

By: Representative Davis (By Request)

To: Judiciary A

HOUSE BILL NO. 1249

1 AN ACT TO AMEND SECTIONS 85-3-21, 85-3-23, 85-3-27 AND
 2 85-3-31, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE AMOUNT OF A
 3 HOMESTEAD EXEMPTION THAT A PERSON WHO IS A HOUSEHOLDER IS ENTITLED
 4 TO HOLD EXEMPT FROM SEIZURE OR SALE UNDER EXECUTION OR ATTACHMENT
 5 WILL BE THE FULL VALUE OF THE HOMESTEAD BASED ON ITS VALUE ONE
 6 YEAR BEFORE THE SEIZURE, IN THE CASE OF OBLIGATIONS ARISING
 7 DIRECTLY AS A RESULT OF A CATASTROPHIC OR TERMINAL ILLNESS OR
 8 INJURY; TO AMEND SECTIONS 85-3-35 AND 85-3-37, MISSISSIPPI CODE OF
 9 1972, TO CONFORM TO THE PRECEDING PROVISIONS; AND FOR RELATED
 10 PURPOSES.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

12 SECTION 1. Section 85-3-21, Mississippi Code of 1972, is
 13 amended as follows:

14 85-3-21. (1) Every citizen of this state, male or female,
 15 being a householder shall be entitled to hold exempt from seizure
 16 or sale, under execution or attachment, the land and buildings
 17 owned and occupied as a residence by him, or her, but the quantity
 18 of land shall not exceed one hundred sixty (160) acres, nor the
 19 value thereof, inclusive of improvements, save as hereinafter
 20 provided, the sum of Seventy-five Thousand Dollars (\$75,000.00) or
 21 such higher amount as specified in subsection (2) of this
 22 section; * * * however, * * * in determining this value, existing
 23 encumbrances on such land and buildings, including taxes and all
 24 other liens, shall first be deducted from the actual value of such
 25 land and buildings. But husband or wife, widower or widow, over
 26 sixty (60) years of age, who has been an exemptionist under this
 27 section, shall not be deprived of such exemption because of not
 28 residing therein.

29 (2) In the case of obligations arising directly as a result
 30 of a catastrophic or terminal illness or injury, the amount of the

31 exemption will be the full value of the homestead based upon its
32 value one (1) year before the seizure. For the purposes of this
33 subsection, "catastrophic or terminal illness or injury" means an
34 illness or injury that creates uninsured obligations to health
35 care providers that are more than Ten Thousand Dollars
36 (\$10,000.00) and are greater than fifty percent (50%) of the
37 annual adjusted gross income of the debtor, as established by an
38 average of federal income tax returns for the three (3) preceding
39 years.

40 SECTION 2. Section 85-3-23, Mississippi Code of 1972, is
41 amended as follows:

42 85-3-23. Every citizen of this state, male or female, being
43 a householder shall be entitled to hold exempt from seizure or
44 sale under execution or attachment the land and buildings owned
45 and occupied as a residence by such person, also the proceeds of
46 any insurance, fire or otherwise, on any such buildings destroyed
47 or damaged by fire, tornado or otherwise, not to exceed in value,
48 save as hereinafter provided, Seventy-five Thousand Dollars
49 (\$75,000.00) or such higher amount as specified in Section
50 85-3-21(2), and personal property to be selected by him or her not
51 to exceed in value Two Hundred Fifty Dollars (\$250.00) or the
52 articles specified as exempt to the head of a family; * * *
53 however, * * * no sum or amount due, or to become due such person,
54 nor any part thereof, for or on account of wages, salaries or
55 commissions, shall in any proceedings be selected or claimed as
56 exempt under this section. But husband or wife, widower or widow,
57 over sixty (60) years of age, who has been an exemptionist under
58 this section, shall not be deprived of such exemption because of
59 not residing therein.

60 SECTION 3. Section 85-3-27, Mississippi Code of 1972, is
61 amended as follows:

62 85-3-27. The declaration, for not more than one hundred
63 sixty (160) acres, and not exceeding in value Seventy-five

64 Thousand Dollars (\$75,000.00) or such higher amount as specified
65 in Section 85-3-21(2); or, if the homestead be in a city, town or
66 village, not exceeding in value Seventy-five Thousand Dollars
67 (\$75,000.00) or such higher amount as specified in Section
68 85-3-21(2) after being filed for record, shall be notice to all
69 persons to be affected thereby; and shall bind the exemptionist,
70 the spouse of the exemptionist if the exemptionist be married, and
71 the creditors of the exemptionist until the exemptionist shall
72 execute and file a new declaration which shall nullify the
73 preceding one, and otherwise have like effect; and shall moreover
74 entitle the exemptionist thereafter to hold the same as exempt to
75 the extent of such value; but subject to contest and legal
76 designation or allotment, if the exemptionist had declared for too
77 much, or has insufficiently or improperly described the premises;
78 and to contest by creditors on the ground that the exemptionist
79 was not entitled to a homestead, and by the spouse of the
80 exemptionist on the ground that it was intended to defraud or
81 circumvent such spouse.

82 SECTION 4. Section 85-3-31, Mississippi Code of 1972, is
83 amended as follows:

84 85-3-31. The homestead of every citizen entitled to such an
85 exemption who shall not select or who has improperly selected his
86 homestead by declaration, shall be, namely: A tract of land in the
87 form of, first, a square, or second, a parallelogram, if
88 practicable, and composed, if practicable, of contiguous parcels,
89 and including the dwelling house, and, if practicable, the other
90 principal buildings, and not to exceed one hundred sixty (160)
91 acres in area, nor Seventy-five Thousand Dollars (\$75,000.00) in
92 value or such higher amount as specified in Section 85-3-21(2).
93 And in all cases where the homestead may be composed of detached
94 parcels of land, it shall be made up of those nearest the forty
95 (40) acre or other less tract containing the dwelling house.

96 SECTION 5. Section 85-3-35, Mississippi Code of 1972, is
97 amended as follows:

98 85-3-35. If the land on which the person claiming the
99 exemption resides exceeds one hundred sixty (160) acres in
100 quantity or Seventy-five Thousand Dollars (\$75,000.00) in value,
101 inclusive of improvements, and a proper selection of a homestead
102 has not been made and filed for record, the officer holding an
103 execution against such persons, and not finding other property to
104 satisfy the same, shall levy the execution on the whole land, and
105 shall notify the defendant, if to be found, and the plaintiff or
106 his attorney, if in his county, each to select one (1) householder
107 or freeholder; and each party may select one, and inform the
108 officer of his selection, and the officer shall select a third;
109 or, if defendant or plaintiff or his attorney be absent from the
110 county, or if he shall not make a selection, or if the person
111 selected will not act, the officer shall select the three (3)
112 householders or freeholders, who, on oath to be administered by
113 him, shall set off to such person a portion of the land, embracing
114 the dwelling house and outhouses and not exceeding one hundred
115 sixty (160) acres in quantity nor Seventy-five Thousand Dollars
116 (\$75,000.00) in value, and the allotment, distinctly indicated by
117 metes and bounds or other sufficient description, shall be
118 returned with the execution; and the levy of the execution shall
119 be dismissed as to the part so allotted; and the officer may
120 advertise and sell the remainder of the land. In making such
121 allotment, the homestead shall be laid off as designated by law in
122 case of the debtor's failure to select his homestead and file his
123 declaration thereof for record.

124 This section may not be used against a person claiming an
125 exemption in the case of obligations arising directly as a result
126 of a catastrophic or terminal illness or injury, as provided in
127 Section 85-3-21(2).

128 SECTION 6. Section 85-3-37, Mississippi Code of 1972, is
129 amended as follows:

130 85-3-37. If the premises be not capable of being so divided
131 as to set off the debtor a part, including the dwelling house and
132 not exceeding Seventy-five Thousand Dollars (\$75,000.00) in value,
133 inclusive of improvements, or if the debtor has made a valid
134 homestead declaration, and the homestead exceeds Seventy-five
135 Thousand Dollars (\$75,000.00) in value, the householders or
136 freeholders shall value the land, inclusive of the dwelling house
137 and buildings; and if the surplus of the valuation, over and above
138 the exempt value, shall, within sixty (60) days, be paid by the
139 execution-debtor, the premises shall not be sold; but if the
140 surplus be not paid within sixty (60) days after the valuation,
141 the officer may advertise and sell the premises, if the same shall
142 bring a greater sum than the exempt value; and out of the proceeds
143 of the sale he shall pay to the execution-debtor the sum of
144 Seventy-five Thousand Dollars (\$75,000.00).

145 This section may not be used against a person claiming an
146 exemption in the case of obligations arising directly as a result
147 of a catastrophic or terminal illness or injury, as provided in
148 Section 85-3-21(2).

149 SECTION 7. This act shall take effect and be in force from
150 and after July 1, 2001.