

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 84th General Assembly
3 Regular Session, 2003

A Bill

HOUSE BILL 2432

4
5 By: Representative Lamoureux
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For An Act To Be Entitled

8 AN ACT TO ALLOW A COURT TO CONSIDER CLAIMS OF
9 SPOILIATION OF EVIDENCE; AND FOR OTHER PURPOSES.
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Subtitle

14 TO ALLOW A COURT TO CONSIDER CLAIMS OF
15 SPOILIATION OF EVIDENCE.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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22 SECTION 1. Arkansas Code Title 16, Chapter 118, Subchapter 1 is
23 amended to add an additional section to read as follows:

24 16-118-108. Spoliation of evidence.

25 (a)(1) A person or entity may petition a circuit court of this state,
26 or file a motion or petition in an existing case in which the alleged
27 spoliation occurred, for violation of this section if the person or entity
28 has a reasonable belief that he or she can establish a claim under this
29 section.

30 (2) All spoliation actions shall be commenced within three (3)
31 years after the date on which the spoliation occurred or was discovered.

32 (b)(1) To establish the tort of negligent spoliation of evidence, a
33 party must prove the following by a preponderance of the evidence:

34 (A) The existence of a potential civil action;

35 (B) A legal or contractual duty to preserve evidence
36 relevant to the civil action;



1 (C) Destruction of the evidence;

2 (D) Significant impairment of the ability to prove the
 3 potential civil action;

4 (E) A causal connection between the destruction of
 5 evidence and the inability of a party to establish an integral part of the
 6 potential civil action;

7 (F) A significant possibility of success of the potential
 8 civil action if the evidence were available; and

9 (G) Damages.

10 (2)(A) If the violation of this subsection (b) is established in
 11 a separate civil action under this subsection (b), then the court may award
 12 damages to compensate the party harmed by the spoliation.

13 (B) If the violation of this subsection (b) is raised in
 14 pending litigation, then the court may:

15 (i) Consider the violation in ruling on any pretrial
 16 motions, including motions to dismiss or motions for summary judgment, or
 17 making any final decisions in the pending litigation; or

18 (ii) Instruct the jury to:

19 (a) Determine whether the violation occurred;
 20 and

21 (b) Use this determination in its decision on
 22 liability in the pending litigation.

23 (c)(1) To establish the tort of intentional spoliation of evidence, a
 24 party must prove the following by a preponderance of the evidence:

25 (A) The existence of a potential civil action;

26 (B) A potential party to the lawsuit's knowledge of a
 27 possible civil action;

28 (C) The intentional destruction of evidence designed to
 29 disrupt or defeat the potential civil action;

30 (D) Actual disruption of the potential civil action;

31 (E) A causal relationship between the act of spoliation
 32 and a party's inability to establish any part of the potential civil action;
 33 and

34 (F) Damages.

35 (2)(A) If the violation of this subsection (c) is established in
 36 a separate civil action under this subsection (c), then the court may:

1 (i) Award damages to compensate the party harmed by
2 the spoliation; or

3 (ii) Award damages to punish the party who destroyed
4 the evidence in an amount not to exceed five (5) times the actual damages
5 established by the party harmed.

6 (B) If the violation of this subsection (c) is raised in
7 pending litigation, then the court may:

8 (i) Consider the violation in ruling on any pretrial
9 motions, ruling on evidence, ruling on witness testimony, or making any final
10 decisions in the pending litigation; or

11 (ii) Instruct the jury to:

12 (a) Determine whether the violation occurred;
13 and

14 (b) Use this determination in its decision on
15 liability in the pending litigation.

16 (d) The court may consider whether the party defending against a
17 petition or motion for violation of this section destroyed the evidence for
18 the following reasons:

19 (1) In the regular course of business; or

20 (2) To eliminate a hazardous condition.

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