerning forfeiture
22 requirements, is amended to read as follows:

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

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

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

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

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

36 (E) A tool or other implement.



1 (2) A person or entity that has a valid security interest in an item
2 or conveyance subject to seizure and forfeiture under this subsection is
3 entitled to notice of any forfeiture proceeding as well as the right to
4 intervene in the forfeiture proceeding in order to secure and represent the
5 person's or entity's interest in the item or conveyance to be forfeited.

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7 SECTION 2. Arkansas Code § 5-39-203 is amended to read as follows:
8 5-39-203. Criminal trespass - Aggravated criminal trespass.

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

- 11 (1) A vehicle of another person;
- 12 (2) ~~The premises~~ Premises owned or leased by another person; or
- 13 (3) Critical infrastructure.

14 (b) Criminal trespass is a:

15 (1) Class D felony if:

16 (A) The person has two (2) or more convictions for a Class
17 A misdemeanor violation of this section or § 5-39-305; or

18 (B) The premises is critical infrastructure;

19 (2) Class A misdemeanor if:

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

22 (i) A killing device;

23 (ii) A harvesting device;

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

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

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

32 (C) The person has a prior conviction for a violation of
33 this section;

34 (3) Class B misdemeanor if:

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

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

3 (4) Class C misdemeanor if otherwise committed.

4 (c)(1) A person commits aggravated criminal trespass if, while
5 intoxicated by alcohol or a controlled substance, he or she purposely enters
6 locked premises owned or leased by another person.

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

8 ~~(e)~~(d) It is a defense to prosecution under this section that:

9 (1) The person was a guest or invitee;

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

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

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

14 or

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

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

20 (1) A law enforcement officer;

21 (2) A firefighter;

22 (3) An emergency first responder;

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

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

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

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

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(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.