

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

As Engrossed: S1/22/09

A Bill

SENATE BILL 34

5 By: Senator R. Thompson
6
7

For An Act To Be Entitled

9 AN ACT TO PROVIDE A PROCEDURE FOR THE EVICTION OF
10 TENANTS ENGAGED IN CERTAIN GAMBLING, ALCOHOL, AND
11 PROSTITUTION OFFENSES; AND FOR OTHER PURPOSES.
12

Subtitle

14 TO PROVIDE A PROCEDURE FOR THE EVICTION
15 OF TENANTS ENGAGED IN CERTAIN GAMBLING,
16 ALCOHOL, AND PROSTITUTION OFFENSES.
17
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 SECTION 1. Arkansas Code Title 18, Chapter 16 is amended to add an
22 additional subchapter to read as follows:

23 SUBCHAPTER 5 – TENANT LIABILITY – EVICTION.

24 18-16-501. Common nuisance – Criminal offense.

25 Any tenant who uses or allows another person to use the tenant's leased
26 premises as a common nuisance as defined by § 5-74-109(b) or § 16-105-402 or
27 for a criminal offense as identified in § 18-16-502 may be evicted by the
28 prosecuting attorney of the county, the city attorney of the city, the
29 landlord, the premises owner, or the agent for the premises owner pursuant to
30 the provisions of this subchapter.
31

32 18-16-502. Gambling – Prostitution – Alcohol.

33 For purposes of this subchapter, any tenant who engages in or allows
34 another person to engage in *illegal gambling* under § 5-66-107, in
35 prostitution as defined by § 5-70-102, or in the unlawful sale of alcohol as
36 defined by § 3-3-205 on the tenant's leased premises shall be subject to the



1 eviction procedures established by this subchapter.

2
3 18-16-503. Complaint.

4 The prosecuting attorney of the county, the city attorney of the city,
5 the landlord, the premises owner, or the agent for the premises owner may
6 file a complaint in the office of the clerk of the circuit court for the
7 eviction of any tenant who has used or has allowed another person to use the
8 tenant's leased premises for use as a common nuisance as defined by § 5-74-
9 109(b) or § 16-105-402 or for a criminal offense as identified in § 18-16-
10 502.

11
12 18-16-504. Form of complaint.

13 A complaint filed under this subchapter shall state the name of the
14 tenant or tenants to be evicted, the location of the leased premises, and the
15 basis for which eviction is authorized under this subchapter.

16
17 18-16-505. Summons – Notice.

18 Upon the filing of a complaint under this subchapter, the clerk of the
19 circuit court shall issue a summons upon the complaint. The summons shall be
20 in customary form directed to the sheriff of the county where the complaint
21 is filed, with direction for service of the complaint on the named
22 defendants. In addition, the circuit court shall issue and direct the
23 sheriff to serve upon the named defendants a notice in the following form:

24
25 "NOTICE OF INTENTION TO EVICT FOR CRIMINAL ACTIVITY

26
27 You are hereby notified that the attached complaint in the above-styled cause
28 claims that you have engaged in or have allowed the property described in the
29 above-mentioned complaint to be used for criminal activity and that the
30 plaintiff is entitled to have you evicted pursuant to state law. If, within
31 five (5) days, excluding Sundays and legal holidays, after the date of
32 service of this notice you have not filed in the office of the circuit clerk
33 of this county a written objection to the claims made against you by the
34 plaintiff in his or her complaint for eviction, then a writ of possession
35 shall forthwith issue from this office directed to the sheriff of this county
36 or to the police chief of the city ordering him or her to remove you from

1 possession of the property described in the complaint. If you should file a
 2 written objection to the complaint of the plaintiff and the allegations for
 3 immediate possession of the property described in the complaint within five
 4 (5) days, excluding Sundays and legal holidays, after the date of service of
 5 this notice, a hearing will be scheduled by the circuit court of this county
 6 after you have timely answered to determine whether or not the writ of
 7 possession should issue as sought by the plaintiff.

8
 9 Circuit Clerk of County"

10
 11 18-16-506. Written objection.

12 (a) If, within five (5) days, excluding Sundays and legal holidays,
 13 following service of this summons, complaint, and notice seeking a writ of
 14 possession against the defendants named in the complaint, the defendant or
 15 defendants have not filed a written objection to the claim for a writ of
 16 possession made by the plaintiff in his or her complaint, the clerk of the
 17 circuit court shall immediately issue a writ of possession directed to the
 18 sheriff of the county or the police chief of the city commanding him or her
 19 to cause the defendant or defendants to vacate the property described in the
 20 complaint without delay, which the sheriff or police chief shall execute in
 21 the manner described in § 18-16-507.

22 (b)(1) If a written objection to the claim of the plaintiff for a writ
 23 of possession is filed by the defendant or defendants within five (5) days
 24 after the date of service of the notice, summons, and complaint as provided
 25 for in this section, the plaintiff shall obtain a date for the hearing of the
 26 plaintiff's demand for a writ of possession of the property described in the
 27 complaint after the defendant or defendants have timely answered the
 28 complaint.

29 (2)(A) If a hearing described in subdivision (b)(1) of this
 30 section is required, at the hearing the plaintiff shall present evidence
 31 sufficient to make a prima facie case of the criminal activity that has been
 32 facilitated at the property described in the complaint.

33 (B) The defendant or defendants shall be entitled to
 34 present evidence in rebuttal of the plaintiff's case.

35 (3) If the circuit court decides upon all the evidence that the
 36 plaintiff is entitled to a writ of possession under state law, then the

1 circuit court shall order the clerk of the circuit court to immediately issue
2 a writ of possession to the sheriff of the county or the police chief of the
3 city to evict the defendant or defendants, as provided for in § 18-16-507.

4
5 18-16-507. Writ of possession.

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

14 (b)(1) Upon receipt of the writ of possession, the sheriff or police
15 chief shall notify the defendant or defendants of the issuance of the writ of
16 possession by delivering a copy of the writ of possession to the defendant or
17 defendants or to any person authorized to receive summons in civil cases and
18 in like manner.

19 (2) If, within eight (8) hours after receipt of the writ of
20 possession, the sheriff or police chief does not find any such defendant as
21 stated in the complaint at his or her normal place of residence, the sheriff
22 or police chief may serve the writ of possession by placing a copy
23 conspicuously upon the front door or other structure of the property
24 described in the complaint, which shall have like effect as if delivered in
25 person pursuant to the terms of the writ of possession.

26 (c)(1)(A) If, at the expiration of twenty-four (24) hours after the
27 service of the writ of possession in the manner indicated, the defendant or
28 defendants remain in possession of the property, the sheriff or police chief
29 shall notify the plaintiff or the plaintiff's attorney of that fact and shall
30 be provided with all labor and assistance required by the sheriff or police
31 chief in removing the possessions and belongings of the defendant or
32 defendants from the affected property to a place of storage in a public
33 warehouse or in some other reasonable safe place of storage under the control
34 of the plaintiff.

35 (B)(i) The defendant or defendants may recover the
36 property stored under subdivision (c)(1)(A) within seven (7) business days.

1 (ii) Before recovering the property, the defendant
2 or defendants shall pay for the reasonable cost of storage.

3 (2) If the defendant or defendants do not recover the property
4 as provided in subdivision (c)(1) of this section, then the circuit court
5 shall order the possessions and belongings of the defendant or defendants
6 sold by the plaintiff in a commercially reasonable manner with the proceeds
7 of the sale applied first to the cost of storage, second to any monetary
8 judgment in favor of the plaintiff, and third, to the defendant any excess.

9 (d) In executing the writ of possession, the sheriff or police chief
10 may forcibly remove all locks or other barriers erected to prevent entry upon
11 the premises in any manner which he or she deems appropriate or convenient
12 and, if necessary, physically restrain the defendant or defendants from
13 interfering with the removal of a defendant's property and possessions from
14 the property described in the writ of possession.

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

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

26
27 18-16-508. Costs and attorney's fees – Damages.

28 (a)(1) A court granting relief under this subchapter may order in
29 addition to any other costs provided by law the payment by the defendant or
30 defendants to the plaintiff reasonable attorney's fees and the costs of the
31 action. In such cases, multiple defendants are jointly and severally liable
32 for any payment so ordered.

33 (2) Any costs or attorney's fees collected from the defendants
34 shall be remitted to the plaintiff. If the plaintiff is the city attorney,
35 the costs shall be remitted to the city general fund. If the plaintiff is
36 the prosecuting attorney, the costs shall be remitted to the county general

1 fund.

2 (b) A proceeding brought under this subchapter for eviction of the
3 defendants and occupants of the premises does not preclude the owner or
4 landlord from recovering monetary damages for rent, repairs, or any other
5 incidental damages up to the date of eviction of the defendants and occupants
6 from the premises in a civil action.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

/s/ R. Thompson