

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 87th General Assembly
3 Regular Session, 2009
4
5 By: Senator Broadway
6 By: Representative Nix
7
8

A Bill

SENATE BILL 859

For An Act To Be Entitled

10 AN ACT TO CREATE LEGAL REMEDIES TO AID THE
11 ABILITY OF A PERSON TO RECOVER STOLEN PROPERTY
12 FROM A PAWNBROKER; TO SET FORTH COURT PROCEDURES;
13 AND FOR OTHER PURPOSES.
14

Subtitle

15 AN ACT TO CREATE LEGAL REMEDIES TO AID
16 THE ABILITY OF A PERSON TO RECOVER
17 STOLEN PROPERTY FROM A PAWNBROKER.
18
19
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 SECTION 1. Arkansas Code § 18-27-202 is amended to read as follows:

24 18-27-202. Immediate Return ~~return~~ of stolen personal property to
25 owner.

26 When ~~any a~~ a pawnbroker in this state ~~shall~~, in good faith or otherwise,
27 ~~acquire~~ acquires, by purchase, pawn, gift, or otherwise, ~~any an~~ an article of
28 personal property ~~which that~~ that has been stolen from the owner ~~thereof~~, the
29 pawnbroker may immediately ~~shall~~ return the personal property to the true
30 owner ~~thereof~~ upon his or her request and the execution of his or her
31 affidavit of possession and not be subject to § 18-27-203.
32

33 SECTION 2. Arkansas Code § 18-27-203 is amended to read as follows:

34 18-27-203. Refusal to return property – Liability.

35 ~~(a) If any pawnbroker shall fail or refuse to return any property to~~
36 ~~the true owner thereof when requested to do so by him or her as provided in §~~



1 ~~18-27-202, it shall be necessary for the true owner to resort to legal action~~
2 ~~to recover the property.~~

3 ~~(b) In the event that the true owner is successful in a legal action,~~
4 ~~the defendant pawnbroker shall be required to pay all reasonable expenses~~
5 ~~incurred by the owner in recovering the property, including court costs and~~
6 ~~attorneys' fees, and any damages suffered by the true owner as a result of~~
7 ~~the pawnbroker's failing or refusing to return the property to the true owner~~
8 ~~when so requested by him or her.~~

9 (a) The owner of stolen personal property that is in the possession of
10 a pawnbroker may file an action for the return of his or her stolen property.

11 (b) The action under subsection (a) of this section shall consist of
12 the following procedure:

13 (1)(A)(i) The owner may file a petition in the district court or
14 circuit court having jurisdiction over either the pawnbroker where the stolen
15 property is located or the location from which the property was stolen.

16 (ii) A petition originally filed in district court
17 is subject to that court's jurisdictional limits on damages.

18 (B) The petition shall be titled "Petition for the Return
19 of Stolen Property" and shall include documentation or proof of ownership of
20 the stolen property and copies of police or investigative reports involving
21 the theft of the property, if applicable.

22 (C)(1) The named defendant shall be the owner or owners of
23 the pawnbroker if it is a sole proprietorship or the corporate name if the
24 pawnbroker is a corporation.

25 (2) The failure to name a proper defendant is not
26 grounds for dismissal of an action brought under this section if the court
27 finds that the pawnbroker or its owner or owners have failed to comply with §
28 18-27-204.

29 (3) This subdivision does not preclude a court upon
30 its own motion or that of any party from joining a party to an action brought
31 under this section as provided by Rule 19 of the Rules of Civil Procedure.

32 (D) The filing fee for the petition is ten dollars
33 (\$10.00).

34 (E) The petition shall set out in plain language:

35 (i) A description of the stolen property;

36 (ii) The value of the stolen property;

- 1 (iii) When the property was stolen, if known;
2 (iv) The last known location of the stolen property;
3 (v) Pertinent information regarding the pawnbroker
4 where the property is located, if known, including:
5 (a) The owner of the pawnbroker;
6 (b) The name and type of the business entity
7 under which the pawnbroker is owned or operated; and
8 (c) The last known address of the pawnbroker
9 or agent for service of process, if applicable; and
10 (vi) Any claim for actual damages, including without
11 limitation:
12 (a) Costs and filing fees;
13 (b) Attorney's fees;
14 (c) Incidental damages and costs, including
15 without limitation:
16 (1) Copying costs;
17 (2) Transportation costs;
18 (3) Lost income; and
19 (4) Other reasonable expenses associated
20 with filing the action; and
21 (d) If conversion is alleged, punitive
22 damages, if the action has been brought in circuit court.
23 (F) The petition shall be signed, verified, and dated by
24 the plaintiff.
25 (G) The petition shall be served by the district court or
26 circuit court on the defendant in accordance with the applicable Rules of
27 Civil Procedure;
28 (2) The plaintiff shall be entitled to a hearing within ten (10)
29 days of the service of the petition upon the defendant;
30 (3) The defendant may but is not required to file an answer;
31 (4) The Rules of Evidence shall be relaxed to allow the court to
32 consider any evidence it deems competent with regard to ownership of the
33 property in question;
34 (5) The court shall have broad authority to ensure that stolen
35 property is returned to its rightful owner, including without limitation:
36 (A) Ordering the immediate return of the stolen property

1 to its rightful owner assessing;

2 (B) Actual damages;

3 (C) Costs and filing fees;

4 (D) Attorney's fees;

5 (E) Incidental damages and costs;

6 (E) Punitive damages, if the action was originally filed
7 in circuit court; and

8 (F) A per diem penalty not exceeding two (2) times the
9 value of the property in question for each day the defendant retains the
10 property after any court-imposed deadline for the return of the property;

11 (6)(A) If the original action was filed in district court, the
12 court's ruling may be appealed to the circuit court and the case heard de
13 novo.

14 (B) If the defendant is the losing party in district court
15 and desires to retain the property in question and appeal to circuit court,
16 the appeal bond shall not be less than the value of the property in question;
17 and

18 (7)(A) If the owner of stolen property gives money or any other
19 consideration to a pawnbroker for the purpose of recovering his or her stolen
20 property that is in the pawnbroker's possession, the transaction shall not
21 operate as a settlement, an accord and satisfaction, or any other compromise
22 as between the owner of the property and the pawnbroker unless the owner of
23 the property signs and verifies a release stating that he is relinquishing
24 any claim for damages under this section;

25 (B) The release must specify the categories of damages
26 which may be recovered under this section.

27 (8) If at any point during the pendency of an action brought
28 under this section a district court or circuit court finds probable cause
29 that the defendant committed theft by receiving under § 5-36-106, the court
30 shall forward a copy of its file to the prosecutor for his or her
31 consideration.

32 (c) The petition may be the same or substantially the same as the
33 following form:

34
35 IN THE DISTRICT/CIRCUIT OF _____ COUNTY, ARKANSAS

36

1 _____ is or are the owners of a pawnbroker which is known by
2 its _____ business name of _____
3 _____ is a corporation whose agent for service of process is
4 _____ (name of agent). The agent for service's address is:
5 _____
6
7

8 7. Plaintiff makes demand for the following: (Check all that apply)

- 9 _____ Return of Plaintiff's property being held by the
- 10 Defendant
- 11 _____ Court costs
- 12 _____ Incidental damages and costs including without limitation
- 13 lost income, copying costs, transportation costs, etc.
- 14 _____ Punitive damages (Circuit Court only)
- 15 _____ Attorney's Fees

16
17 8. Plaintiff is requesting total damages of \$ _____ (not to exceed
18 the jurisdictional limits of the court).

19
20 _____
21 (Signature of Plaintiff)

22
23 _____
24 _____
25 _____
26 _____
27 _____

28
29 _____
30 (Printed Name and Address of Plaintiff)

31
32 VERIFICATION

33
34 Before the undersigned Notary Public appeared _____, who
35 stated under oath that the information contained in the Petition is true and
36 correct to the best of his/her knowledge and belief.

1
2
3 My Commission Expires: _____
4 NOTARY PUBLIC
5 _____
6

7 CERTIFICATE OF SERVICE, SUMMONS, AND
8 NOTICE OF HEARING
9

10 You are hereby warned to appear on the _____ day of _____,
11 20____, at _____ a.m/p.m. in the _____ Court of _____,
12 Arkansas, to answer the petition of the Plaintiff
13

14 FAILURE TO APPEAR MAY RESULT IN A DEFAULT JUDGMENT OR OTHER ORDERS
15 BEING ENTERED AGAINST YOU.
16

17 I certify that I have served the above Petition and Notice of Hearing
18 on the Defendant pursuant to the Rules of Civil Procedure.
19

20 _____
21 (Signature of Clerk)
22

23 SECTION 3. Arkansas Code Title 18, Chapter 27, Subchapter 2 is amended
24 to add a new section to read as follows

25 18-27-205. Refusal to return property – Notice.

26 (a) A pawnbroker as defined in § 18-27-201 shall be required to post a
27 notice described as follows:

28 (1) The notice shall be printed on plain white paper not less
29 than eight and one-half inches by eleven inches (8 1/2” X 11”) in size;

30 (2) The heading of the notice shall consist of the following
31 words printed in easily legible, bold black letters not less than three-
32 fourths of an inch (3/4”) of an inch or 54-point font in height: “NOTICE TO
33 OWNERS OF STOLEN PROPERTY”;

34 (3) The notice shall include the following statement in easily
35 legible bold black letters not less than one-half inch (1/2”) or 20-point
36 font in height: “If you are the owner of stolen property that you believe is

1 being retained by this pawnbroker and this pawnbroker has denied your request
2 to return the property, you have the right to file an action under Arkansas
3 Code Annotated § 18-27-203”.

4 (b) The notice required under this section shall include in the same
5 size type as described in subdivision (a)(3) of this section:

6 (1) Information as to who should be the proper defendant or
7 defendants if an action is filed;

8 (2) The address of the potential defendant or defendants if an
9 action is filed; and

10 (3) If the defendant is a corporation or limited liability
11 corporation, the address and name of the agent for service of process.

12 (c) The notice required under this section shall be conspicuously
13 posted on or within three feet (3’) of the main entrance to the pawnbroker’s
14 place of business and shall be located no less than four and one-half feet (4
15 1/2’) above ground level nor more than five and one-half feet (5 1/2’) above
16 ground level, as measured from the bottom edge of the notice.

17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36