

1 State of Arkansas *As Engrossed: S3/16/17 S3/22/17*

2 91st General Assembly

# A Bill

3 Regular Session, 2017

HOUSE BILL 1554

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

7 By: Senators Irvin, Standridge

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## For An Act To Be Entitled

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

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## Subtitle

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

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

29

30 SECTION 1. Arkansas Code § 5-5-201 is amended to read as follows:

31 5-5-201. Forfeiture requirement – Exceptions.

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

35 (1) A burglary;

36 (2) A robbery;



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

4 (b) However:

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

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

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

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

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

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

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

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

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

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

35 (E) A tool or other implement.

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

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

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

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

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

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

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

21  
 22 SECTION 3. Arkansas Code § 5-39-203 is amended to read as follows:

23 5-39-203. Criminal trespass.

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

26 (1) A vehicle of another person; or

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

28 (b) Criminal trespass is a:

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

31 (2) Class A misdemeanor if:

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

34 (i) A killing device;

35 (ii) A harvesting device;

36 (iii) A device primarily used for the location and

1 unearthing of buried or submerged artifacts; or

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

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

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

10 ~~(1)~~(2) Class B misdemeanor if:

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

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

15 ~~(2)~~(3) Class C misdemeanor if otherwise committed.

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

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

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

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

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

22 or

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

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

28 (1) A law enforcement officer;

29 (2) A firefighter;

30 (3) An emergency first responder;

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

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

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

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

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

9 (B) Either:

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

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

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

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

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

24  
 25 SECTION 4. Arkansas Code § 5-39-305 is amended to read as follows:

26 5-39-305. Criminal trespass on ~~land~~ premises located in unincorporated  
 27 area.

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

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

34 seq.

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

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

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

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

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

9 (2) Class A misdemeanor if:

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

13 (i) A killing device;

14 (ii) A harvesting device;

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

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

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

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

25 (2) Class B misdemeanor if:

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

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

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

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

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

34 ~~(2)(1) The person was a guest or invitee;~~

35 ~~(3)(2) The person was required to enter upon the premises of~~  
36 ~~another the other person for a business reason or for health and safety~~

1 reasons;

2 ~~(4)(3)~~ The person was authorized by law to enter upon the ~~land~~  
3 premises; ~~or~~

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

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

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

10 (1) public Public land;

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

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

15 (A) A law enforcement officer;

16 (B) A firefighter;

17 (C) An emergency first responder;

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

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

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

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

32 (B) Either:

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

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

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

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

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/s/Drown

**APPROVED: 04/04/2017**