

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**

A Bill

ACT 547 OF 1995
SENATE BILL 431

4 **By: Committee on Public Health, Welfare, and Labor**

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For An Act To Be Entitled

8 "AN ACT TO AMEND VARIOUS SECTIONS OF TITLE 8, CHAPTER 6
9 ARKANSAS CODE ANNOTATED TO MAKE TECHNICAL CORRECTIONS; TO
10 CHANGE THE DEFINITION OF SOLID WASTE; TO AMEND THIRD PARTY
11 VIOLATOR EXCLUSION; TO DELETE FINANCIAL ASSURANCE
12 PROVISIONS; TO CLARIFY YARD WASTE MANAGEMENT; AND FOR
13 OTHER PURPOSES."

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Subtitle

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"TO AMEND VARIOUS SECTIONS OF TITLE 8,
CHAPTER 6 OF ARKANSAS CODE ANNOTATED"

18

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

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21 SECTION 1. Arkansas Code Annotated § 8-6-203 is hereby amended to read
22 as follows:

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"8-6-203. Definitions.

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As used in this subchapter, unless the context otherwise requires:

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(1) Commission means the Arkansas Pollution Control and Ecology

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Commission;

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(2) Department means the Department of Pollution Control and Ecology;

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(3) Disposal site means any place at which solid waste is dumped,

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abandoned, or accepted or disposed of for final disposition by incineration,

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landfilling, composting, or any other method;

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(4) Municipality means a city of the first class, a city of the

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second class, or an incorporated town;

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(5) Person means any individual, corporation, company, firm,

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partnership, association, trust, state agency, government instrumentality or

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agency, institution, county, city, town, municipal authority or trust,

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venture, or other legal entity, however organized;

1 (6) Solid waste means any garbage, or refuse, sludge from a
2 wastewater treatment plant, water supply treatment plant, or air pollution
3 control facility and other discarded material, including solid, liquid,
4 semi-solid, or contained gaseous material resulting from industrial,
5 commercial, mining, and agricultural operations, and from community
6 activities, but does not include solid or dissolved materials in domestic
7 sewage, or solid or dissolved materials in irrigation return flows or
8 industrial discharges that are point sources subject to permit under 33 U.S.C.
9 1342, or source, special nuclear, or by-products material as defined by the
10 Atomic Energy Act of 1954, as amended (68 Stat. 923);

11 (7) Solid waste board or board means a regional solid waste
12 planning board or a solid waste service area board, or its successor, created
13 under § 8-6-701 et seq.;

14 (8) Solid waste management system means the entire process of source
15 reduction, storage, collection, transportation, processing, waste
16 minimization, recycling, and disposal of solid wastes by any person engaging
17 in the process as a business or by any municipality, authority, trust, county,
18 or by any combination thereof; and

19 (9) Transfer station means a facility that is used to manage the
20 removal, compaction, and transfer of solid waste from collection vehicles and
21 other small vehicles to greater capacity transport vehicles."
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23 SECTION 2. Arkansas Code Annotated § 8-6-204 is hereby amended to read
24 as follows:

25 "8-6-204. Criminal, civil, and administrative penalties.

26 (a) Criminal Penalties.

27 (1) (A) Any person who violates any provision of this subchapter,
28 who commits any unlawful act under it, or who violates any rule, regulation,
29 or order of the commission or department shall be guilty of a misdemeanor.

30 (B) Notwithstanding any other provisions of Arkansas law,
31 upon conviction that person shall be subject to imprisonment for not more than
32 one (1) year or a fine of not more than twenty-five thousand dollars
33 (\$25,000), or subject to both such fine and imprisonment. For the purpose of
34 fines only, each day or part of a day during which the violation is continued
35 or repeated shall constitute a separate offense.

1 (2) (A) It shall be illegal for a person to:

2 (i) Violate any provision of this subchapter, commit
3 any unlawful act under it, or violate any rule, regulation, or order of the
4 commission or department, and leave the state or remove his person from the
5 jurisdiction of this state;

6 (ii) Through the course of activities prohibited by
7 this section, commit a violation of § 8-4-103(a) (2) (A) (i); or

8 (iii) Purposely or knowingly make any false
9 statement, representation, or certification in any document required to be
10 maintained under this chapter, or falsify, tamper with, or render inaccurate
11 any monitoring device, testing method, or record required to be maintained
12 under this chapter.

13 (B) (i) A person who violates this subdivision (2) shall be
14 guilty of a felony.

15 (ii) Notwithstanding any other provisions of Arkansas
16 law, upon conviction that person shall be subject to imprisonment for not more
17 than five (5) years or a fine of not more than fifty thousand dollars
18 (\$50,000), or subject to both such fine and imprisonment. For the purpose of
19 fines only, each day or part of a day during which the violation is continued
20 or repeated shall constitute a separate offense.

21 (3) Notwithstanding the limits on fines set in subdivisions
22 (a) (1) and (2) of this section, if a person convicted under any of those
23 subdivisions has derived or will derive pecuniary gain from commission of the
24 offenses, then he may be sentenced to pay a fine not to exceed twice the
25 amount of the pecuniary gain.

26 (b) Civil Penalties. The department is authorized to institute a civil
27 action in any court of competent jurisdiction to accomplish any or all of the
28 following:

29 (1) Restrain any violation of, or compel compliance with, the
30 provisions of this subchapter and of any rules, regulations, orders, permits,
31 licenses, or plans issued pursuant thereto;

32 (2) Affirmatively order that remedial measures be taken as may be
33 necessary or appropriate to implement or effectuate the purposes and intent of
34 this subchapter;

35 (3) Recover all costs, expenses, and damages to the department

1 and any other agency or subdivision of the state in enforcing or effectuating
2 the provisions of this subchapter, including natural resource damages;

3 (4) Assess civil penalties in an amount not to exceed ten
4 thousand dollars (\$10,000) per day for violations of this subchapter and of
5 any rules, regulations, permits, or plans issued pursuant thereto; or

6 (5) Recover civil penalties assessed pursuant to subsection (c)
7 of this section.

8 (c) Any person who violates any provision of this subchapter and
9 regulations, rules, permits, or plans issued pursuant thereto may be assessed
10 an administrative civil penalty not to exceed ten thousand dollars (\$10,000)
11 per violation. Each day of a continuing violation may be deemed a separate
12 violation for purposes of penalty assessment. No civil penalty may be
13 assessed until the person charged with the violation has been given the
14 opportunity for a hearing in accordance with regulations adopted by the
15 commission. All hearings and appeals arising under this subchapter shall be
16 conducted in accordance with the procedures prescribed by §§ 8-4-205, 8-4-212,
17 and 8-4-218 - 8-4-229. These administrative procedures may also be used to
18 recover all costs, expenses, and damages to the department and any other
19 agency or subdivision of the state in enforcing or effectuating the provisions
20 of this subchapter, including natural resource damages.

21 (d) As an alternative to the limits on civil penalties set in
22 subsections (b) and (c) of this section, if a person found liable in actions
23 brought under any of those subsections has derived pecuniary gain from
24 commission of the offenses, then he may be ordered to pay a civil penalty
25 equal to the amount of the pecuniary gain.

26 (e)(1) All moneys collected as reimbursement for expenses, costs, and
27 damages to the department shall be deposited in the operating fund of the
28 department.

29 (2) All moneys collected as civil penalties pursuant to this
30 section shall be deposited in the Emergency Response Fund as provided by
31 § 8-7-410.

32 (3)(A) The director, in his discretion, may accept in-kind
33 services as partial mitigation of cash penalties for use in projects or
34 programs designed to advance environmental interests.

35 (B) The violator may provide in-kind services as directed

1 by the department by utilizing the violator's own expertise, by hiring and
2 compensating subcontractors to perform the services, or by other financial
3 arrangements in which the violator retains no monetary benefit, however
4 remote.

5 (C) The services shall not duplicate or augment services
6 already provided by the department through appropriations of the General
7 Assembly.

8 (4) All moneys collected to cover the costs, expenses, or damages
9 of other agencies or subdivisions of the state, including natural resource
10 damages, shall be distributed to the appropriate governmental entity.

11 (f) The culpable mental states referenced throughout this section shall
12 have the definitions set out in § 5-2-202.

13 (g) Solicitation or conspiracy, as defined by subchapters 3 and 4 of
14 chapter 3 of the Arkansas Criminal Code, to commit any criminal act proscribed
15 by this section and §§ 8-4-103 and 8-7-204 shall be punishable as follows:

16 (1) Any solicitation or conspiracy to commit an offense under
17 this section which is a misdemeanor shall be a misdemeanor subject to fines
18 not to exceed fifteen thousand dollars (\$15,000) per day of violation or
19 imprisonment for more than six (6) months, or both such fine and imprisonment.

20 (2) Any solicitation or conspiracy to commit an offense under
21 this section which is a felony subject to fines of fifty thousand dollars
22 (\$50,000) per day or imprisonment up to five (5) years shall be a felony
23 subject to fines up to thirty-five thousand dollars (\$35,000) per day or
24 imprisonment up to two (2) years, or both such fine and imprisonment.

25 (3) Any solicitation or conspiracy to commit an offense under
26 this section which is a felony subject to fines of one hundred thousand
27 dollars (\$100,000) per day or imprisonment up to ten (10) years shall be a
28 felony subject to fines up to seventy-five thousand dollars (\$75,000) per day
29 or imprisonment up to seven (7) years, or both such fine and imprisonment.

30 (4) Any solicitation or conspiracy to commit an offense under
31 this section which is a felony subject to fines of two hundred fifty thousand
32 dollars (\$250,000) per day or imprisonment up to twenty (20) years shall be a
33 felony subject to fines up to one hundred fifty thousand dollars (\$150,000)
34 per day or imprisonment up to fifteen (15) years, or both such fine and
35 imprisonment.

1 (h) In cases considering suspension of sentence or probation, efforts
2 or commitments by the defendant to remediate any adverse environmental effects
3 caused by his activities may be considered by the court to be restitution as
4 contemplated by § 5-4-301.

5 (i) A business organization, its agents or officers, may be found
6 liable under this section in accordance with the standards set forth in
7 § 5-2-501 et seq., and sentenced to pay fines in accordance with the
8 provisions of § 5-4-201(d) and (e)."

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10 SECTION 3. Arkansas Code Annotated § 8-6-205 is hereby amended to read
11 as follows:

12 "8-6-205. Illegal actions - Rebuttable presumption - Acts or omissions
13 by third party.

14 (a) It shall be illegal for any person:

15 (1) To violate any provision of this subchapter or any rule,
16 regulation, or order of the Arkansas Pollution Control and Ecology Commission
17 issued pursuant to this subchapter;

18 (2) To construct, install, alter, modify, use, or operate any
19 solid waste processing or disposal facility or disposal site without a permit
20 from the department;

21 (3) To dispose of solid wastes at any disposal site or facility
22 other than a disposal site or facility for which a permit has been issued by
23 the department. However, no provision of this subchapter shall be construed
24 so as to prevent an individual from disposing of solid wastes resulting from
25 his own household activities on his own land, if the disposal does not create
26 a public or private nuisance or a hazard to health and does not violate a city
27 ordinance or other law and does not involve the open dumping of garbage;

28 (4) To dump, deposit, throw, or in any manner leave or abandon
29 any solid wastes, including, but not limited to, garbage, tin cans, bottles,
30 rubbish, refuse, or trash upon property owned by another person without the
31 written permission of the owner or occupant of the property or upon any public
32 highway, street, road, public park or recreation area, or any other public
33 property except as designated for disposal of waste;

34 (5) To sort, collect, transport, process, or dispose of solid
35 waste contrary to the rules, regulations, or orders of the department or in

1 such a manner or place as to create or be likely to create a public nuisance
2 or a public health hazard or to cause or be likely to cause water or air
3 pollution within the meaning of the Arkansas Water and Air Pollution Control
4 Act, § 8-4-101 et seq.

5 (b) There is hereby created a rebuttable presumption that shall arise
6 in any administrative, civil, or criminal actions under this subchapter, to
7 the effect that, if it can be proved that two (2) or more items of solid waste
8 bear the name or names of one (1) or more persons in such a form as to
9 indicate that the person or persons are or were the owners of those items and
10 those items were unlawfully disposed of, then the person or persons are
11 presumed to have committed the unlawful act of disposal.

12 (c) No person shall be liable for any violation of this subchapter, or
13 of any rule, regulation, or order of the Arkansas Pollution Control and
14 Ecology Commission issued pursuant to this subchapter, if the violation
15 results solely from the act or omission of a third party unless the person has
16 knowingly allowed the violation to occur through acquiescence, acts and/or
17 omissions.

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19 SECTION 4. Arkansas Code Annotated § 8-6-211(a) is hereby amended to
20 read as follows:

21 "(a) All municipalities shall provide a solid waste management system
22 which will adequately provide for the collection and disposal of all solid
23 wastes generated or existing within the incorporated limits of the
24 municipality or in the area to be served and in accordance with the rules,
25 regulations, and orders of the Arkansas Pollution Control and Ecology
26 Commission. The governing body of the municipality may enter into agreements
27 with one (1) or more other municipalities, counties, a regional solid waste
28 management district, with private persons or trusts, or with any combination
29 thereof, to provide a solid waste management system, or any part of a system,
30 for the municipality, but the agreement shall not relieve the parties of their
31 responsibilities under this subchapter."

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33 SECTION 5. Arkansas Code Annotated § 8-6-212(a) is hereby amended to
34 read as follows:

35 "(a) (1) Each county of the state is authorized to provide, and shall

1 provide a solid waste management system adequate to collect and dispose of all
2 solid wastes generated or existing within the boundaries of the county and
3 outside the corporate limits of any municipality in the county.

4 (2) By agreement or contractual arrangement the county may assume
5 responsibility for solid wastes generated within municipalities whether within
6 its county or other counties.

7 (3) A county may enter into agreements with other counties, one
8 (1) or more municipalities, a regional solid waste management district, or
9 governmental agencies, with private persons, trusts, or with any combination
10 thereof, to provide a solid waste management system for the county or any
11 portion thereof, but the agreement shall not relieve the parties to the
12 agreement of their responsibilities under this subchapter."

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14 SECTION 6. Arkansas Code Annotated § 8-6-220 is hereby amended to read
15 as follows:

16 "8-6-220. Yard waste.

17 (a) It is established by this section that it is illegal for any yard
18 waste to be placed in a solid waste management facility solely for the purpose
19 of disposal, except for fugitive amounts of such yard waste.

20 (b) In addition to composting requirements for regional solid waste
21 management districts set forth in Arkansas Code Annotated § 8-6-719, each
22 district shall furnish yard waste reduction or usage and/or opportunities to
23 ensure that its residents are provided with the availability to choose, based
24 upon need by population and/or area, ways and means of usage, reduction,
25 reuse, and/or composting of yard waste. Such choices of yard waste reduction
26 and/or usage shall be submitted to the department for approval and shall
27 become an integral part of the district's solid waste management plan.

28 (c) For purposes of this section, yard waste means grass clippings,
29 leaves, and shrubbery trimmings.

30 (d) For purposes of this section, fugitive amounts of yard waste
31 means small quantities that escape the approved methods of usage, reduction,
32 reuse, or composting of yard waste."

33

34 SECTION 7. All provisions of this act of a general and permanent nature
35 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code

1 Revision Commission shall incorporate the same in the Code.

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3 SECTION 8. If any provision of this act or the application thereof to
4 any person or circumstance is held invalid, such invalidity shall not affect
5 other provisions or applications of the act which can be given effect without
6 the invalid provision or application, and to this end the provisions of this
7 act are declared to be severable.

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9 SECTION 9. Arkansas Code Annotated 8-6-213 is hereby repealed and all
10 other laws and parts of laws in conflict with this act are hereby repealed.

11 */s/Bookout*

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13 APPROVED: 3-8-95

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