

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.
Act 482 of the Regular Session

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009

A Bill

SENATE BILL 408

4
5 By: Senator Madison
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For An Act To Be Entitled

8
9 AN ACT TO MAKE VARIOUS CORRECTIONS TO TITLE 18 OF
10 THE ARKANSAS CODE OF 1987 ANNOTATED; AND FOR
11 OTHER PURPOSES.
12

Subtitle

13
14 AN ACT TO MAKE VARIOUS CORRECTIONS TO
15 TITLE 18 OF THE ARKANSAS CODE OF 1987
16 ANNOTATED.
17
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code § 18-16-112(a)(4)(A)(xix)-(xxiv) is amended
22 to read as follows to correct references and to remove duplicative offenses:

- 23 (xix) Computer child pornography, § 5-27-603;
24 (xx) Computer exploitation of a child ~~in the first~~
25 ~~degree~~, § 5-27-605(a);
26 (xxi) Permanent detention or restraint when the
27 offender is not the parent of the victim, § 5-11-106; and
28 (xxii) Distributing, possessing, or viewing matter
29 depicting sexually explicit conduct involving a child, § 5-27-602;
30 ~~(xxiii) Computer child pornography, § 5-27-603; and~~
31 ~~(xxiv) Computer exploitation of a child, § 5-27-605;~~
32

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

- 35 (12) "Roomer" means a person occupying a dwelling unit;



1 (2) The rental agreement ~~terminates~~ shall terminate as provided
 2 in the notice ~~except that if~~ unless the ~~breach noncompliance~~ is remediable by
 3 repairs or otherwise and the tenant adequately remedies the
 4 ~~breach noncompliance~~ before the date specified in the notice.

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

8 18-17-702. Noncompliance affecting health and safety.

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

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

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

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

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

31 18-17-706. Payment of rent into court.

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

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

1 or show cause as rent becomes due and the landlord shall provide the tenant
 2 with a written receipt for each payment except when the tenant pays by check.

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

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

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

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

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

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

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

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

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

33 18-17-904. Tenant ejected on failure to show cause.

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

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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~~ 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~~ order.

(2) ~~the~~ The tenant shall be liable for the payment of the ~~rental rent~~ 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~~ 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~~ 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~~ order and alleges that rent due as provided by § 18-17-911 and this section has been

1 paid, the court shall determine the issue.

2 (B) If the tenant has failed to comply with § 18-17-
 3 911 and this section, the court shall issue a writ of eviction and the
 4 landlord ~~must~~ shall be placed in full possession of the premises by the
 5 sheriff, deputy, or constable.

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

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

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

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

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

22 (c) If the tenant fails to make a payment as provided in § 18-17-
 23 911 and this section, the tenant's failure to comply entitles the landlord to
 24 execution of the judgment for possession, and, upon application of the
 25 landlord, the circuit judge shall issue a writ of eviction and the landlord
 26 shall be placed in full possession of the premises by the sheriff, deputy, or
 27 constable.

28
 29 SECTION 12. Arkansas Code § 18-50-116(d) is amended to read as follows
 30 to correct a reference and to make stylistic changes:

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

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

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

36 (B) ~~Provided, however, that any such~~ However, a claim or

1 defense of a person or entity asserting his or her or its legal and equitable
2 rights shall be asserted ~~prior to~~ before the sale or ~~be it is~~ forever barred
3 and terminated, except that the mortgagor may assert the following against
4 either the mortgagee or trustee:

5 (i) Fraud; or

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

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

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

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

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22 **APPROVED: 3/19/2009**