

INTERIM STUDY PROPOSAL 2015-029

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

**A Bill**

HOUSE BILL 1564

4 By: Representative C. Fite

5  
6 Filed with: House Committee on Agriculture, Forestry, and Economic Development  
7 pursuant to A.C.A. §10-3-217.  
8

**For An Act To Be Entitled**

9  
10 AN ACT TO ENCOURAGE BEAUTIFICATION OF PUBLIC AND  
11 PRIVATE PROPERTY BY ENCOURAGING THE INVESTIGATION AND  
12 PROSECUTION OF PERSONS ENGAGING IN ILLEGAL DUMPING;  
13 AND FOR OTHER PURPOSES.  
14

**Subtitle**

15  
16 TO ENCOURAGE BEAUTIFICATION OF PUBLIC AND  
17 PRIVATE PROPERTY BY ENCOURAGING THE  
18 INVESTIGATION AND PROSECUTION OF PERSONS  
19 ENGAGING IN ILLEGAL DUMPING.  
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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25 SECTION 1. Arkansas Code § 8-6-506 is amended to read as follows:  
26 8-6-506. Criminal, civil, and administrative penalties.

27 (a) In addition to the proceedings described in § 8-6-505, ~~every a~~  
28 ~~person convicted of a violation of this subchapter shall be is~~ subject to ~~the~~  
29 ~~criminal, civil, or administrative penalties as specified in~~ penalties under  
30 this section and civil and administrative penalties under § 8-6-204.

31 (b)(1) A person that violates this subchapter or a rule, regulation,  
32 or order promulgated under this subchapter by the Arkansas Pollution Control  
33 and Ecology Commission or the Arkansas Department of Environmental Quality  
34 upon conviction is guilty of an unclassified misdemeanor with the following  
35 penalties:

36 (A) Imprisonment for not more than one (1) year;

1                   (B) A fine of not less than two thousand dollars (\$2,000)  
2 but not more than twenty-five thousand dollars (\$25,000); or

3                   (C) Both imprisonment and a fine.

4                   (2)(A) A person convicted under subdivision (b)(1) of this  
5 section is subject to restitution to a state agency with environmental  
6 regulation and enforcement authority, local law enforcement agency, person,  
7 or other entity in an amount equal to all costs, expenses, and damages  
8 incurred in the investigation, remediation, and prosecution of the offense.

9                   (B) Restitution as required by subdivision (b)(2)(A) of  
10 this section is mandatory and may not be waived by the sentencing court.

11                   (C)(i) An order of restitution under this subsection shall  
12 be supported by testimony and other evidence provided by the prosecution  
13 during the sentencing phase of the trial, and the amount ordered shall be set  
14 by the finder of fact.

15                   (ii) Testimony and evidence may be offered at the  
16 option of the defendant as mitigating evidence regarding an order of  
17 restitution.

18                   (D)(i) Restitution ordered under this subsection that has  
19 been paid shall be credited to any civil penalty or administrative penalty  
20 assessed under this section.

21                   (ii) Restitution that has been ordered but not yet  
22 paid may be credited to a civil penalty or administrative penalty assessed  
23 under this section.

24                   (c)(1) A person that violates this subchapter or a rule, regulation,  
25 or order promulgated under this subchapter by the commission or the  
26 department upon conviction is guilty of an unclassified felony if:

27                   (A) After violating this subchapter, the person leaves the  
28 state or removes his or her person from the jurisdiction of this state for  
29 the purpose of avoiding prosecution;

30                   (B) The person recklessly causes pollution of the waters  
31 or air of the state in a manner not otherwise permitted by law and thereby  
32 creates a substantial likelihood of adversely affecting human health, animal  
33 or plant life, or property; or

34                   (C) The person knowingly makes a false statement,  
35 representation, or certification in any document required to be maintained  
36 under this subchapter or falsifies, tampers with, or renders inaccurate a

1 monitoring device, testing method, or record required to be maintained under  
2 this subchapter.

3 (2) An unclassified felony under subdivision (c)(1) of this  
4 section has the following penalties:

5 (A) Imprisonment for not more than five (5) years;

6 (B) A fine of not less than two thousand dollars (\$2,000)  
7 but not more than fifty thousand dollars (\$50,000); or

8 (C) Both imprisonment and a fine.

9 (3)(A) A person convicted under subdivision (c)(1) of this  
10 section is subject to restitution to a state agency with environmental  
11 regulation and enforcement authority, local law enforcement agency, person,  
12 or other entity in an amount equal to all costs, expenses, and damages  
13 incurred in the investigation, remediation, and prosecution of the offense.

14 (B) Restitution as required by subdivision (c)(3)(A) of  
15 this section is mandatory and may not be waived by the sentencing court.

16 (C)(i) An order of restitution under this subsection shall  
17 be supported by testimony and other evidence provided by the prosecution  
18 during the sentencing phase of the trial, and the amount ordered shall be set  
19 by the finder of fact.

20 (ii) Testimony and evidence may be offered at the  
21 option of the defendant as mitigating evidence regarding an order of  
22 restitution.

23 (D)(i) Restitution ordered under this subsection that has  
24 been paid shall be credited to any civil damage award or administrative  
25 penalty assessed under this section.

26 (ii) Restitution that has been ordered but not yet  
27 paid may be credited to a civil damage award or administrative penalty  
28 assessed under this section.

29 (d)(1) For the purpose of the assessment of fines under subsections  
30 (b) and (c) of this section, each day or part of a day during which the  
31 violation is continued or repeated constitutes a separate offense.

32 (2) If it is shown that a person has derived or will derive  
33 pecuniary gain from the commission of an offense under this subchapter, then  
34 the person may be sentenced to pay a fine not to exceed two (2) times the  
35 amount of the pecuniary gain.

1           (e)(1) A person that knowingly solicits or conspires with another  
2 person to commit an offense under this subchapter shall be subject to one-  
3 half (1/2) of the sentence for which the person would have been criminally  
4 liable if the person had been a principal offender.

5           (2) As used in this section:

6                   (A) "Conspires" means the same as criminal conspiracy as  
7 defined under § 5-3-401 et seq.; and

8                   (B) "Solicits" means the same as criminal solicitation as  
9 defined under § 5-3-301 et seq.

10           (f) In a case considering suspension of sentence or probation, efforts  
11 or commitments by the defendant to remediate any adverse environmental  
12 effects caused by the defendant's activities may be considered by the court  
13 to be restitution as contemplated by § 5-4-301(b)(4).

14           (g) A business organization and its agents or officers may be found  
15 criminally liable under this section under the standards set forth in § 5-2-  
16 501 et seq. and sentenced to pay fines under § 5-4-201(d) and (e).

17           (h) Money collected as restitution or reimbursement for expenses,  
18 costs, or damages to the department under this section shall be deposited  
19 into the Hazardous Substance Remedial Action Trust Fund, § 8-7-509.

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23 Referred by the Arkansas House of Representatives

24 Prepared by: VJF  
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