

Stricken language would be deleted from and underlined language would be added to present law.
Act 1242 of the Regular Session

State of Arkansas
90th General Assembly
Regular Session, 2015

As Engrossed: H3/23/15
A Bill

HOUSE BILL 1544

By: Representatives Sullivan, Ladyman, Tosh, Wallace

By: Senator J. Cooper

For An Act To Be Entitled

AN ACT TO REGULATE THE PRACTICES AND PROCEDURES OF
DEALERS IN SECONDHAND GOODS; TO HELP THE RIGHTFUL
OWNER RECOVER STOLEN PROPERTY; AND FOR OTHER
PURPOSES.

Subtitle

*TO REGULATE THE PRACTICES AND PROCEDURES
OF DEALERS IN SECONDHAND GOODS; AND TO
HELP THE RIGHTFUL OWNER RECOVER STOLEN
PROPERTY.*

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

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

The General Assembly finds and determines that:

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

(2) The law should encourage dealers in secondhand goods, including pawnbrokers, to return stolen property to the rightful owner



without penalty while protecting respective property rights;

(3) To assist the recovery of stolen property:

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

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

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

(B) A right to recover and deliver stolen property without the threat of additional loss; and

(4) Appropriate penalties should be provided if:

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

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

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

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

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

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

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

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

Subchapter 3 – Dealer in Secondhand Goods Reform and Disclosure Act

18-27-301. Title.

This subchapter shall be known and may be cited as the *Dealer in Secondhand Goods Reform and Disclosure Act*".

18-27-302. Definitions.

As used in this subchapter:

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

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

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

(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 specific personal property in the possession of the dealer; and

(C) Connected by documentation, such as a receipt, presented to the dealer by the owner demonstrating the likelihood of current ownership;

(3) "Insider" means a family member or friend of the owner of stolen property; and

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

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

(i) The loan is repaid; or

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

(B) Purchasing other than at wholesale or retail an article of personal property for resale in any form.

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

(a) An owner of stolen personal property may request that a dealer return the stolen property without charge to the owner by signing and

following the terms of the affidavit in favor of the dealer as described in § 18-27-304(b).

(b) Unless reasonable cause exists, within seven (7) days after the later of the receipt of an affidavit described in § 18-27-304(b) and the written release, either conditional or outright, of any property hold issued by any law enforcement agency with respect to the identifiable stolen property, a dealer shall:

(1) Deliver the identifiable stolen property to the owner; or

(2) File a legal action in a court of competent jurisdiction to determine ownership.

(c) If the dealer refuses to make an election under subsection (b) of this section, the owner may file a replevin action to recover the property and the court may award and apportion costs and attorney's fees as appropriate under the facts of the case.

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

(a) Once an owner requests the return of stolen property, a dealer shall deliver a written notice as to the owner's rights.

(b) The written notice required by subsection (a) of this section shall be written in bold letters that are each at least 12-point type and read as follows:

“NOTICE CONCERNING STOLEN PROPERTY

PLEASE TAKE NOTICE THAT THE RIGHTFUL OWNER MAY ASK A DEALER IN SECONDHAND GOODS (“DEALER”) TO RETURN STOLEN PROPERTY BY SHOWING PROOF OF OWNERSHIP OF THE PROPERTY AND SIGNING AN AFFIDAVIT AS TO OWNERSHIP, INDEMNIFYING AND HOLDING THE DEALER HARMLESS FROM LOSS (“AFFIDAVIT”). THE AFFIDAVIT MUST RELATE TO IDENTIFIABLE STOLEN PERSONAL PROPERTY AND BE IN THE FORM BELOW OR ATTACHED TO THIS NOTICE. AFTER DELIVERY OF THE AFFIDAVIT TO DEALER AND THE RELEASE OF ANY PROPERTY HOLD PLACED ON THE PROPERTY BY A LAW ENFORCEMENT AGENCY, THE DEALER HAS SEVEN DAYS TO EITHER RELINQUISH THE IDENTIFIABLE STOLEN PERSONAL PROPERTY OR FILE A LEGAL ACTION IN COURT TO DETERMINE OWNERSHIP.

IF THE DEALER REFUSES TO DELIVER THE PROPERTY OR FILE AN ACTION IN COURT TO DETERMINE OWNERSHIP WITHIN SEVEN (7) DAYS THEREAFTER, THE OWNER MAY ATTEMPT TO RECOVER THE ITEMS OF STOLEN PERSONAL PROPERTY WITHOUT PAYMENT TO THE DEALER BY FILING A LEGAL ACTION IN COURT. IF THE COURT DETERMINES THAT

THE DEALER REFUSED TO EITHER DELIVER THE PERSONAL PROPERTY OR FILE AN ACTION IN COURT TO DETERMINE OWNERSHIP WITHIN SEVEN (7) DAYS, WITHOUT REASONABLE CAUSE, THE DEALER COULD BE ORDERED TO RETURN THE IDENTIFIABLE STOLEN PERSONAL PROPERTY TO THE OWNER WITHOUT CHARGE TO THE OWNER.

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

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

"IDENTIFIABLE STOLEN PERSONAL PROPERTY" MEANS PERSONAL PROPERTY THAT IS:

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

(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 SPECIFIC PERSONAL PROPERTY IN THE POSSESSION OF DEALER; AND

(C) CONNECTED BY DOCUMENTATION (SUCH AS A RECEIPT) PRESENTED TO THE DEALER BY THE OWNER DEMONSTRATING THE LIKELIHOOD OF CURRENT OWNERSHIP.

TO PROCEED, PLEASE COMPLETE THE FOLLOWING AFFIDAVIT AND DELIVER TO THE DEALER.

AFFIDAVIT AS TO OWNERSHIP, INDEMNITY AND HOLD HARMLESS AGREEMENT

STATE OF ARKANSAS

COUNTY OF _____

BEFORE THE UNDERSIGNED, _____, DULY QUALIFIED AND ACTING IN AND FOR THIS COUNTY AND STATE, APPEARED _____ [TO ME WELL KNOWN] [SATISFACTORILY PROVEN] TO BE THE AFFIANT HEREIN, WHO STATED THE FOLLOWING

UNDER OATH:

1. I _____, AM THE SOLE, TRUE AND ABSOLUTE OWNER OF PERSONAL PROPERTY ("PROPERTY"), FREE OF ANY LIENS AND ENCUMBRANCES DESCRIBED AS:

AND CURRENTLY IN THE POSSESSION OF:

_____ ("DEALER")

2. I HAVE REPORTED THE PROPERTY STOLEN TO THE APPROPRIATE LAW ENFORCEMENT AGENCY AND HAVE PRESENTED THE DEALER WITH THE FOLLOWING DOCUMENTATION WITH REGARD TO MY OWNERSHIP OF THE PROPERTY AND SUCH DOCUMENTATION IS ATTACHED HERETO:

a. OFFICIAL STOLEN PROPERTY REPORT OF A LAW ENFORCEMENT AGENCY SHOWING SERIAL NUMBER, VEHICLE IDENTIFICATION NUMBER, LICENSE REGISTRATION NUMBER, OR OTHER NUMBERS, LETTERS, SYMBOLS, OR MARKINGS THAT AUTHENTICATE THE SPECIFIC PERSONAL PROPERTY IN THE POSSESSION OF DEALER. SAID REPORT IS ISSUED BY:

_____ AND HAS A REPORT NUMBER OF

b. DOCUMENTATION DEMONSTRATING THE LIKELIHOOD OF MY CURRENT OWNERSHIP OF THE PROPERTY, SPECIFICALLY DESCRIBED AS:

3. I WILL COOPERATE WITH LAW ENFORCEMENT AND THE PROSECUTOR IN ALL RESPECTS REGARDING THE THEFT OF PROPERTY.

4. I UNDERSTAND THE DEALER CANNOT RELEASE PROPERTY THAT IS SUBJECT TO A LAW ENFORCEMENT PROPERTY HOLD AND ANY SUCH HOLD MUST BE REMOVED BEFORE THE PROPERTY CAN BE DELIVERED TO ME.

5. I UNDERSTAND THE DEALER HAS SEVEN DAYS TO EITHER RELEASE THE PROPERTY TO ME OR FILE A LEGAL ACTION TO DETERMINE OWNERSHIP.

6. THE PERSON THAT CAUSED THE ITEM TO BE IN THE POSSESSION OF THE DEALER IS NOT A FAMILY MEMBER OR FRIEND OF MINE.

7. I UNDERSTAND THAT I MAY BE SUBJECT TO CIVIL OR CRIMINAL PENALTIES IF THE REPRESENTATIONS I AM MAKING HEREIN ARE UNTRUE.

8. I WILL INDEMNIFY AND HOLD THE DEALER HARMLESS FOR ANY AND ALL LOSS OCCASIONED BY THE REPRESENTATIONS MADE IN THIS AFFIDAVIT WITH REGARD TO THE PROPERTY.

FURTHER THE AFFIANT SAYETH NOT.

IN WITNESS WHEREOF, I HEREUNTO SET MY HAND THIS _____ DAY OF _____.

OWNER

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY OF _____.

[OFFICIAL TITLE]

MY COMMISSION EXPIRES:

[SEAL]

18-27-305. Limitations on the purchase, maintenance, and disposition of personal property – Defacing identifiable stolen personal property.

(a) A dealer shall not:

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

(2) Deface identifiable stolen personal property.

18-27-307. Penalties.

A violation of this subchapter by a dealer is a Class C misdemeanor.

/s/Sullivan

APPROVED: 04/08/2015