

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 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: H3/30/01

A Bill

Act 1758 of 2001
HOUSE BILL 2650

5 By: Representative Salmon
6
7

For An Act To Be Entitled

9 AN ACT TO ALLOW FOR THE EVICTION OF TENANTS USING
10 ANY PREMISES FOR USE IN THE COMMISSION OF A
11 CONTINUING SERIES OF CRIMINAL VIOLATIONS, OR FOR
12 THE UNLAWFUL MANUFACTURE, DELIVERY, OR POSSESSION
13 WITH THE INTENT TO MANUFACTURE OR DELIVER A
14 CONTROLLED SUBSTANCE, OR ANY OTHER CRIMINAL
15 OFFENSE; *ESTABLISHING A CAUSE OF ACTION*; AND FOR
16 OTHER PURPOSES.

Subtitle

17
18
19 TO ALLOW FOR THE EVICTION OF TENANTS FOR
20 USE OF ANY PREMISES IN CONTINUING
21 CRIMINAL VIOLATIONS OR FOR MANUFACTURE
22 OR DELIVERY OF CONTROLLED SUBSTANCES, OR
23 ANY OTHER CRIMINAL OFFENSE.
24
25

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
27

28 SECTION 1. Any tenant who uses or allows another person to use the
29 tenant's leased premises as a common nuisance as defined by Arkansas Code 5-
30 74-109(b) or 16-105-402, or for a criminal offense identified in Section 2
31 may be evicted by the prosecuting attorney of the county, the city attorney
32 of the city, the premises owner, or an agent for the premises owner pursuant
33 to the provisions of this act.
34

35 SECTION 2. For purposes of this act, any tenant who engages in or
36 allows another person to engage in gambling as defined by Arkansas Code 5-66-

1 107, in prostitution as defined by Arkansas Code 5-70-102, or in the unlawful
2 sale of alcohol as defined by Arkansas Code 3-3-205 on the tenant's leased
3 premises shall be subject to the eviction procedures established by this act.
4

5 SECTION 3. The prosecuting attorney of the county, the city attorney
6 of the city, the premises owner, or an agent for the premises owner may file
7 a complaint in office of the clerk of the circuit court for the eviction of
8 any tenant who has used or has allowed another person to use the tenant's
9 leased premises for use as a common nuisance as defined by Arkansas Code 5-
10 74-109(b) or 16-105-402, or for a criminal offense identified in Section 2.
11

12 SECTION 4. The complaint shall state the name of the tenant or tenants
13 to be evicted, the location of the leased premises, and the basis for which
14 eviction is authorized under this act.
15

16 SECTION 5. Upon the filing of a complaint under this act, the clerk of
17 the court shall issue a summons upon the complaint. The summons shall be in
18 customary form directed to the sheriff of the county in which the cause of
19 action is filed, with direction for service thereof on the named defendants.
20 In addition, the court shall issue and direct the sheriff to serve upon the
21 named defendants a notice in the following form:

22 NOTICE OF INTENTION TO EVICT FOR CRIMINAL ACTIVITY

23 You are hereby notified that the attached complaint in the above styled cause
24 claims that you have engaged in or have allowed the property described in the
25 abovementioned complaint to be used for criminal activity and that the
26 plaintiff is entitled to have you evicted pursuant to state law. If, within
27 five (5) days, excluding Sundays and legal holidays, after the date of
28 service of this notice, you have not filed in the office of the circuit clerk
29 of this county a written objection to the claims made against you by the
30 plaintiff in his or her complaint for eviction, then a writ of ejection
31 shall forthwith issue from this office directed to the sheriff of this county
32 or to the police chief of the city and ordering him or her to remove you from
33 possession of the property described in the complaint. If you should file a
34 written objection to the complaint of the plaintiff and the allegations for
35 immediate possession of the property described in the complaint within five
36 (5) days, excluding Sundays and legal holidays, after the date of service of

1 this notice, a hearing will be scheduled by the circuit court of this county
2 after you have timely answered to determine whether or not the writ of
3 ejectment should issue as sought by the plaintiff.

4
5
6 Circuit Clerk of _____ County
7

8 SECTION 6. (a) If, within five (5) days, excluding Sundays and legal
9 holidays, following service of this summons, complaint, and notice seeking a
10 writ of ejectment against the defendants named therein, the defendant or
11 defendants have not filed a written objection to the claim for a writ of
12 ejectment made by the plaintiff in his complaint, the clerk of the circuit
13 court shall immediately issue a writ of ejectment directed to the sheriff of
14 the county and or the police chief of the city commanding him or her to cause
15 the defendant or defendants to vacate the property described in the complaint
16 without delay, which the sheriff or police chief shall thereupon execute in
17 the manner described in section 7 of this act.

18 (b) If a written objection to the claim of the plaintiff for a writ of
19 ejectment shall be filed by the defendant or defendants within five (5) days
20 after the date of service of the notice, summons, and complaint as provided
21 for in this section, the plaintiff shall obtain a date for the hearing of the
22 plaintiff's demand for a writ of ejectment of the property described in the
23 complaint after the defendants have timely answered the complaint. If such a
24 hearing is required, at the hearing the plaintiff shall present evidence
25 sufficient to make a prima facie case of the criminal activity that has been
26 facilitated at property described in the complaint. The defendant or
27 defendants shall be entitled to present evidence in rebuttal thereof. If the
28 court decides upon all the evidence that the plaintiff is entitled to a writ
29 of ejectment under state law, then the court shall order the clerk forthwith
30 to issue a writ of ejectment to the sheriff or the police chief of the city
31 to evict the defendant or defendants as provided for in section 7 of this
32 act.

33
34 SECTION 7. (a) Upon receipt of a writ of ejection from the clerk of
35 the circuit court, the sheriff or police chief shall immediately proceed to
36 execute the writ in the specific manner described in this section and, if

1 necessary, ultimately by ejecting from the property described in the writ the
2 defendant or defendants and any other person or persons who shall have
3 unlawfully received or entered into the possession of the property after the
4 issuance of the writ, and thereupon notify the plaintiff that the property
5 has been vacated by the defendant or defendants.

6 (b) Upon receipt of the writ, the sheriff or police chief shall notify
7 the defendant of the issuance of the writ by delivering a copy thereof to the
8 defendant or to any person authorized to receive summons in civil cases and
9 in like manner. If, within eight (8) hours after receipt of the writ of
10 possession, the sheriff or police chief shall not find any such person at
11 their normal place of residence, he or she may serve the writ of possession
12 by placing a copy conspicuously upon the front door or other structure of the
13 property described in the complaint, which shall have like effect as if
14 delivered in person pursuant to the terms hereof.

15 (c)(1) If, at the expiration of twenty-four (24) hours after the
16 service of the writ of ejectment in the manner indicated, the defendants or
17 any or either of them shall be and remain in possession of the property, the
18 sheriff or police chief shall notify the plaintiff or his attorney of that
19 fact and shall be provided with all labor and assistance required by him or
20 her in removing the possessions and belongings of the defendants from the
21 affected property to a place of storage in a public warehouse or in some
22 other reasonable safe place of storage under the control of the plaintiff
23 until the defendant or defendants may recover the property within seven (7)
24 business days. Before recovering the property the defendant or defendants
25 shall pay for the reasonable cost of storage.

26 (2) If the defendant or defendants shall never recover the
27 property as provides in subdivision (c)(1) then the court shall order the
28 possessions and belongings of the defendant sold by the plaintiff in a
29 commercially reasonable manner with the proceeds of the sale applied first to
30 the cost of storage, second to any monetary judgment in favor of the
31 plaintiff, and third, any excess to be remitted to the defendant.

32 (d) In executing the writ of ejectment, the sheriff or police chief
33 shall have the right forcibly to remove all locks or other barriers erected
34 to prevent entry upon the premises in any manner which he or she deems
35 appropriate or convenient and, if necessary, physically to restrain the
36 defendants from interfering with the removal of the defendants' property and

1 possessions from the property described in the writ of ejectment.

2 (e) If the plaintiff is the city attorney or prosecuting attorney no
3 bond shall be required. If the plaintiff is the landlord no bond shall be
4 required, unless ordered to do so by the court, as a condition to the
5 execution of a writ granted prior to the date an answer is to be filed by the
6 defendant or defendants.

7 (f) The sheriff or police chief shall return the writ at or before the
8 return date of the writ and shall state in his return the manner in which he
9 or she executed the writ and whether or not the defendant or defendants have
10 been ejected from the property described and, if not, the reason for his or
11 her failure to do so.

12
13 SECTION 8. (a) A court granting relief under this act may order, in
14 addition to any other costs provided by law, the payment by the defendant or
15 defendants to the plaintiff reasonable attorney fees and the costs of the
16 action. In such cases, multiple defendants are jointly and severally liable
17 for any payment so ordered. Any costs of attorney's fees collected from the
18 defendants shall be remitted to the plaintiff. If the plaintiff is the city
19 attorney, the costs shall be remitted to the general fund of the city. If
20 the plaintiff is the prosecuting attorney, the costs shall be remitted to the
21 general fund of the county.

22 (b) A proceeding brought under this section for eviction of the
23 defendant or defendants of the premises does not preclude the owner or
24 landlord from recovering monetary damages for rent, repairs or any other
25 incidental damages up to the date of eviction from the tenants or occupants
26 of such premises in a civil action.

27 /s/ Salmon

30 APPROVED: 4/18/2001