

State of Arkansas
87th General Assembly
Regular Session, 2009

A Bill

SENATE BILL 408

By: Senator Madison

For An Act To Be Entitled

AN ACT TO MAKE VARIOUS CORRECTIONS TO TITLE 18 OF
THE ARKANSAS CODE OF 1987 ANNOTATED; AND FOR
OTHER PURPOSES.

Subtitle

AN ACT TO MAKE VARIOUS CORRECTIONS TO
TITLE 18 OF THE ARKANSAS CODE OF 1987
ANNOTATED.

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

SECTION 1. Arkansas Code § 18-16-112(a)(4)(A)(xix)-(xxiv) is amended to read as follows to correct references and to remove duplicative offenses:

- (xix) Computer child pornography, § 5-27-603;
- (xx) Computer exploitation of a child ~~in the first degree~~, § 5-27-605(a);
- (xxi) Permanent detention or restraint when the offender is not the parent of the victim, § 5-11-106; and
- (xxii) Distributing, possessing, or viewing matter depicting sexually explicit conduct involving a child, § 5-27-602;
- ~~(xxiii) Computer child pornography, § 5-27-603; and~~
- ~~(xxiv) Computer exploitation of a child, § 5-27-605;~~

SECTION 2. Arkansas Code § 18-17-301(12) and (13) is amended to read as follows:

- (12) "Roomer" means a person occupying a dwelling unit;
(A) that That does not include the following facilities



1 provided by the landlord:

2 (i) ~~a toilet and either a~~ Toilet;

3 (ii) ~~bathtub or a~~ Bathtub or shower; and a

4 (iii) ~~refrigerator,~~ Refrigerator;

5 (iv) ~~stove,~~ Stove; and

6 (v) ~~kitchen sink, all provided by the landlord,~~

7 Kitchen sink; and

8 (B) ~~where~~ Where one (1) or more of these facilities are
9 used in common by occupants in the structure;

10 (13) "Security deposit" means a monetary deposit from the tenant
11 to the landlord to secure the full and faithful performance of the terms and
12 conditions of the ~~lease~~ rental agreement as provided in this ~~subchapter~~
13 chapter;

14
15 SECTION 3. Arkansas Code § 18-17-301(16) is amended to read as follows
16 to clarify the language:

17 (16) "Willful" means an intentional attempt to ~~intentionally~~
18 avoid obligations under the rental agreement or the provisions of this
19 chapter.

20
21 SECTION 4. Arkansas Code § 18-17-501(a)(1) is amended to read as
22 follows:

23 (a)(1) Upon termination of the tenancy, property or money held by the
24 landlord as security must be returned, less amounts withheld by the landlord
25 for accrued rent and damages that the landlord has suffered by reason of the
26 tenant's noncompliance with this ~~subchapter~~ chapter.

27
28 SECTION 5. Arkansas Code § 18-17-701(a) is amended to read as follows
29 to correct word usage and to make stylistic changes:

30 (a)(1) Except as provided in this chapter, if there is a noncompliance
31 by the tenant with the rental agreement, the landlord may deliver a written
32 notice to the tenant specifying the acts and omissions constituting the
33 ~~breach~~ noncompliance and that the rental agreement will terminate upon a date
34 not less than fourteen (14) days after receipt of the notice, if the
35 ~~breach~~ noncompliance is not remedied in fourteen (14) days.

36 (2) The rental agreement ~~terminates~~ shall terminate as provided

1 in the notice ~~except that if~~ unless the ~~breach noncompliance~~ is remediable by
 2 repairs or otherwise and the tenant adequately remedies the
 3 ~~breach noncompliance~~ before the date specified in the notice.

5 SECTION 6. Arkansas Code § 18-17-702 is amended to read as follows to
 6 correct word usage and to make stylistic changes:

7 18-17-702. Noncompliance affecting health and safety.

8 (a)(1) If there is noncompliance by the tenant with § 18-17-
 9 601 materially affecting health and safety that may be remedied by repair,
 10 replacement of a damaged item, or cleaning, and the tenant fails to comply as
 11 promptly as conditions require in case of emergency or within fourteen (14)
 12 days after written notice by the landlord specifying the ~~breach noncompliance~~
 13 and requesting that the tenant remedy it within that period of time, the
 14 landlord may enter the dwelling unit and cause the work to be done in a
 15 workmanlike manner.

16 (2) ~~and the~~ The tenant shall reimburse the landlord for the cost
 17 of the work. ~~and,~~

18 (3) ~~in~~ In addition, the landlord shall have the remedies
 19 available under this chapter.

20 (b) If there is noncompliance by the tenant with this ~~subchapter~~
 21 chapter materially affecting health and safety other than as stated in
 22 subsection (a) of this section, and the tenant fails to comply as promptly as
 23 conditions require in case of emergency, or within fourteen (14) days after
 24 written notice by the landlord if it is not an emergency, specifying the
 25 ~~breach noncompliance~~ and requesting that the tenant remedy within that period
 26 of time, the landlord may terminate the rental agreement.

28 SECTION 7. Arkansas Code § 18-17-706 is amended to read as follows to
 29 correct word usage and to make stylistic changes:

30 18-17-706. Payment of rent into court.

31 In any action in which the landlord sues for possession and the tenant
 32 raises defenses or counterclaims ~~pursuant to~~ under this chapter or the rental
 33 agreement:

34 (1)(A) The tenant shall pay the landlord all rent that becomes
 35 due after the issuance of a written ~~rule~~ order requiring the tenant to vacate
 36 or show cause as rent becomes due and the landlord shall provide the tenant

1 with a written receipt for each payment except when the tenant pays by check.

2 (B) Rent must not be abated for a condition caused by the
3 deliberate or negligent act or omission of the tenant, a member of his or her
4 family, or other person on the premises with his or her permission or who is
5 allowed access to the premises by the tenant;

6 (2) The tenant shall pay the landlord all rent allegedly owed
7 before the issuance of the ~~rule~~ order, provided that in lieu of the payment
8 the tenant may be allowed to submit to the court a receipt ~~and~~ or cancelled
9 check, or both, indicating that payment has been made to the landlord;

10 (3)(A) Should the tenant not appear and show cause within ten
11 (10) days, the court shall issue a warrant of ejectment ~~pursuant to~~ under
12 this subchapter.

13 (B)(i) Should the tenant appear in response to the ~~rule~~
14 order and allege that rent due under subdivision (1) or (2) of this section
15 has been paid, the court shall determine the issue.

16 (ii) If the tenant has failed to comply with
17 subdivision (1) or (2) of this section, the court shall issue a warrant of
18 ejectment and the landlord shall be placed in full possession of the premises
19 by the sheriff, deputy, or constable; and

20 (4) If the amount of rent due is determined at final
21 adjudication to be less than alleged by the landlord, judgment shall be
22 entered for the tenant if he or she has complied fully with ~~the provisions of~~
23 this section.

24
25 SECTION 8. Arkansas Code § 18-17-901(a)(3) is amended to read as
26 follows to correct word usage:

27 (3) The terms or conditions of the ~~lease~~ rental agreement have
28 been violated.

29
30 SECTION 9. Arkansas Code § 18-17-904 is amended to read as follows to
31 insert a needed reference:

32 18-17-904. Tenant ejected on failure to show cause.

33 If the tenant fails to appear and show cause within the ten (10) days
34 provided in § 18-17-902(b), the court shall issue a writ of eviction and the
35 tenant shall be evicted by the sheriff of the county.

SECTION 10. Arkansas Code § 18-17-911(a) is amended to read as follows to correct word usage:

(a)(1) After the commencement of eviction proceedings by the issuance of ~~a rule~~ an order to vacate or to show cause as provided, the ~~rental rent~~ for the use and occupancy of the premises involved shall continue to accrue so long as the tenant remains in possession of the premises, at the rate as prevailed immediately before the issuance of the ~~rule order~~, ~~and~~.

(2) ~~the~~ The tenant shall be liable for the payment of the ~~rental rent~~, the collection of which may be enforced ~~by distress~~ as provided with respect to other rents.

SECTION 11. Arkansas Code § 18-17-912 is amended to read as follows to correct word usage and to make stylistic changes:

18-17-912. Commercial leases.

(a) In any action involving a commercial lease in which the landlord sues for possession and the tenant raises defenses or counterclaims ~~pursuant to~~ under this chapter or the lease agreement:

(1) The tenant shall pay the landlord all rent that becomes due after the issuance of a written ~~rule order~~ requiring the tenant to vacate or show cause as rent becomes due, and the landlord shall provide the tenant with a written receipt for each payment except when the tenant pays by check; and

(2)(A) The tenant shall pay the landlord all rent allegedly owed before the issuance of the ~~rule order~~.

(B) However, in lieu of the payment the tenant may be allowed to submit to the court a receipt ~~and or~~ cancelled check, or both, indicating that payment has been made to the landlord.

(b)(1) If a jury trial is requested and upon motion of either party or upon his or her own motion, the circuit judge may order that the commercial lease eviction case be heard at the next term of court following the tenant's appearance.

(2) If the amount of rent is in controversy, the court shall preliminarily determine the amount of rent to be paid to the landlord.

(3)(A) If the tenant appears in response to the ~~rule order~~ and alleges that rent due as provided by § 18-17-911 and this section has been paid, the court shall determine the issue.

(B) If the tenant has failed to comply with § 18-17-911 and this section, the court shall issue a writ of eviction and the landlord ~~must~~ shall be placed in full possession of the premises by the sheriff, deputy, or constable.

(4) If the amount of rent due is determined at final adjudication to be less than alleged by the landlord, judgment shall be entered for the tenant if the court determines that the tenant has complied fully with the provisions of § 18-17-911, this section, and the lease agreement.

(5) If the court orders that the tenant pay all rent due and accruing as of and during the pendency of the action as provided by this subchapter, the writ may require the payments to be made:

(A) Directly to the commercial landlord or to the clerk of court, to be held until final disposition of the case; or

(B)(i) Through the circuit judge's office.

(ii) If payments are to be made through the circuit judge's office, a fee of three percent (3%) of the rental payment shall be added to the amount paid through the office and the fee of three percent (3%) shall be retained in the circuit judge's office to defray the costs of collection.

(c) If the tenant fails to make a payment as provided in § 18-17-911 and this section, the tenant's failure to comply entitles the landlord to execution of the judgment for possession, and, upon application of the landlord, the circuit judge shall issue a writ of eviction and the landlord shall be placed in full possession of the premises by the sheriff, deputy, or constable.

SECTION 12. Arkansas Code § 18-50-116(d) is amended to read as follows to correct a reference and to make stylistic changes:

(d) Nothing in this chapter shall be construed to:

(1) Create an implied right of redemption in favor of any person; or

(2)(A) Impair the right of any person or entity to assert his or her legal and equitable rights in a court of competent jurisdiction.

(B) ~~Provided, however, that any such~~ However, a claim or defense of a person or entity asserting his or her or its legal and equitable

1 rights shall be asserted ~~prior to~~ before the sale or ~~be it is~~ forever barred
2 and terminated, except that the mortgagor may assert the following against
3 either the mortgagee or trustee:

4 (i) Fraud; or

5 (ii) Failure to strictly comply with the provisions
6 of this ~~act~~ chapter, including but not limited to including without
7 limitation subsection (c) of this section.

8 (C)(i) ~~Any of the above~~ The claims or defenses described
9 in subdivision (d)(2)(B) of this section may not be asserted against a
10 subsequent purchaser for value of the property.

11 (ii) For purposes of this section, "purchaser for
12 value" ~~shall~~ does not include the mortgagee or the trustee.

13
14 SECTION 13. The enactment and adoption of this act shall not repeal,
15 expressly or impliedly, the acts passed at the regular session of the 87th
16 General Assembly. All such acts shall have full effect and, so far as those
17 acts intentionally vary from or conflict with any provision contained in this
18 act, those acts shall have the effect of subsequent acts and as amending or
19 repealing the appropriate parts of the Arkansas Code of 1987.