

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015

A Bill

HOUSE BILL 1544

4
5 By: Representatives Sullivan, Ladyman, Tosh, Wallace
6 By: Senator J. Cooper

For An Act To Be Entitled

9 AN ACT TO REGULATE THE PRACTICES AND PROCEDURES OF
10 PAWNBROKERS; TO HELP THE RIGHTFUL OWNER RECOVER
11 STOLEN PROPERTY; AND FOR OTHER PURPOSES.

Subtitle

15 TO REGULATE THE PRACTICES AND PROCEDURES
16 OF PAWNBROKERS; AND TO HELP THE RIGHTFUL
17 OWNER RECOVER STOLEN PROPERTY.

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

21
22 SECTION 1. DO NOT CODIFY. Findings and legislative intent.

23 The General Assembly finds and determines that:

24 (1) Certain provisions of Arkansas law requiring a pawnbroker to
25 turn over personal property based upon the affidavit of the alleged owner
26 without a judicial determination of the merits of the demanding owner's
27 claim, and the pawnbroker's corresponding liability for costs, attorney's
28 fees, and damages, were held to be unconstitutional in Landers v. Jameson,
29 355 Ark. 163, 132 S.W.3d 741 (2003), for failure to provide the pawnbroker
30 notice and an opportunity for a hearing before taking the property pawned to
31 the pawnbroker;

32 (2) Rather than merely protecting the pawnbroker from being
33 forced to return personal property based upon the mere demand and production
34 of an affidavit by the alleged owner, the Landers case has been used to
35 falsely advise rightful owners of personal property that Arkansas law
36 requires that the pawnbroker be paid the amount the pawnbroker paid for



1 stolen property before releasing the property to the true owner;

2 (3) The law should discourage pawnbrokers from acquiring stolen
 3 personal property and encourage the return of stolen property to the rightful
 4 owner without penalty;

5 (4) To assist the recovery of stolen property:

6 (A) Full disclosure should be made of the respective
 7 rights of the parties to stolen property to encourage:

8 (i) The parties to resolve disputed claims to stolen
 9 property; and

10 (ii) The reporting of acts of theft and dishonesty
 11 to appropriate law enforcement authorities; and

12 (B) A right to examine, inspect, and photograph suspected
 13 stolen property should be provided; and

14 (5) Appropriate penalties should be provided if:

15 (A) The rights of the parties to stolen property in the
 16 possession of a pawnbroker are not disclosed by the pawnbroker;

17 (B) Clearly identifiable stolen property is wrongfully
 18 withheld from the rightful owner; or

19 (C) Stolen property is defaced or other action is taken to
 20 hide or hinder the identification of stolen property.

21
 22 SECTION 2. Arkansas Code § 18-27-204(c), concerning the disposition of
 23 pawned property, is amended to read as follows:

24 (c) ~~No~~ A pawnbroker shall not dispose of personal property purchased or
 25 received as security until at least fifteen (15) calendar days after the
 26 personal property is purchased or pawned or at least seven (7) calendar days
 27 after the purchase or pawn is reported to the local police, whichever comes
 28 first, unless the personal property is:

29 (1) ~~redeemed~~ Redeemed by the person who sold or pawned it; or

30 (2) Returned to the rightful owner of the personal property.

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 32
 33 SECTION 3. Arkansas Code Title 18, Chapter 27, is amended to add an
 34 additional subchapter to read as follows:

35
 36 Subchapter 3 – Pawnbroker Reform and Disclosure Act

1
2 18-27-301. Title.

3 This subchapter shall be known and may be cited as the "Pawnbroker
4 Reform and Disclosure Act".

5
6 18-27-302. Definitions.

7 As used in this subchapter:

8 (1) "Defacing identifiable stolen personal property" means
9 performing or acquiescing in an act designed to remove, destroy, mutilate,
10 disguise, or otherwise prevent detection of identifiable stolen personal
11 property;

12 (2) "Identifiable stolen personal property" means personal
13 property that is:

14 (A) Reported stolen to an appropriate law enforcement
15 agency; and

16 (B) Described in the official stolen property report of
17 the law enforcement agency by serial number, vehicle identification number,
18 license registration number, or other numbers, letters, symbols, or markings
19 that authenticate the personal property;

20 (3) "Insider" means a family member or employee of the owner of
21 stolen property;

22 (4) "Pawnbroker" means an individual or entity that is engaged
23 in the business of:

24 (A) Lending money upon the security of an article of
25 personal property that is retained by the individual or entity until:

26 (i) The loan is repaid; or

27 (ii) The time to repay the loan has expired; or

28 (B) Purchasing other than at wholesale or retail an
29 article of personal property for resale; and

30 (5) "Right of inspection" means the right of an individual to
31 freely and fully examine and photograph an article of personal property in
32 the possession of a pawnbroker.

33
34 18-27-303. Recovery of personal property and identifiable stolen
35 personal property – Liability.

36 (a) An owner of stolen personal property may request that a pawnbroker

1 return the stolen property without charge to the owner by furnishing adequate
2 proof of ownership.

3 (b) If a request under subsection (a) of this section is refused, the
4 owner may file a replevin action to recover the property.

5 (c) In an action under subsection (b) of this section:

6 (1)(A) Except as provided in subdivision (c)(2) of this section,
7 if the court determines that the pawnbroker refused, without justification,
8 to return identifiable stolen property, the court shall order the pawnbroker
9 to:

10 (i) Return the identifiable stolen property to the
11 owner without charge to the owner; and

12 (ii) Pay the owner:

13 (a) Two (2) times the value of the
14 identifiable stolen property; and

15 (b) Compensatory damages for the lost use of
16 the identifiable stolen property.

17 (B) Proof that the pawnbroker refused to return
18 identifiable stolen personal property in the pawnbroker's possession after
19 being furnished a police report containing the identifiable stolen personal
20 property creates a presumption that the pawnbroker refused, without
21 justification, to return identifiable stolen property;

22 (2) If the court determines that the property was acquired by
23 the pawnbroker from an insider, the owner shall be entitled to recover the
24 property upon reimbursing the cost to the pawnbroker of acquiring the
25 property;

26 (3) The court may award and apportion costs and attorney's fees
27 as appropriate under the facts of the case; and

28 (4) If the court determines that probable cause exists to find
29 that a pawnbroker is guilty of defacing identifiable stolen property under §
30 18-27-204, the court shall refer the offense of defacing identifiable
31 personal property for criminal prosecution.

32
33 18-27-304. Notice concerning recovery of personal property and
34 identifiable stolen personal property.

35 (a) A pawnbroker shall post the notice contained in subsection (b) of
36 this section in bold letters that are each at least three inches (3") tall at

each location where the pawnbroker does business adjacent to the business's:

(1) Cash register; and

(2) Entrance.

(b) The notice required by subsection (a) of this section shall be written in bold letters that are each at least three inches (3") tall and read as follows:

"NOTICE CONCERNING STOLEN PROPERTY

PLEASE TAKE NOTICE THAT THE RIGHTFUL OWNER MAY ASK A PAWNBROKER TO RETURN STOLEN PROPERTY BY SHOWING PROOF OF OWNERSHIP OF THE PROPERTY. IF THE PAWNBROKER REFUSES TO RETURN THE STOLEN PERSONAL PROPERTY AS REQUESTED, THE OWNER MAY ATTEMPT TO RECOVER THE ITEMS OF STOLEN PERSONAL PROPERTY WITHOUT PAYMENT TO THE PAWNBROKER BY FILING SUIT IN THE LOCAL DISTRICT COURT FOR ITEMS VALUED UNDER CERTAIN LIMITS, USUALLY LESS THAN FIVE THOUSAND DOLLARS (\$5,000), OR IN THE COUNTY CIRCUIT COURT.

IF THE COURT DETERMINES THAT THE PAWNBROKER REFUSED, WITHOUT JUST CAUSE, TO RETURN "IDENTIFIABLE STOLEN PERSONAL PROPERTY", THE PAWNBROKER SHALL BE ORDERED TO RETURN THE IDENTIFIABLE STOLEN PERSONAL PROPERTY TO THE OWNER WITHOUT CHARGE TO THE OWNER AND PAY THE OWNER: (1) TWO (2) TIMES THE VALUE OF THE IDENTIFIABLE STOLEN PERSONAL PROPERTY; AND (2) COMPENSATORY DAMAGES FOR THE LOST USE OF THE IDENTIFIABLE STOLEN PERSONAL PROPERTY. "IDENTIFIABLE STOLEN PERSONAL PROPERTY" MEANS PERSONAL PROPERTY THAT IS:

(A) REPORTED STOLEN TO AN APPROPRIATE LAW ENFORCEMENT AGENCY; AND

(B) DESCRIBED IN THE OFFICIAL STOLEN PROPERTY REPORT OF THE LAW ENFORCEMENT AGENCY BY SERIAL NUMBER, VEHICLE IDENTIFICATION NUMBER, LICENSE REGISTRATION NUMBER, OR OTHER NUMBERS, LETTERS, SYMBOLS, OR MARKINGS THAT AUTHENTICATE THE PERSONAL PROPERTY.

HOWEVER, IF THE COURT DETERMINES THAT THE PROPERTY WAS ACQUIRED BY THE PAWNBROKER FROM A FAMILY MEMBER OR EMPLOYEE OF THE OWNER, THE OWNER IS ENTITLED TO RECOVER THE PROPERTY ONLY UPON REIMBURSING THE COST TO THE PAWNBROKER OF ACQUIRING THE PROPERTY.

IF SUIT IS FILED TO RECOVER PROPERTY IN THE POSSESSION OF THE PAWNBROKER, THE COURT MAY AWARD AND APPORTION COSTS AND ATTORNEY'S FEES AS APPROPRIATE."

18-27-305. Limitations on the purchase, maintenance, and disposition of

1 personal property – Defacing identifiable stolen personal property.

2 (a) A pawnbroker shall not:

3 (1) Purchase or receive personal property as security from a
4 person under eighteen (18) years of age who has not been emancipated under §
5 9-26-104;

6 (2) Dispose of personal property purchased or received as
7 security until at least fifteen (15) calendar days after the personal
8 property is purchased or pawned or at least seven (7) calendar days after the
9 purchase or pawn is reported to the local police, whichever comes first,
10 unless the personal property is:

11 (A) Redeemed by the person who sold or pawned the personal
12 property; or

13 (B) Returned to the rightful owner of the personal
14 property;

15 (3) Deface identifiable stolen personal property.

16 (b) Subdivision (a)(2) of this section does not apply to personal
17 property purchased by the pawnbroker from a retailer or a wholesaler.

18
19 18-27-306. Right of inspection.

20 A pawnbroker shall:

21 (1) Provide a right of inspection at all times during the
22 pawnbroker's customary business hours; and

23 (2) Not engage in any conduct to deny, interfere with, delay, or
24 discourage a right of inspection.

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26 18-27-307. Penalties.

27 A violation of this subchapter is a Class D felony.
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