

Hall of the House of Representatives
83rd General Assembly - Regular Session, 2001
Amendment Form

Subtitle of House Bill No. 2650

"TO ALLOW FOR THE EVICTION OF TENANTS FOR USE OF ANY PREMISES IN
CONTINUING CRIMINAL VIOLATIONS OR FOR MANUFACTURE OR DELIVERY OF
CONTROLLED SUBSTANCES, OR ANY OTHER CRIMINAL OFFENSE."

Amendment No. 1 to House Bill No. 2650.

Amend House Bill No. 2650 as originally introduced:

Page 1, line 14, delete "PRESCRIBING PENALTIES" and substitute "ESTABLISHING A CAUSE OF ACTION"

AND

Delete Sections 1 through 4 and substitute the following:

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

SECTION 2. For purposes of this act, any tenant who engages in or allows another person to engage in gambling as defined by Arkansas Code 5-66-107, in prostitution as defined by Arkansas Code 5-70-102, or in the unlawful sale of alcohol as defined by Arkansas Code 3-3-205 on the tenant's leased premises shall be subject to the eviction procedures established by this act.

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

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

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

NOTICE OF INTENTION TO EVICT FOR CRIMINAL ACTIVITY

You are hereby notified that the attached complaint in the above styled cause claims that you have engaged in or have allowed the property described in the abovementioned complaint to be used for criminal activity and that the plaintiff is entitled to have you evicted pursuant to state law. If, within five (5) days, excluding Sundays and legal holidays, after the date of service of this notice, you have not filed in the office of the circuit clerk of this county a written objection to the claims made against you by the plaintiff in his or her complaint for eviction, then a writ of ejectment shall forthwith issue from this office directed to the sheriff of this county or to the police chief of the city and ordering him or her to remove you from possession of the property described in the complaint. If you should file a written objection to the complaint of the plaintiff and the allegations for immediate possession of the property described in the complaint within five (5) days, excluding Sundays and legal holidays, after the date of service of this notice, a hearing will be scheduled by the circuit court of this county after you have timely answered to determine whether or not the writ of ejectment should issue as sought by the plaintiff.

Circuit Clerk of _____ County

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

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

act.

SECTION 7. (a) Upon receipt of a writ of ejection from the clerk of the circuit court, the sheriff or police chief shall immediately proceed to execute the writ in the specific manner described in this section and, if necessary, ultimately by ejecting from the property described in the writ the defendant or defendants and any other person or persons who shall have unlawfully received or entered into the possession of the property after the issuance of the writ, and thereupon notify the plaintiff that the property has been vacated by the defendant or defendants.

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

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

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

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

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

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

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

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

**The Amendment was read _____
By: Representative Salmon
LH/RRS - 032920010840
RRS824**

Chief Clerk