

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 84th General Assembly  
3 Regular Session, 2003  
4

# A Bill

HOUSE BILL 1272

5 By: Representative Oglesby  
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7

## For An Act To Be Entitled

9 AN ACT TO MAKE A PERSON FAILING TO PROPERLY  
10 EXECUTE A WRIT LIABLE ONLY FOR WILLFUL  
11 VIOLATIONS; AND FOR OTHER PURPOSES.  
12

## Subtitle

13 AN ACT TO MAKE A PERSON FAILING TO  
14 PROPERLY EXECUTE A WRIT LIABLE ONLY FOR  
15 WILLFUL VIOLATIONS.  
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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21 SECTION 1. Arkansas Code § 16-65-202 is amended to read as follows:

22 16-65-202. Judgments against officers or securities on defaults.

23 (a)(1) Judgment shall be rendered, summarily, against the persons and  
24 their securities and for the defaults stated in subsections (b), (c), and (d)  
25 of this section.

26 (2) The motion may be made by the party aggrieved or his legal  
27 representatives against the person in default and his securities upon his  
28 official bond.

29 (3) Judgment shall be rendered against such of the parties,  
30 whether principal or surety, as may have received notice of the intended  
31 motion.

32 (b) Judgments shall be rendered for the plaintiffs in the following  
33 cases against the sheriff, coroner, or constable receiving or executing the  
34 writ:

35 (1) For willfully failing to return an execution; the amount of  
36 the judgment on which it was issued including all the costs and ten percent



1 (10%) thereon;

2 (2) For willfully failing to pay over money collected upon an  
 3 execution, on demand of the plaintiff, his agent, or attorney; judgment for  
 4 the amount so collected, and ten percent (10%) per month damages, from the  
 5 time such demand was made;

6 (3) For willfully failing to make the money on an execution,  
 7 which, by due diligence, could have been made; judgment for the amount of the  
 8 execution, interest, costs, and ten percent (10%) damages. However, the  
 9 sheriff or other officer shall have the same defenses, with regard to  
 10 property, the title to which is contested, that now exist by law;

11 (4) For willfully making a false return upon an execution;  
 12 judgment for the amount of the execution, interest, and costs, and ten  
 13 percent (10%) damages thereon;

14 (5) For willfully failing to endorse on an execution the true  
 15 date of its delivery to him; judgment for twenty percent (20%) on the amount  
 16 of the execution, and the officer shall also be responsible for any injury or  
 17 loss which may arise from the omission;

18 (6) For willfully failing to execute a summons, attachment, or  
 19 other mesne process, which, by due diligence, could have been executed;  
 20 judgment for a sum not less than fifty dollars (\$50.00) nor more than five  
 21 hundred dollars (\$500) to be ascertained by a jury, and this remedy shall not  
 22 preclude the party injured from a resort to other legal means of redress;

23 (7) For willfully failing to pay, on demand, to the party or  
 24 officer entitled to receive the same, all money received by him in his  
 25 official capacity, and which it is, by law, his duty to pay over, whether it  
 26 is for fines, forfeitures, costs, or other indebtedness; judgment in favor of  
 27 the party or officer, as the case may be, for the amount for which he is  
 28 liable, and ten percent (10%) per month thereon from the time the money  
 29 should have been paid, until paid.

30 (c) Judgment shall, in the manner prescribed in subsection (a) of this  
 31 section, be rendered in favor of the defendant, against the officers and  
 32 their securities named in that subsection, on the notice therein specified:

33 (1) For willfully failing to pay over, on demand, any excess of  
 34 money which may remain upon a sale by execution, after the satisfaction  
 35 thereof, and the costs; judgment for the amount of such excess, and five  
 36 percent (5%) per month after demand;

1 (2) For willfully failing to return an execution, wholly or  
2 partially satisfied; twenty-five percent (25%) on the amount paid;

3 (3) For willfully failing to pay over, on demand, money paid or  
4 collected on an execution, the whole, or any part of which, is enjoined in  
5 chancery, or the judgment on which the execution issued, has, in any manner,  
6 been reversed or set aside, or the execution superseded, or quashed; judgment  
7 for the amount and five percent (5%) per month on the amount, from the time  
8 the execution was returnable.

9 (d) Judgment shall be rendered against the clerk of the circuit court  
10 and his sureties, in the manner prescribed in subsection (a), upon the notice  
11 prescribed and shall be rendered in favor of the plaintiff:

12 (1) For willfully failing to issue an execution upon a forfeited  
13 delivery bond, within five (5) days after the return thereof to his office by  
14 the proper officer; twenty-five percent (25%) on the amount of the debt;

15 (2) For willfully failing to issue execution upon any judgment,  
16 order, or decree in his office, on request of the party interested, his  
17 agent, or attorney; twenty-five percent (25%) on the amount of the judgment;

18 (3) For willfully failing to issue an attachment, summons, or  
19 other mesne process, which the party applying may be entitled to have issued;  
20 judgment for a sum not less than fifty dollars (\$50.00) nor more than five  
21 hundred dollars (\$500), to be ascertained by a jury. This remedy is not to  
22 preclude the party injured from a resort to other legal means of redress.

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