

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 S2/5/09

A Bill

SENATE BILL 34

5 By: Senator R. Thompson
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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.
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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.
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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 – Jurisdiction.

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

10 (b) A civil action under this subchapter is cognizable before the:

11 (1) Circuit court of any county in which an act described in §
12 18-16-501 or § 18-16-502 is committed; and

13 (2) District court with jurisdiction concurrent with the
14 jurisdiction of the circuit court if permitted by rule or order of the
15 Supreme Court.

16 (c) As used in this subchapter, "court" means:

17 (1) A circuit court; and

18 (2) If permitted by rule or order of the Supreme Court, a
19 district court.

20
21 18-16-504. Form of complaint.

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

25
26 18-16-505. Summons – Notice.

27 Upon the filing of a complaint under this subchapter, the clerk of the
28 court shall issue a summons upon the complaint. The summons shall be in
29 customary form directed to the sheriff of the county where the complaint is
30 filed, with direction for service of the complaint on the named defendants.
31 In addition, the court shall issue and direct the sheriff to serve upon the
32 named defendants a notice in the following form:

33
34 "NOTICE OF INTENTION TO EVICT FOR CRIMINAL ACTIVITY

35
36 You are hereby notified that the attached complaint in the above-styled cause

1 claims that you have engaged in or have allowed the property described in the
2 above-mentioned complaint to be used for criminal activity and that the
3 plaintiff is entitled to have you evicted pursuant to state law. If, within
4 five (5) days, excluding Sundays and legal holidays, after the date of
5 service of this notice you have not filed in the office of the clerk of this
6 court a written objection to the claims made against you by the plaintiff in
7 his or her complaint for eviction, then a writ of possession shall forthwith
8 issue from this office directed to the sheriff of this county or to the
9 police chief of the city ordering him or her to remove you from possession of
10 the property described in the complaint. If you should file a written
11 objection to the complaint of the plaintiff and the allegations for immediate
12 possession of the property described in the complaint within five (5) days,
13 excluding Sundays and legal holidays, after the date of service of this
14 notice, a hearing will be scheduled by the court after you have timely
15 answered to determine whether or not the writ of possession should issue as
16 sought by the plaintiff.

17
18 Clerk of Court

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20 18-16-506. Written objection.

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

31 (b)(1) If a written objection to the claim of the plaintiff for a writ
32 of possession is filed by the defendant or defendants within five (5) days
33 after the date of service of the notice, summons, and complaint as provided
34 for in this section, the plaintiff shall obtain a date for the hearing of the
35 plaintiff's demand for a writ of possession of the property described in the
36 complaint after the defendant or defendants have timely answered the

1 complaint.

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

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

8 (3) If the court decides upon all the evidence that the
9 plaintiff is entitled to a writ of possession under state law, then the court
10 shall order the clerk of the court to immediately issue a writ of possession
11 to the sheriff of the county or the police chief of the city to evict the
12 defendant or defendants, as provided for in § 18-16-507.

13
14 18-16-507. Writ of possession.

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

23 (b)(1) Upon receipt of the writ of possession, the sheriff or police
24 chief shall notify the defendant or defendants of the issuance of the writ of
25 possession by delivering a copy of the writ of possession to the defendant or
26 defendants or to any person authorized to receive summons in civil cases and
27 in like manner.

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

35 (c)(1)(A) If, at the expiration of twenty-four (24) hours after the
36 service of the writ of possession in the manner indicated, the defendant or

1 defendants remain in possession of the property, the sheriff or police chief
2 shall notify the plaintiff or the plaintiff's attorney of that fact and shall
3 be provided with all labor and assistance required by the sheriff or police
4 chief in removing the possessions and belongings of the defendant or
5 defendants from the affected property to a place of storage in a public
6 warehouse or in some other reasonable safe place of storage under the control
7 of the plaintiff.

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

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

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

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

24 (e) If the plaintiff is the city attorney or prosecuting attorney, no
25 bond shall be required. If the plaintiff is the landlord or premises owner,
26 no bond shall be required unless ordered by the court as a condition to the
27 execution of a writ of possession granted prior to the date that an answer is
28 to be filed by the defendant or defendants.

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

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36 18-16-508. Costs and attorney's fees – Damages.

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

6 (2) Any costs or attorney's fees collected from the defendants
7 shall be remitted to the plaintiff. If the plaintiff is the city attorney,
8 the costs shall be remitted to the city general fund. If the plaintiff is
9 the prosecuting attorney, the costs shall be remitted to the county general
10 fund.

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

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17 */s/ R. Thompson*
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