

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

As Engrossed: H3/23/15

A Bill

HOUSE BILL 1544

5 By: Representatives Sullivan, Ladyman, Tosh, Wallace
6 By: Senator J. Cooper
7

For An Act To Be Entitled

9 AN ACT TO REGULATE THE PRACTICES AND PROCEDURES OF
10 *DEALERS IN SECONDHAND GOODS*; TO HELP THE RIGHTFUL
11 OWNER RECOVER STOLEN PROPERTY; AND FOR OTHER
12 PURPOSES.
13
14

Subtitle

15 *TO REGULATE THE PRACTICES AND PROCEDURES*
16 *OF DEALERS IN SECONDHAND GOODS; AND TO*
17 *HELP THE RIGHTFUL OWNER RECOVER STOLEN*
18 *PROPERTY.*
19
20
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. DO NOT CODIFY. Findings and legislative intent.

25 The General Assembly finds and determines that:

26 (1) Certain provisions of Arkansas law requiring a pawnbroker to
27 turn over personal property based upon the affidavit of the alleged owner
28 without a judicial determination of the merits of the demanding owner's
29 claim, and the pawnbroker's corresponding liability for costs, attorney's
30 fees, and damages, were held to be unconstitutional in Landers v. Jameson,
31 355 Ark. 163, 132 S.W.3d 741 (2003), for failure to provide the pawnbroker
32 notice and an opportunity for a hearing before taking the property pawned to
33 the pawnbroker; stolen property before releasing the property to the true
34 owner;

35 (2) The law should encourage dealers in secondhand goods,
36 including pawnbrokers, to return stolen property to the rightful owner



1 without penalty while protecting respective property rights;

2 (3) To assist the recovery of stolen property:

3 (A) Full disclosure should be made of the respective
4 rights of the parties to stolen property to encourage:

5 (i) The parties to resolve disputed claims to stolen
6 property; and

7 (ii) The reporting of acts of theft and dishonesty
8 to appropriate law enforcement authorities; and

9 (B) A right to recover and deliver stolen property without
10 the threat of additional loss; and

11 (4) Appropriate penalties should be provided if:

12 (A) The rights of the parties to stolen property in the
13 possession of a dealer are not disclosed by the dealer;

14 (B) Clearly identifiable stolen property is wrongfully
15 withheld from the rightful owner; or

16 (C) Stolen property is defaced or other action is taken to
17 hide or hinder the identification of stolen property.

18
19 SECTION 2. Arkansas Code § 18-27-204(c), concerning the disposition of
20 pawned property, is amended to read as follows:

21 (c) ~~No~~ A pawnbroker shall not dispose of personal property purchased or
22 received as security until at least fifteen (15) calendar days after the
23 personal property is purchased or pawned or at least seven (7) calendar days
24 after the purchase or pawn is reported to the local police, whichever comes
25 first, unless the personal property is:

26 (1) ~~redeemed~~ Redeemed by the person who sold or pawned it; or

27 (2) Returned to the rightful owner of the personal property.

28
29
30 SECTION 3. Arkansas Code Title 18, Chapter 27, is amended to add an
31 additional subchapter to read as follows:

32
33 Subchapter 3 – Dealer in Secondhand Goods Reform and Disclosure
34 Act

35
36 18-27-301. Title.

1 This subchapter shall be known and may be cited as the *Dealer in*
2 *Secondhand Goods Reform and Disclosure Act*".

3
4 18-27-302. Definitions.

5 As used in this subchapter:

6 (1) "Defacing identifiable stolen personal property" means
7 performing or acquiescing in an act designed to remove, destroy, mutilate,
8 disguise, or otherwise purposefully and willfully prevent detection of
9 identifiable stolen personal property;

10 (2) "Identifiable stolen personal property" means personal
11 property that is:

12 (A) Reported stolen to an appropriate law enforcement
13 agency;

14 (B) Described in the official stolen property report of
15 the law enforcement agency by serial number, vehicle identification number,
16 license registration number, or other numbers, letters, symbols, or markings
17 that authenticate the specific personal property in the possession of the
18 dealer; and

19 (C) Connected by documentation, such as a receipt,
20 presented to the dealer by the owner demonstrating the likelihood of current
21 ownership;

22 (3) "Insider" means a family member or friend of the owner of
23 stolen property; and

24 (4) "Dealer" means an individual or entity that is engaged in
25 the business of:

26 (A) Lending money upon the security of an article of
27 personal property that is retained by the individual or entity until:

28 (i) The loan is repaid; or

29 (ii) The time to repay the loan has expired; or

30 (B) Purchasing other than at wholesale or retail an
31 article of personal property for resale in any form.

32
33 18-27-303. Recovery of personal property and identifiable stolen
34 personal property – Liability.

35 (a) An owner of stolen personal property may request that a dealer
36 return the stolen property without charge to the owner by signing and

1 following the terms of the affidavit in favor of the dealer as described in §
 2 18-27-304(b).

3 (b) Unless reasonable cause exists, within seven (7) days after the
 4 later of the receipt of an affidavit described in § 18-27-304(b) and the
 5 written release, either conditional or outright, of any property hold issued
 6 by any law enforcement agency with respect to the identifiable stolen
 7 property, a dealer shall:

8 (1) Deliver the identifiable stolen property to the owner; or

9 (2) File a legal action in a court of competent jurisdiction to
 10 determine ownership.

11 (c) If the dealer refuses to make an election under subsection (b) of
 12 this section, the owner may file a replevin action to recover the property
 13 and the court may award and apportion costs and attorney's fees as
 14 appropriate under the facts of the case.

15 18-27-304. Notice concerning recovery of personal property and
 16 identifiable stolen personal property.

17 (a) Once an owner requests the return of stolen property, a dealer
 18 shall deliver a written notice as to the owner's rights.

19 (b) The written notice required by subsection (a) of this section
 20 shall be written in bold letters that are each at least 12-point type and
 21 read as follows:

22 “NOTICE CONCERNING STOLEN PROPERTY

23 PLEASE TAKE NOTICE THAT THE RIGHTFUL OWNER MAY ASK A DEALER IN
 24 SECONDHAND GOODS (“DEALER”) TO RETURN STOLEN PROPERTY BY SHOWING PROOF OF
 25 OWNERSHIP OF THE PROPERTY AND SIGNING AN AFFIDAVIT AS TO OWNERSHIP,
 26 INDEMNIFYING AND HOLDING THE DEALER HARMLESS FROM LOSS (“AFFIDAVIT”). THE
 27 AFFIDAVIT MUST RELATE TO IDENTIFIABLE STOLEN PERSONAL PROPERTY AND BE IN THE
 28 FORM BELOW OR ATTACHED TO THIS NOTICE. AFTER DELIVERY OF THE AFFIDAVIT TO
 29 DEALER AND THE RELEASE OF ANY PROPERTY HOLD PLACED ON THE PROPERTY BY A LAW
 30 ENFORCEMENT AGENCY, THE DEALER HAS SEVEN DAYS TO EITHER RELINQUISH THE
 31 IDENTIFIABLE STOLEN PERSONAL PROPERTY OR FILE A LEGAL ACTION IN COURT TO
 32 DETERMINE OWNERSHIP.

33 IF THE DEALER REFUSES TO DELIVER THE PROPERTY OR FILE AN ACTION IN
 34 COURT TO DETERMINE OWNERSHIP WITHIN SEVEN (7) DAYS THEREAFTER, THE OWNER MAY
 35 ATTEMPT TO RECOVER THE ITEMS OF STOLEN PERSONAL PROPERTY WITHOUT PAYMENT TO
 36 THE DEALER BY FILING A LEGAL ACTION IN COURT. IF THE COURT DETERMINES THAT

1 THE DEALER REFUSED TO EITHER DELIVER THE PERSONAL PROPERTY OR FILE AN ACTION
2 IN COURT TO DETERMINE OWNERSHIP WITHIN SEVEN (7) DAYS, WITHOUT REASONABLE
3 CAUSE, THE DEALER COULD BE ORDERED TO RETURN THE IDENTIFIABLE STOLEN PERSONAL
4 PROPERTY TO THE OWNER WITHOUT CHARGE TO THE OWNER.

5 HOWEVER, IF THE COURT DETERMINES THAT THE PROPERTY WAS ACQUIRED BY THE
6 DEALER FROM A FAMILY MEMBER OR FRIEND, THE OWNER IS ENTITLED TO RECOVER THE
7 PROPERTY ONLY UPON REIMBURSING THE COST TO THE DEALER OF ACQUIRING THE
8 PROPERTY.

9 IF LEGAL ACTION IS FILED TO RECOVER PROPERTY IN THE POSSESSION OF THE
10 DEALER, THE COURT MAY AWARD AND APPORTION COSTS AND ATTORNEY'S FEES AS
11 APPROPRIATE.

12 "IDENTIFIABLE STOLEN PERSONAL PROPERTY" MEANS PERSONAL PROPERTY THAT IS:

13 (A) REPORTED STOLEN TO AN APPROPRIATE LAW ENFORCEMENT
14 AGENCY;

15 (B) DESCRIBED IN THE OFFICIAL STOLEN PROPERTY REPORT OF
16 THE LAW ENFORCEMENT AGENCY BY SERIAL NUMBER, VEHICLE IDENTIFICATION NUMBER,
17 LICENSE REGISTRATION NUMBER, OR OTHER NUMBERS, LETTERS, SYMBOLS, OR MARKINGS
18 THAT AUTHENTICATE THE SPECIFIC PERSONAL PROPERTY IN THE POSSESSION OF DEALER;
19 AND

20 (C) CONNECTED BY DOCUMENTATION (SUCH AS A RECEIPT)
21 PRESENTED TO THE DEALER BY THE OWNER DEMONSTRATING THE LIKELIHOOD OF CURRENT
22 OWNERSHIP.

23
24 TO PROCEED, PLEASE COMPLETE THE FOLLOWING AFFIDAVIT AND DELIVER TO THE
25 DEALER.

26
27
28 AFFIDAVIT AS TO OWNERSHIP, INDEMNITY AND HOLD HARMLESS AGREEMENT

29
30 STATE OF ARKANSAS

31
32 COUNTY OF _____

33
34 BEFORE THE UNDERSIGNED, _____, DULY QUALIFIED AND ACTING IN AND
35 FOR THIS COUNTY AND STATE, APPEARED _____ [TO ME WELL KNOWN]
36 [SATISFACTORILY PROVEN] TO BE THE AFFIANT HEREIN, WHO STATED THE FOLLOWING

1 UNDER OATH:

2

3

4 1. I _____, AM THE SOLE, TRUE AND ABSOLUTE OWNER OF PERSONAL
5 PROPERTY ("PROPERTY"), FREE OF ANY LIENS AND ENCUMBRANCES DESCRIBED AS:

6 _____

7 _____

8 _____

9 AND CURRENTLY IN THE POSSESSION OF:

10 _____

11 _____

("DEALER")

12 2. I HAVE REPORTED THE PROPERTY STOLEN TO THE APPROPRIATE LAW ENFORCEMENT AGENCY
13 AND HAVE PRESENTED THE DEALER WITH THE FOLLOWING DOCUMENTATION WITH REGARD TO
14 MY OWNERSHIP OF THE PROPERTY AND SUCH DOCUMENTATION IS ATTACHED HERETO:

15

a. OFFICIAL STOLEN PROPERTY REPORT OF A LAW ENFORCEMENT AGENCY
16 SHOWING SERIAL NUMBER, VEHICLE IDENTIFICATION NUMBER, LICENSE
17 REGISTRATION NUMBER, OR OTHER NUMBERS, LETTERS, SYMBOLS, OR
18 MARKINGS THAT AUTHENTICATE THE SPECIFIC PERSONAL PROPERTY IN THE
19 POSSESSION OF DEALER. SAID REPORT IS ISSUED BY:

20 _____

21 _____

AND HAS A REPORT NUMBER OF

22

b. DOCUMENTATION DEMONSTRATING THE LIKELIHOOD OF MY CURRENT
23 OWNERSHIP OF THE PROPERTY, SPECIFICALLY DESCRIBED
24 AS:

25 _____

26 3. I WILL COOPERATE WITH LAW ENFORCEMENT AND THE PROSECUTOR IN ALL RESPECTS
27 REGARDING THE THEFT OF PROPERTY.

28 4. I UNDERSTAND THE DEALER CANNOT RELEASE PROPERTY THAT IS SUBJECT TO A LAW
29 ENFORCEMENT PROPERTY HOLD AND ANY SUCH HOLD MUST BE REMOVED BEFORE THE
30 PROPERTY CAN BE DELIVERED TO ME.

31 5. I UNDERSTAND THE DEALER HAS SEVEN DAYS TO EITHER RELEASE THE PROPERTY TO ME
32 OR FILE A LEGAL ACTION TO DETERMINE OWNERSHIP.

33 6. THE PERSON THAT CAUSED THE ITEM TO BE IN THE POSSESSION OF THE DEALER IS NOT
34 A FAMILY MEMBER OR FRIEND OF MINE.

35 7. I UNDERSTAND THAT I MAY BE SUBJECT TO CIVIL OR CRIMINAL PENALTIES IF THE
36 REPRESENTATIONS I AM MAKING HEREIN ARE UNTRUE.

18. I WILL INDEMNIFY AND HOLD THE DEALER HARMLESS FOR ANY AND ALL LOSS OCCASIONED BY THE REPRESENTATIONS MADE IN THIS AFFIDAVIT WITH REGARD TO THE PROPERTY.

3
4 FURTHER THE AFFIANT SAYETH NOT.

5
6 IN WITNESS WHEREOF, I HEREUNTO SET MY HAND THIS _____ DAY OF _____.

7
8 _____
9 OWNER

10
11
12 SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY OF _____.

13
14 _____
15 [OFFICIAL TITLE]

16 MY COMMISSION EXPIRES:

17
18 [SEAL]

19
20 18-27-305. Limitations on the purchase, maintenance, and disposition of
21 personal property – Defacing identifiable stolen personal property.

22 (a) A dealer shall not:

23 (1) Purchase or receive personal property as security from a
24 person under eighteen (18) years of age who has not been emancipated under §
25 9-26-104; or

26 (2) Deface identifiable stolen personal property.

27
28 18-27-307. Penalties.

29 A violation of this subchapter by a dealer is a Class C misdemeanor.

30
31 /s/Sullivan

32
33
34
35
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