

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 *As Engrossed: S1/22/09 S2/5/09 H2/12/09 H3/3/09*

2 87th General Assembly

A Bill

3 Regular Session, 2009

SENATE BILL 34

4

5 By: Senator R. Thompson

6 By: Representative Hyde

7

8

For An Act To Be Entitled

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

13

14

Subtitle

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

18

19

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

21

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

24 SUBCHAPTER 5 – TENANT LIABILITY – EVICTION.

25 18-16-501. Common nuisance – Criminal offense.

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

32

33 18-16-502. Gambling – Prostitution – Alcohol.

34 For purposes of this subchapter, any tenant who engages in or allows
35 another person to engage in illegal gambling under § 5-66-107, in
36 prostitution as defined by § 5-70-102, or in the unlawful sale of alcohol as



1 defined by § 3-3-205 on the tenant's leased premises shall be subject to the
2 eviction procedures established by this subchapter.

3
4 18-16-503. Complaint – Jurisdiction.

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

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

12 (1) Circuit court of any county in which an act described in §
13 18-16-501 or § 18-16-502 is committed; and

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

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

18 (1) A circuit court; and

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

21
22 18-16-504. Form of complaint.

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

26
27 18-16-505. Summons – Notice.

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

34
35 "NOTICE OF INTENTION TO EVICT FOR CRIMINAL ACTIVITY
36

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

18
19 Clerk of Court

20
21 18-16-506. Written objection.

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

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

1 complaint after the defendant or defendants have timely answered the
2 complaint.

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

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

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

14
15 18-16-507. Writ of possession.

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

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

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

36 (c)(1)(A) If, at the expiration of twenty-four (24) hours after the

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

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

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

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

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

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

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

36 (g) As used in this section, "sheriff or police chief" includes a

1 deputy sheriff, police officer, or other law enforcement official acting at
2 the direction of the sheriff or police chief.

3
4 18-16-508. Costs and attorney's fees – Damages.

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

10 (2) Any costs or attorney's fees collected from the defendants
11 shall be remitted to the plaintiff. If the plaintiff is the city attorney,
12 the costs shall be remitted to the city general fund. If the plaintiff is
13 the prosecuting attorney, the costs shall be remitted to the county general
14 fund.

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

20
21 18-16-509. Immunity from civil liability.

22 For any action or threatened action taken to enforce a right or remedy
23 provided by this subchapter, a landlord, a premises owner, an agent or
24 attorney for the premises owner, and a real estate licensee as defined in §
25 17-42-103(10) are immune from civil liability for the breach of an express or
26 implied covenant concerning the possession or quiet enjoyment of the leased
27 premises.

28
29 /s/ R. Thompson
30
31
32
33
34
35
36