

1 State of Arkansas  
2 90th General Assembly  
3 Regular Session, 2015  
4

*As Engrossed: S3/18/15*

# A Bill

SENATE BILL 459

5 By: Senator D. Johnson  
6

## For An Act To Be Entitled

8 AN ACT TO CLARIFY THE PENALTIES FOR CERTAIN OFFENSES  
9 IN THE CRIMINAL CODE; TO REORGANIZE CERTAIN CRIMINAL  
10 OFFENSES; TO MAKE TECHNICAL CORRECTIONS TO TITLE 5 OF  
11 THE ARKANSAS CODE; AND FOR OTHER PURPOSES.  
12  
13

### Subtitle

14 TO CLARIFY THE PENALTIES FOR CERTAIN  
15 OFFENSES IN THE CRIMINAL CODE; TO  
16 REORGANIZE CERTAIN CRIMINAL OFFENSES; AND  
17 TO MAKE TECHNICAL CORRECTIONS TO TITLE 5  
18 OF THE ARKANSAS CODE.  
19  
20  
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
23

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

26 (14) "Antishoplifting or inventory control device" means a mechanism  
27 or other device designed and operated for the purpose of detecting the  
28 removal from a store or business establishment or from a protected area  
29 within a store or business establishment.  
30

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

32 5-36-102. Consolidation of offenses — ~~Shoplifting presumption~~ — Theft  
33 by deception presumption at auction of livestock — Amount of theft.

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

36 (1) Larceny;



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

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

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

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

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

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

29  
30 SECTION 3. Arkansas Code § 5-36-116 is amended to read as follows:

31 *5-36-116. Shoplifting presumption – Detention and arrest of person*  
32 *under shoplifting presumption.*

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

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

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

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

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

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

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

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

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

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

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

19  
 20 SECTION 4. Arkansas Code § 5-36-115(a)-(e), concerning the offense of  
 21 theft of leased, rented, or entrusted property, is amended to read as  
 22 follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

28  
29 SECTION 5. Arkansas Code § 5-36-115, concerning the offense of theft  
30 of leased, rented, or entrusted property, is amended to add a new subsection  
31 to read as follows:

32 (g) A violation of this section is a:

33 (1) Class B felony if:

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

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

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

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

6 (2) Class C felony if:

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

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

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

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

18 (3) Class D felony if:

19 (A) The value of the property, service, or labor is five  
20 thousand dollars (\$5,000) or less but more than one thousand dollars  
21 (\$1,000);

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

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

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

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

36 (4) Class A misdemeanor if:

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

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

6  
7           SECTION 6. Arkansas Code § 5-36-123 is amended to read as follows:  
8           5-36-123. Theft of scrap metal.

9           (a) As used in this section:

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

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

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

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

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

24                           (A) Firefighting and rescue;

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

27                           (C) Law enforcement; or

28                           (D) Ambulance or emergency medical services;

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

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

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

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

9           ~~(a)(b)~~ A person commits theft of scrap metal if he or she commits,  
10 aids, or is an accomplice to a commission of theft of property under § 5-36-  
11 103(a) and the property is scrap metal.

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

15           (c) Theft of scrap metal is a:

16                 (1) Class B felony if:

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

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

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

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

27                 (2) Class C felony if:

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

30                         (B) The property is obtained by threat;

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

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



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

2 (3) Class D felony if:

3 (A) The value of the property is five thousand dollars  
4 (\$5,000) or less but more than one thousand dollars (\$1,000);

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

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

14 (4) Class A misdemeanor if:

15 (A) The value of the property is one thousand dollars  
16 (\$1,000) or less; or

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

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

25 (A) A generator intended for use by:

26 (i) A public facility;

27 (ii) A nursing home or hospital;

28 (iii) An airport;

29 (iv) A public safety device;

30 (v) A communication tower or facility;

31 (vi) A public utility;

32 (vii) A water system or sewer system;

33 (viii) A public safety agency; or

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

36 (B) Any other equipment used in the transmission of

1 electric power or telephone service.

2 (2) The penalty is enhanced as follows:

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

5 (ii) The fine is mandatory; and

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

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

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

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

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

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

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

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

26  
27 SECTION 7. Arkansas Code § 5-36-202 is amended to read as follows:

28 5-36-202. Theft of public benefits.

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

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

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

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

1 benefit; or

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

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

9 (c) Theft of public benefits is a:

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

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

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

17 (d) In addition to an extended term of imprisonment provided by § 5-4-  
18 501 for a habitual offender, any person who pleads guilty or nolo contendere  
19 to or is found guilty of violating this section shall be imprisoned:

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

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

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

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

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

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

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

34

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

1 ~~5-36-203. Penalties.~~

2 ~~Theft of public benefits is a:~~

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

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

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

10  
11 SECTION 9. Arkansas Code § 5-36-204, concerning imprisonment and fines  
12 for theft of public benefits and recodified elsewhere in this act, is  
13 repealed.

14 ~~5-36-204. Terms of imprisonment—Fines.~~

15 ~~(a) In addition to an extended term of imprisonment provided by § 5-4-~~  
16 ~~501 for a habitual offender, any person who pleads guilty or nolo contendere~~  
17 ~~or is found guilty of violating § 5-36-202(a) shall be imprisoned:~~

18 ~~(1) For no less than seven (7) days for the second offense of~~  
19 ~~any felony or misdemeanor set forth in § 5-36-203 occurring within five (5)~~  
20 ~~years of the first offense of any felony or misdemeanor set forth in § 5-36-~~  
21 ~~203;~~

22 ~~(2) For no less than ninety (90) days for a third offense of any~~  
23 ~~felony or misdemeanor set forth in § 5-36-203 occurring within five (5) years~~  
24 ~~of the first offense of any felony or misdemeanor set forth in § 5-36-203;~~  
25 ~~and~~

26 ~~(3) For at least one (1) year for a fourth or subsequent offense~~  
27 ~~of any felony or misdemeanor set forth in § 5-36-203 occurring within five~~  
28 ~~(5) years of the first offense of any felony or misdemeanor set forth in § 5-~~  
29 ~~36-203.~~

30 ~~(b) In addition to restitution, any person who pleads guilty or nolo~~  
31 ~~contendere or is found guilty of a felony or misdemeanor set forth in § 5-36-~~  
32 ~~203 shall be fined no less than:~~

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

34 ~~(2) Four hundred dollars (\$400) for a second offense occurring~~  
35 ~~within five (5) years of the first offense; and~~

36 ~~(3) Nine hundred dollars (\$900) for a third or subsequent~~

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

2  
3 SECTION 10. Arkansas Code § 5-37-302 is amended to read as follows:

4 5-37-302. Unlawful acts.

5 (a) It is unlawful for any person:

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

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

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

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

9 (b)(1) Upon a determination of guilt of a person under this section,  
10 in the event that the order, draft, check, or other form of presentment  
11 involving the transmission of account information is one thousand dollars  
12 (\$1,000) or less, the penalties shall be as follows:

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

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

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

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

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

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

1 (\$25,000) or more.

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

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

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

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

15 (A) The amount of any one (1) instrument or transaction is  
16 five thousand dollars (\$5,000) or less but more than one thousand dollars  
17 (\$1,000); or

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

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

25  
26 SECTION 11. Arkansas Code § 5-37-305 is amended to read as follows:

27 5-37-305. ~~Penalties~~ Restitution and court costs.

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

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

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

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

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

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

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

15 ~~(B) More than one (1) instrument or transaction has been~~  
16 ~~drawn within a ninety-day period, each instrument or transaction is in an~~  
17 ~~amount less than twenty-five thousand dollars (\$25,000), and the total amount~~  
18 ~~of all such instruments or transactions is twenty-five thousand dollars~~  
19 ~~(\$25,000) or more.~~

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

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

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

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

33 ~~(A) The amount of any one (1) instrument or transaction is~~  
34 ~~five thousand dollars (\$5,000) or less but more than one thousand dollars~~  
35 ~~(\$1,000); or~~

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



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

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

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

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

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

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

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

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

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

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

26 (d) The penalty for an offense under this section when based upon a  
27 prior conviction includes without limitation a felony offense involving theft  
28 of service or fraud under this subchapter or a violation of the Cable  
29 Communications Policy Act of 1984, Pub. L. No. 98-549, as in effect on March  
30 1, 2003.

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

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

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

3  
4 SECTION 13. Arkansas Code § 5-37-403, concerning the penalties for  
5 theft of communications services and recodified elsewhere in this act, is  
6 repealed.

7 ~~5-37-403. Penalties.~~

8 ~~(a)(1) Upon conviction, any person violating a provision of § 5-37-~~  
9 ~~402(a)(1) or (2) is guilty of a Class B misdemeanor.~~

10 ~~(2) Upon conviction, any person violating a provision of § 5-37-~~  
11 ~~402(a)(3)-(6) is guilty of a Class D felony.~~

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

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

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

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

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

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

31  
32 SECTION 14. Arkansas Code § 5-62-202, concerning definitions for  
33 criminal offenses involving farm animal and research facilities, is amended  
34 to add a new subdivision to read as follows:

35 (9) "Notice" means:

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

1 apparent authority to act for the owner;

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

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

7

8 SECTION 15. Arkansas Code § 5-62-203 is amended to read as follows:  
9 5-62-203. Offenses.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 notice to depart but failed to depart.

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

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

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

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

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

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

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

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

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

21  
22 SECTION 16. Arkansas Code § 5-62-204, concerning the penalties for  
23 violating certain offenses involving farm animals and research facilities and  
24 recodified elsewhere in this act, is repealed.

25 ~~5-62-204. Penalties.~~

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

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

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

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

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

1 ~~subchapter.~~

2

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

4 5-63-302. Debt adjusting – Prohibition.

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

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

9

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

12 ~~5-63-304. Debt adjusting – Penalties.~~

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

15

16 SECTION 19. Arkansas Code § 5-65-103 is amended to read as follows:

17 5-65-103. Unlawful acts.

18 (a)(1) It is unlawful and punishable as provided in this chapter for  
19 any person who is intoxicated to operate or be in actual physical control of  
20 a motor vehicle.

21 ~~(b)(2)~~ (2) It is unlawful and punishable as provided in this chapter  
22 for any person to operate or be in actual physical control of a motor vehicle  
23 if at that time the alcohol concentration in the person's breath or blood was  
24 eight-hundredths (0.08) or more based upon the definition of alcohol  
25 concentration in § 5-65-204.

26 (b)(1)(A)(i) A person who pleads guilty or nolo contendere to or is  
27 found guilty of violating this section, for a first offense is guilty of an  
28 unclassified misdemeanor and may be imprisoned for no less than twenty-four  
29 (24) hours and no more than one (1) year.

30 (ii) However, the court may order public service in  
31 lieu of jail, and in that instance the court shall include the reasons for  
32 the order of public service in lieu of jail in the court's written order or  
33 judgment.

34 (B)(i) However, if a passenger under sixteen (16) years of  
35 age was in the motor vehicle at the time of the offense, a person who pleads  
36 guilty or nolo contendere to or is found guilty of violating this section,

1 for a first offense is guilty of an unclassified misdemeanor and may be  
2 imprisoned for no fewer than seven (7) days and no more than one (1) year.

3 (ii) However, the court may order public service in  
4 lieu of jail, and in that instance the court shall include the reasons for  
5 the order of public service in lieu of jail in the court's written order or  
6 judgment.

7 (2) A person who pleads guilty or nolo contendere to or is found  
8 guilty of violating this section or any other equivalent penal law of another  
9 state or foreign jurisdiction shall be imprisoned or shall be ordered to  
10 perform public service in lieu of jail as follows:

11 (A)(i) For no fewer than seven (7) days but no more than  
12 one (1) year for the second offense occurring within five (5) years of the  
13 first offense or no fewer than thirty (30) days of community service and is  
14 guilty of an unclassified misdemeanor.

15 (ii)(a) However, if a person under sixteen (16)  
16 years of age was in the motor vehicle at the time of the offense, for no  
17 fewer than thirty (30) days but no more than one (1) year for the second  
18 offense occurring within five (5) years of the first offense or no fewer than  
19 sixty (60) days of community service and is guilty of an unclassified  
20 misdemeanor.

21 (b) If the court orders community service, the  
22 court shall clearly set forth in written findings the reasons for the order  
23 of community service;

24 (B)(i) For no fewer than ninety (90) days but no more than  
25 one (1) year for the third offense occurring within five (5) years of the  
26 first offense or no fewer than ninety (90) days of community service and is  
27 guilty of an unclassified misdemeanor.

28 (ii)(a) However, if a person under sixteen (16)  
29 years of age was in the motor vehicle at the time of the offense, for no  
30 fewer than one hundred twenty days (120) days but no more than one (1) year  
31 for the third offense occurring within five (5) years of the first offense or  
32 no fewer than one hundred twenty (120) days of community service and is  
33 guilty of an unclassified misdemeanor.

34 (b) If the court orders community service, the  
35 court shall clearly set forth in written findings the reasons for the order  
36 of community service;

1 (C)(i) For at least one (1) year but no more than six (6)  
2 years for the fourth offense occurring within five (5) years of the first  
3 offense or not less than one (1) year of community service and is guilty of  
4 an unclassified felony.

5 (ii)(a) However, if a person under sixteen (16)  
6 years of age was in the motor vehicle at the time of the offense, for at  
7 least two (2) years but no more than six (6) years for the fourth offense  
8 occurring within five (5) years of the first offense or not less than two (2)  
9 years of community service and is guilty of an unclassified felony.

10 (b) If the court orders community service, the  
11 court shall clearly set forth in written findings the reasons for the order  
12 of community service; and

13 (D)(i)(a) Except as provided in § 5-65-122, for at least  
14 two (2) years but no more than ten (10) years for the fifth or subsequent  
15 offense occurring within five (5) years of the first offense or not less than  
16 two (2) years of community service and is guilty of an unclassified felony.

17 (b) If the court orders community service, the  
18 court shall clearly set forth in written findings the reasons for the order  
19 of community service.

20 (ii)(a) However, if a person under sixteen (16)  
21 years of age was in the motor vehicle at the time of the offense, for at  
22 least three (3) years but no more than ten (10) years for the fifth offense  
23 occurring within five (5) years of the first offense or not less than three  
24 (3) years of community service and is guilty of an unclassified felony.

25 (b) If the court orders community service, the  
26 court shall clearly set forth in written findings the reasons for the order  
27 of community service.

28 (3) It is an affirmative defense to prosecution under  
29 subdivision (b)(1)(B), subdivision (b)(2)(A)(ii), subdivision (b)(2)(B)(ii),  
30 subdivision (b)(2)(C)(ii), and subdivision (b)(2)(D)(ii) of this section that  
31 the person operating or in actual physical control of the motor vehicle was  
32 not more than two (2) years older than the passenger.

33 (4) A prior conviction for § 5-10-105(a)(1)(A) or (a)(1)(B) is  
34 considered a previous offense for purposes of this subsection.

35 (c) A person who pleads guilty or nolo contendere to or is found  
36 guilty of violating this section shall be fined:

1           (1) No less than one hundred fifty dollars (\$150) and no more  
2 than one thousand dollars (\$1,000) for the first offense;

3           (2) No less than four hundred dollars (\$400) and no more than  
4 three thousand dollars (\$3,000) for the second offense occurring within five  
5 (5) years of the first offense; and

6           (3) Except as provided in § 5-65-122, no less than nine hundred  
7 dollars (\$900) and no more than five thousand dollars (\$5,000) for the third  
8 or subsequent offense occurring within five (5) years of the first offense.

9  
10           SECTION 20. Arkansas Code § 5-65-111, concerning the penalties for the  
11 offense of driving while intoxicated and recodified elsewhere in this act, is  
12 repealed.

13           ~~5-65-111. Prison terms—Exception.~~

14           ~~(a)(1)(A) Any person who pleads guilty or nolo contendere to or is~~  
15 ~~found guilty of violating § 5-65-103, for a first offense, may be imprisoned~~  
16 ~~for no less than twenty-four (24) hours and no more than one (1) year.~~

17           ~~(B) However, the court may order public service in lieu of~~  
18 ~~jail, and in that instance, the court shall include the reasons for the order~~  
19 ~~of public service in lieu of jail in the court's written order or judgment.~~

20           ~~(2)(A) However, if a passenger under sixteen (16) years of age~~  
21 ~~was in the vehicle at the time of the offense, a person who pleads guilty or~~  
22 ~~nolo contendere to or is found guilty of violating § 5-65-103, for a first~~  
23 ~~offense, may be imprisoned for no fewer than seven (7) days and no more than~~  
24 ~~one (1) year.~~

25           ~~(B) However, the court may order public service in lieu of~~  
26 ~~jail, and in that instance, the court shall include the reasons for the order~~  
27 ~~of public service in lieu of jail in the court's written order or judgment.~~

28           ~~(b) Any person who pleads guilty or nolo contendere to or is found~~  
29 ~~guilty of violating § 5-65-103 or any other equivalent penal law of another~~  
30 ~~state or foreign jurisdiction shall be imprisoned or shall be ordered to~~  
31 ~~perform public service in lieu of jail as follows:~~

32           ~~(1)(A) For no fewer than seven (7) days but no more than one (1)~~  
33 ~~year for the second offense occurring within five (5) years of the first~~  
34 ~~offense or no fewer than thirty (30) days of community service.~~

35           ~~(B)(i) However, if a person under sixteen (16) years of~~  
36 ~~age was in the vehicle at the time of the offense, for no fewer than thirty~~



1 ~~(30) days but no more than one (1) year for the second offense occurring~~  
2 ~~within five (5) years of the first offense or no fewer than sixty (60) days~~  
3 ~~of community service.~~

4 ~~(ii) If the court orders community service, the~~  
5 ~~court shall clearly set forth in written findings the reasons for the order~~  
6 ~~of community service;~~

7 ~~(2)(A) For no fewer than ninety (90) days but no more than one~~  
8 ~~(1) year for the third offense occurring within five (5) years of the first~~  
9 ~~offense or no fewer than ninety (90) days of community service.~~

10 ~~(B)(i) However, if a person under sixteen (16) years of~~  
11 ~~age was in the vehicle at the time of the offense, for no fewer than one~~  
12 ~~hundred twenty days (120) days but no more than one (1) year for the third~~  
13 ~~offense occurring within five (5) years of the first offense or no fewer than~~  
14 ~~one hundred twenty (120) days of community service.~~

15 ~~(ii) If the court orders community service, the~~  
16 ~~court shall clearly set forth in written findings the reasons for the order~~  
17 ~~of community service;~~

18 ~~(3)(A) For at least one (1) year but no more than six (6) years~~  
19 ~~for the fourth offense occurring within five (5) years of the first offense~~  
20 ~~or not less than one (1) year of community service and is guilty of a felony.~~

21 ~~(B)(i) However, if a person under sixteen (16) years of~~  
22 ~~age was in the vehicle at the time of the offense, for at least two (2) years~~  
23 ~~but no more than six (6) years for the fourth offense occurring within five~~  
24 ~~(5) years of the first offense or not less than two (2) years of community~~  
25 ~~service and is guilty of a felony.~~

26 ~~(ii) If the court orders community service, the~~  
27 ~~court shall clearly set forth in written findings the reasons for the order~~  
28 ~~of community service; and~~

29 ~~(4)(A)(i) Except as provided in § 5-65-122, for at least two (2)~~  
30 ~~years but no more than ten (10) years for the fifth or subsequent offense~~  
31 ~~occurring within five (5) years of the first offense or not less than two (2)~~  
32 ~~years of community service and is guilty of an unclassified felony.~~

33 ~~(ii) If the court orders community service, the~~  
34 ~~court shall clearly set forth in written findings the reasons for the order~~  
35 ~~of community service.~~

36 ~~(B)(i) However, if a person under sixteen (16) years of~~

1 ~~age was in the vehicle at the time of the offense, for at least three (3)~~  
2 ~~years but no more than ten (10) years for the fifth offense occurring within~~  
3 ~~five (5) years of the first offense or not less than three (3) years of~~  
4 ~~community service and is guilty of a felony.~~

5 ~~(ii) If the court orders community service, the~~  
6 ~~court shall clearly set forth in written findings the reasons for the order~~  
7 ~~of community service.~~

8 ~~(c) For any arrest or offense occurring before July 30, 1999, but that~~  
9 ~~has not reached a final disposition as to judgment in court, the offense~~  
10 ~~shall be decided under the law in effect at the time the offense occurred,~~  
11 ~~and any defendant is subject to the penalty provisions in effect at that time~~  
12 ~~and not under the provisions of this section.~~

13 ~~(d) It is an affirmative defense to prosecution under subdivisions~~  
14 ~~(a)(2), (b)(1)(B), (b)(2)(B), (b)(3)(B), and (b)(4)(B) of this section that~~  
15 ~~the person operating or in actual physical control of the motor vehicle was~~  
16 ~~not more than two (2) years older than the passenger.~~

17 ~~(e) A prior conviction for § 5-10-105(a)(1)(A) or (B) is considered a~~  
18 ~~previous offense for purposes of subsection (b) of this section.~~

19  
20 SECTION 21. Arkansas Code § 5-65-112, concerning the fines for the  
21 offense of driving while intoxicated and recodified elsewhere in this act, is  
22 repealed.

23 ~~5-65-112. Fines.~~

24 ~~Any person who pleads guilty or nolo contendere to or is found guilty~~  
25 ~~of violating § 5-65-103 shall be fined:~~

26 ~~(1) No less than one hundred fifty dollars (\$150) and no more~~  
27 ~~than one thousand dollars (\$1,000) for the first offense;~~

28 ~~(2) No less than four hundred dollars (\$400) and no more than~~  
29 ~~three thousand dollars (\$3,000) for the second offense occurring within five~~  
30 ~~(5) years of the first offense; and~~

31 ~~(3) Except as provided in § 5-65-122, no less than nine hundred~~  
32 ~~dollars (\$900) and no more than five thousand dollars (\$5,000) for the third~~  
33 ~~or subsequent offense occurring within five (5) years of the first offense.~~

34  
35 SECTION 22. Arkansas Code § 5-65-303 is amended to read as follows:

36 5-65-303. ~~Conduct proscribed~~ Unlawful acts.

1 (a)(1) It is unlawful and punishable as provided in this subchapter  
2 for any underage person to operate or be in actual physical control of a  
3 motor vehicle while under the influence of an alcoholic beverage or similar  
4 intoxicant.

5 ~~(b)(2)~~ It is unlawful and punishable as provided in this  
6 subchapter for any underage person to operate or be in actual physical  
7 control of a motor vehicle if at that time there was an alcohol concentration  
8 of two-hundredths (0.02) but less than eight-hundredths (0.08) in the  
9 underage person's breath or blood as determined by a chemical test of the  
10 underage person's blood or breath or other bodily substance.

11 (b)(1) A person who pleads guilty or nolo contendere to or is found  
12 guilty of violating this section is guilty of an unclassified misdemeanor and  
13 shall be sentenced to public service work under subsection (c) of this  
14 section and shall be fined:

15 (A) No less than one hundred dollars (\$100) and not more  
16 than five hundred dollars (\$500) for the first offense;

17 (B) No less than two hundred dollars (\$200) and not more  
18 than one thousand dollars (\$1,000) for the second offense; and

19 (C) No less than five hundred dollars (\$500) and not more  
20 than two thousand dollars (\$2,000) for the third or subsequent offense.

21 (2) For the purpose of determining an underage person's fine  
22 under this section, an underage person who has one (1) or more previous  
23 convictions or suspensions for a violation of § 5-65-103 or § 5-65-205 is  
24 deemed to have a conviction for a violation of this section for each  
25 conviction for driving while intoxicated.

26 (c)(1) A person who pleads guilty or nolo contendere to or is found  
27 guilty of violating this section shall be ordered by the court to perform  
28 public service work of the type and for the duration as deemed appropriate by  
29 the court.

30 (2) The duration of public service work shall be:

31 (A) No less than thirty (30) days for a second offense;  
32 and

33 (B) No less than sixty (60) days for a third or subsequent  
34 offense.

35  
36 SECTION 23. Arkansas Code § 5-65-305, concerning fines for underage

1 DUI and recodified elsewhere in this act, is repealed.

2 ~~5-65-305. Fines.~~

3 ~~(a) Any person who pleads guilty or nolo contendere to or is found~~  
4 ~~guilty of violating § 5-65-303 or § 5-65-310 shall be fined:~~

5 ~~(1) No less than one hundred dollars (\$100) and not more than~~  
6 ~~five hundred dollars (\$500) for the first offense;~~

7 ~~(2) No less than two hundred dollars (\$200) and not more than~~  
8 ~~one thousand dollars (\$1,000) for the second offense occurring underage; and~~

9 ~~(3) No less than five hundred dollars (\$500) and not more than~~  
10 ~~two thousand dollars (\$2,000) for the third or subsequent offense occurring~~  
11 ~~underage.~~

12 ~~(b) For the purpose of determining an underage person's fine under~~  
13 ~~this subchapter, an underage person who has one (1) or more previous~~  
14 ~~convictions or suspensions for a violation of § 5-65-103 or § 5-65-205 is~~  
15 ~~deemed to have a conviction for a violation of this subchapter for each~~  
16 ~~conviction for driving while intoxicated.~~

17  
18 SECTION 24. Arkansas Code § 5-65-306, concerning public service work  
19 as part of the sentence for underage DUI and recodified elsewhere in this  
20 act, is repealed.

21 ~~5-65-306. Public service work.~~

22 ~~(a) Any underage person who pleads guilty or nolo contendere to or is~~  
23 ~~found guilty of violating § 5-65-303 or § 5-65-310 shall be ordered by the~~  
24 ~~court to perform public service work of the type and for the duration as~~  
25 ~~deemed appropriate by the court.~~

26 ~~(b) The period of community service shall be for:~~

27 ~~(1) No less than thirty (30) days for a second offense of~~  
28 ~~violating § 5-65-303; and~~

29 ~~(2) No less than sixty (60) days for a third or subsequent~~  
30 ~~offense of violating § 5-65-303.~~

31  
32 SECTION 25. Arkansas Code § 5-65-310 is amended to read as follows:

33 5-65-310. Refusal to submit.

34 (a)(1) If an underage person under arrest refuses upon the request of  
35 a law enforcement officer to submit to a chemical test designated by the law  
36 enforcement agency, as provided in § 5-65-309, no chemical test shall be

1 given, and the underage person's driver's license shall be seized by the law  
2 enforcement officer, and the law enforcement officer shall immediately  
3 deliver to the underage person from whom the driver's license was seized a  
4 receipt for a temporary driving permit license, as provided by § 5-65-402.

5 (2) Refusal to submit to a chemical test under this subsection  
6 is a strict liability offense and is a violation pursuant to § 5-1-108.

7 (b)(1) The Office of Driver Services shall suspend or revoke the  
8 driving privileges of the arrested underage person under § 5-65-402.

9 (2) The ~~office~~ Office of Driver Services shall suspend the  
10 underage person's driving privileges as follows:

11 (A) Suspension for ninety (90) days for a first offense  
12 under this section;

13 (B) Suspension for one (1) year for a second offense under  
14 this section; and

15 (C)(i) Revocation for the third or subsequent offense  
16 occurring while the person is underage.

17 (ii) Revocation is until the underage person reaches  
18 twenty-one (21) years of age or for a period of three (3) years, whichever is  
19 longer.

20 (c) In order to determine the number of previous offenses to consider  
21 when suspending or revoking the arrested underage person's driving  
22 privileges, the ~~office~~ Office of Driver Services shall consider as a previous  
23 offense:

24 (1) Any conviction for violating ~~§ 5-65-310~~ this section; and

25 (2) Any suspension or revocation of driving privileges for an  
26 arrest for a violation of ~~§ 5-65-310~~ this section when the person was not  
27 subsequently acquitted of the criminal charge.

28 (d) In addition to any other penalty provided for in this section, if  
29 the underage person is a resident without a license or permit to operate a  
30 motor vehicle in this state:

31 (1) The ~~office~~ Office of Driver Services shall deny to that  
32 underage person the issuance of a license or permit for a period of six (6)  
33 months for a first offense; and

34 (2) For a second or subsequent offense by an underage resident  
35 without a license or permit to operate a motor vehicle, the ~~office~~ Office of  
36 Driver Services shall deny to that underage person the issuance of a license

1 or permit for a period of one (1) year.

2 (e) When an underage nonresident's privilege to operate a motor  
3 vehicle in this state has been suspended, the ~~office~~ Office of Driver  
4 Services shall notify the office of issuance of that underage person's  
5 nonresident motor vehicle license of action taken by the ~~office~~ Office of  
6 Driver Services.

7 (f)(1)(A) The ~~office~~ Office of Driver Services shall charge a  
8 reinstatement fee to be calculated as provided under subdivision (f)(1)(B) of  
9 this section for reinstating a driver's license suspended or revoked for a  
10 violation of this section.

11 (B) The reinstatement fee is calculated by multiplying  
12 twenty-five dollars (\$25.00) by the number of offenses resulting in an  
13 administrative suspension order under ~~§ 5-65-310~~ this section unless the  
14 administrative suspension order has been removed because:

15 (i) The person has been found not guilty of the  
16 offense by a circuit court or district court; or

17 (ii) The ~~office~~ Office of Driver Services has  
18 entered an administrative suspension order.

19 (C) The fee under subdivision (f)(1)(A) of this section is  
20 supplemental to and in addition to any fee imposed by § 5-65-119, § 5-65-304,  
21 § 27-16-508, or § 27-16-808.

22 (2) Forty percent (40%) of the revenues derived from the  
23 reinstatement fee under this subsection shall be deposited into the State  
24 Treasury as special revenues and credited to the Public Health Fund to be  
25 used exclusively for the Blood Alcohol Program of the Office of Alcohol  
26 Testing of the Department of Health.

27

28 SECTION 26. Arkansas Code § 5-65-402(a)(8)(D)(i)(b), concerning the  
29 surrender of a driver's license to an officer, is amended to read as follows:

30 (b) The person's blood alcohol concentration  
31 measured by weight of alcohol in the person's blood was equal to or greater  
32 than the blood alcohol concentration prohibited by ~~§ 5-65-103(b)~~ § 5-65-  
33 103(a)(2);

34

35 SECTION 27. Arkansas Code § 5-68-502 is amended to read as follows:

36 5-68-502. ~~Unlawful acts~~ Selling, loaning, or displaying pornography to

1 minors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35

36 SECTION 28. Arkansas Code § 5-68-503, concerning the penalties for

1 selling or loaning pornography to minors and recodified elsewhere in this  
2 act, is repealed.

3 ~~5-68-503. Penalties.~~

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

6  
7 SECTION 29. Arkansas Code § 5-76-107 is amended to read as follows:  
8 5-76-107. Unlawful acts by underage operator.

9 (a) ~~No~~ An underage person shall not operate any motorboat on the  
10 waters of this state while:

11 (1) Intoxicated; or

12 (2) There is an alcohol concentration in the underage person's  
13 breath or blood of two-hundredths (0.02) but less than eight-hundredths  
14 (0.08) based upon the definition of breath, blood, and urine concentration in  
15 § 5-65-204.

16 (b)(1) A certified law enforcement officer may test an underage person  
17 who operates a motorboat using a portable breath-testing instrument or other  
18 approved method to determine if the underage person may be operating a  
19 motorboat or device in violation of this section only if the certified law  
20 enforcement officer has probable cause to believe that:

21 (A) The underage person is operating the motorboat while  
22 intoxicated; or

23 (B) The underage person is operating the motorboat while  
24 there is an alcohol concentration of two-hundredths (0.02) but less than  
25 eight-hundredths (0.08) in the underage person's breath or blood.

26 (2) The consumption of alcohol or the possession of an open  
27 container of an alcoholic beverage aboard a vessel does not alone constitute  
28 probable cause.

29 (c)(1) A person who pleads guilty or nolo contendere to or is found  
30 guilty of violating this section is guilty of a violation and shall be fined  
31 not less than:

32 (A) One hundred dollars (\$100) and not more than five  
33 hundred dollars (\$500) for the first offense;

34 (B) Two hundred dollars (\$200) and not more than one  
35 thousand dollars (\$1,000) for the second offense; and

36 (C) Five hundred dollars (\$500) and not more than two



1 thousand dollars (\$2,000) for the third or subsequent offense.

2 (2) For the purpose of determining the amount of a fine under  
3 this section, an underage person who has one (1) or more previous convictions  
4 for a violation of § 5-76-102 is deemed to have a conviction for a violation  
5 of § 5-76-107 for each conviction for a violation of § 5-76-102.

6  
7 SECTION 30. Arkansas Code § 5-76-108, concerning fines for underage  
8 operation of a motorboat while intoxicated and recodified elsewhere in this  
9 act, is repealed.

10 ~~5-76-108. Fines for violating § 5-76-107.~~

11 ~~(a) Any person who pleads guilty or nolo contendere to or is found~~  
12 ~~guilty of violating § 5-76-107 shall be fined not less than:~~

13 ~~(1) One hundred dollars (\$100) and not more than five hundred~~  
14 ~~dollars (\$500) for the first offense;~~

15 ~~(2) Two hundred dollars (\$200) and not more than one thousand~~  
16 ~~dollars (\$1,000) for the second offense; and~~

17 ~~(3) Five hundred dollars (\$500) and not more than two thousand~~  
18 ~~dollars (\$2,000) for the third or subsequent offense.~~

19 ~~(b) For the purpose of determining the amount of a fine under this~~  
20 ~~section, an underage person who has one (1) or more previous convictions for~~  
21 ~~a violation of § 5-76-102 is deemed to have a conviction for a violation of §~~  
22 ~~5-76-107 for each conviction for a violation of § 5-76-102.~~

23  
24 SECTION 31. Arkansas Code § 6-17-414(b)(29), concerning offenses which  
25 will make a person ineligible to be employed by a educational entity, is  
26 amended to read as follows:

27 (29) Felony theft as prohibited in §§ 5-36-103 – 5-36-106 and §  
28 ~~5-36-203~~ 5-36-202;

29  
30 SECTION 32. Arkansas Code § 20-13-1106(b)(32), concerning  
31 disqualifying offenses for certification or recertification by the Division  
32 of EMS and Trauma Systems of the Department of Health, is amended to read as  
33 follows:

34 (32) Fourth or subsequent driving while intoxicated violations  
35 that constitute felony offenses under ~~§ 5-65-111(b)(3) and (4)~~ § 5-65-  
36 103(b)(2)(C) and (D);

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*/s/D. Johnson*