

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.

INTERIM STUDY PROPOSAL 2009-172

State of Arkansas
87th General Assembly
Regular Session, 2009

A Bill

SENATE BILL 859

By: Senator Broadway
By: Representative Nix

Filed with: Senate Interim Committee on Judiciary
pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

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

Subtitle

AN ACT TO CREATE LEGAL REMEDIES TO AID
THE ABILITY OF A PERSON TO RECOVER
STOLEN PROPERTY FROM A PAWNBROKER.

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

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

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

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

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



1 18-27-203. Refusal to return property – Liability.

2 ~~(a) If any pawnbroker shall fail or refuse to return any property to~~
3 ~~the true owner thereof when requested to do so by him or her as provided in §~~
4 ~~18-27-202, it shall be necessary for the true owner to resort to legal action~~
5 ~~to recover the property.~~

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

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

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

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

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

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

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

28 (2) The failure to name a proper defendant is not
29 grounds for dismissal of an action brought under this section if the court
30 finds that the pawnbroker or its owner or owners have failed to comply with §
31 18-27-204.

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

35 (D) The filing fee for the petition is ten dollars
36 (\$10.00).

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

2 (i) A description of the stolen property;

3 (ii) The value of the stolen property;

4 (iii) When the property was stolen, if known;

5 (iv) The last known location of the stolen property;

6 (v) Pertinent information regarding the pawnbroker
7 where the property is located, if known, including:

8 (a) The owner of the pawnbroker;

9 (b) The name and type of the business entity
10 under which the pawnbroker is owned or operated; and

11 (c) The last known address of the pawnbroker
12 or agent for service of process, if applicable; and

13 (vi) Any claim for actual damages, including without
14 limitation:

15 (a) Costs and filing fees;

16 (b) Attorney's fees;

17 (c) Incidental damages and costs, including
18 without limitation:

19 (1) Copying costs;

20 (2) Transportation costs;

21 (3) Lost income; and

22 (4) Other reasonable expenses associated
23 with filing the action; and

24 (d) If conversion is alleged, punitive
25 damages, if the action has been brought in circuit court.

26 (F) The petition shall be signed, verified, and dated by
27 the plaintiff.

28 (G) The petition shall be served by the district court or
29 circuit court on the defendant in accordance with the applicable Rules of
30 Civil Procedure;

31 (2) The plaintiff shall be entitled to a hearing within ten (10)
32 days of the service of the petition upon the defendant;

33 (3) The defendant may but is not required to file an answer;

34 (4) The Rules of Evidence shall be relaxed to allow the court to
35 consider any evidence it deems competent with regard to ownership of the
36 property in question;

1 (5) The court shall have broad authority to ensure that stolen
2 property is returned to its rightful owner, including without limitation:

3 (A) Ordering the immediate return of the stolen property
4 to its rightful owner assessing;

5 (B) Actual damages;

6 (C) Costs and filing fees;

7 (D) Attorney's fees;

8 (E) Incidental damages and costs;

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

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

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

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

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

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

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

35 (c) The petition may be the same or substantially the same as the
36 following form:

1 Plaintiff's property, but the Defendant has refused to do so.

2

3 6. Defendant(s): (Check one)

4 is or are the owners of a pawnbroker which is known by
 5 its business name of
 6 is a corporation whose agent for service of process is
 7 (name of agent). The agent for service's address is:
 8
 9

10

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

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

19

20 8. Plaintiff is requesting total damages of \$ (not to exceed
 21 the jurisdictional limits of the court).

22

23

24
 (Signature of Plaintiff)

25

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29

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33
 (Printed Name and Address of Plaintiff)

34

35 VERIFICATION

36

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

4
5
6 My Commission Expires: _____ NOTARY PUBLIC
7
8
9

10 CERTIFICATE OF SERVICE, SUMMONS, AND
11 NOTICE OF HEARING
12

13 You are hereby warned to appear on the _____ day of _____,
14 20____, at _____ a.m/p.m. in the _____ Court of _____,
15 Arkansas, to answer the petition of the Plaintiff
16

17 FAILURE TO APPEAR MAY RESULT IN A DEFAULT JUDGMENT OR OTHER ORDERS
18 BEING ENTERED AGAINST YOU.
19

20 I certify that I have served the above Petition and Notice of Hearing
21 on the Defendant pursuant to the Rules of Civil Procedure.
22

23 _____
24 (Signature of Clerk)
25

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

28 18-27-205. Refusal to return property – Notice.

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

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

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

1 (3) The notice shall include the following statement in easily
2 legible bold black letters not less than one-half inch (1/2") or 20-point
3 font in height: "If you are the owner of stolen property that you believe is
4 being retained by this pawnbroker and this pawnbroker has denied your request
5 to return the property, you have the right to file an action under Arkansas
6 Code Annotated § 18-27-203".

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

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

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

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

15 (c) The notice required under this section shall be conspicuously
16 posted on or within three feet (3') of the main entrance to the pawnbroker's
17 place of business and shall be located no less than four and one-half feet (4
18 1/2') above ground level nor more than five and one-half feet (5 1/2') above
19 ground level, as measured from the bottom edge of the notice.

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36 Filed Date: 04/22/2009 By: BPG\VJF