

By: Representative Watson

To: Sel Cmte on Hurricane
Recovery

HOUSE BILL NO. 1322

1 AN ACT TO AMEND SECTION 89-8-23, MISSISSIPPI CODE OF 1972, TO
2 IMPOSE CERTAIN DUTIES UPON A LANDLORD AS A RESULT OF HURRICANE
3 KATRINA; TO AMEND SECTIONS 89-7-23, 89-7-51, 89-8-13 AND 89-8-19,
4 MISSISSIPPI CODE OF 1972, IN CONFORMITY; TO AMEND SECTIONS
5 89-1-301, 89-1-303 AND 89-1-305, MISSISSIPPI CODE OF 1972, TO
6 PROVIDE THAT FORGIVEN MORTGAGE PAYMENTS SHALL BE ADDED TO THE END
7 OF THE MORTGAGE SCHEDULE; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** Section 89-8-23, Mississippi Code of 1972, is
10 amended as follows:

11 89-8-23. (1) A landlord shall at all times during the
12 tenancy:

13 (a) Comply with the requirements of applicable building
14 and housing codes materially affecting health and safety;

15 (b) Maintain the dwelling unit, its plumbing, heating
16 and/or cooling system, in substantially the same condition as at
17 the inception of the lease, reasonable wear and tear excluded,
18 unless the dwelling unit, its plumbing, heating and/or cooling
19 system is damaged or impaired as a result of the deliberate or
20 negligent actions of the tenant.

21 (2) No duty on the part of the landlord shall arise under
22 this section in connection with a defect which is caused by the
23 deliberate or negligent act of the tenant or persons on the
24 premises with the tenant's permission.

25 (3) Subject to the provisions of Section 89-8-5, the
26 landlord and tenant may agree in writing that the tenant perform
27 some or all of the landlord's duties under this section, but only
28 if the transaction is entered into in good faith.

29 (4) No duty on the part of the landlord shall arise under
30 this section in connection with a defect which is caused by the
31 tenant's affirmative act or failure to comply with his obligations
32 under Section 89-8-25 of this act.

33 (5) As a result of the devastation of Hurricane Katrina a
34 landlord shall comply with the following:

35 (a) Rent may not be increased for a period of one (1)
36 year after September 1, 2005.

37 (b) Beginning September 1, 2006, rent may only be
38 increased by up to ten percent (10%) for a period of one (1) year.

39 (c) The eviction process shall be extended by thirty
40 (30) days.

41 (d) A landlord may not dispose of a tenant's personal
42 goods until the eviction process is completed.

43 (e) A tenant shall not be charged for utilities in an
44 area where service is not available.

45 **SECTION 2.** Section 89-7-23, Mississippi Code of 1972, is
46 amended as follows:

47 89-7-23. Notice to quit shall be necessary only where the
48 term is not to expire at a fixed time. In all cases in which a
49 notice is required to be given by the landlord or tenant to
50 determine a tenancy, two (2) months' notice, in writing, shall be
51 given where the holding is from year to year, and one (1) month's
52 notice shall be given where the holding is by the half-year or
53 quarter-year; and where the letting is by the month or by the
54 week, one (1) week's notice, in writing, shall be given. This
55 section shall not apply to rental agreements governed by the
56 Residential Landlord and Tenant Act or rental agreements subject
57 to Section 89-8-23(5).

58 **SECTION 3.** Section 89-7-51, Mississippi Code of 1972, is
59 amended as follows:

60 89-7-51. (1) Every lessor of land shall have a lien on the
61 agricultural products of the leased premises, however and by

62 whomsoever produced, to secure the payment of the rent and of
63 money advanced to the tenant, and the fair market value of all
64 advances made by him to his tenant for supplies for the tenant and
65 others for whom he may contract, and for his business carried on
66 upon the leased premises. This lien shall be paramount to all
67 other liens, claims, or demands upon such products when perfected
68 in accordance with Uniform Commercial Code Article 9 - Secured
69 Transactions (Section 75-9-101, et seq.). The claim of the lessor
70 for supplies furnished may be enforced in the same manner and
71 under the same circumstances as his claim for rent may be; and all
72 the provisions of law as to attachment for rent and proceedings
73 under it shall be applicable to a claim for supplies furnished,
74 and such attachment may be levied on any goods and chattels liable
75 for rent, as well as on the agricultural products.

76 (2) All articles of personal property, except a stock of
77 merchandise sold in the normal course of business, owned by the
78 lessee of real property and situated on the leased premises shall
79 be subject to a lien in favor of the lessor to secure the payment
80 of rent for such premises as has been contracted to be paid,
81 whether or not then due. Such lien shall be subject to all prior
82 liens or other security interests perfected according to law. No
83 such articles of personal property may be removed from the leased
84 premises until such rent is paid except with the written consent
85 of the lessor. All of the provisions of law as to attachment for
86 rent and proceedings thereunder shall be applicable with reference
87 to the lessor's lien under this subsection.

88 (3) This section shall be subject to the provisions of
89 Section 89-8-23(5).

90 **SECTION 4.** Section 89-8-13, Mississippi Code of 1972, is
91 amended as follows:

92 89-8-13. (1) If there is a material noncompliance by the
93 tenant with the rental agreement or the obligations imposed by
94 Section 89-8-25, the landlord may terminate the tenancy as set out

95 in subsection (3) of this section or resort to any other remedy at
96 law or in equity except as prohibited by this chapter.

97 (2) If there is a material noncompliance by the landlord
98 with the rental agreement or the obligations imposed by Section
99 89-8-23, the tenant may terminate the tenancy as set out in
100 subsection (3) of this section or resort to any other remedy at
101 law or in equity except as prohibited by this chapter.

102 (3) The nonbreaching party may deliver a written notice to
103 the party in breach specifying the acts and omissions constituting
104 the breach and that the rental agreement will terminate upon a
105 date not less than thirty (30) days after receipt of the notice if
106 the breach is not remedied within a reasonable time not in excess
107 of thirty (30) days; and the rental agreement shall terminate and
108 the tenant shall surrender possession as provided in the notice
109 subject to the following:

110 (a) If the breach is remediable by repairs, the payment
111 of damages, or otherwise, and the breaching party adequately
112 remedies the breach prior to the date specified in the notice, the
113 rental agreement shall not terminate;

114 (b) In the absence of a showing of due care by the
115 breaching party, if substantially the same act or omission which
116 constituted a prior noncompliance of which notice was given recurs
117 within six (6) months, the nonbreaching party may terminate the
118 rental agreement upon at least fourteen (14) days' written notice
119 specifying the breach and the date of termination of the rental
120 agreement;

121 (c) Neither party may terminate for a condition caused
122 by his own deliberate or negligent act or omission or that of a
123 member of his family or other person on the premises with his
124 consent.

125 (4) If the rental agreement is terminated, the landlord
126 shall return all prepaid and unearned rent and security
127 recoverable by the tenant under Section 89-8-21.

128 (5) Notwithstanding the provisions of this section or any
129 other provisions of this chapter to the contrary, if the material
130 noncompliance by the tenant is the nonpayment of rent pursuant to
131 the rental agreement, the landlord shall not be required to
132 deliver thirty (30) days' written notice as provided by subsection
133 (3) of this section. In such event, the landlord may seek removal
134 of the tenant from the premises in the manner and with the notice
135 prescribed by Chapter 7, Title 89, Mississippi Code of 1972.

136 (6) This section shall be subject to the provisions of
137 Section 89-8-23(5).

138 **SECTION 5.** Section 89-8-19, Mississippi Code of 1972, is
139 amended as follows:

140 89-8-19. (1) Unless the rental agreement fixes a definite
141 term a tenancy shall be week to week in case of a tenant who pays
142 weekly rent, and in all other cases month to month.

143 (2) The landlord or the tenant may terminate a week-to-week
144 tenancy by written notice given to the other at least seven (7)
145 days prior to the termination date.

146 (3) The landlord or the tenant may terminate a
147 month-to-month tenancy by a written notice given to the other at
148 least thirty (30) days prior to the termination date.

149 (4) Notwithstanding the provisions of this section or any
150 other provision of this chapter to the contrary, notice to
151 terminate a tenancy shall not be required to be given when the
152 landlord or tenant has committed a substantial violation of the
153 rental agreement or this chapter that materially affects health
154 and safety.

155 (5) This section shall be subject to the provisions of
156 Section 89-8-23(5).

157 **SECTION 6.** Section 89-1-301, Mississippi Code of 1972, is
158 amended as follows:

159 89-1-301. The provisions of Sections 89-1-301 through
160 89-1-329 shall apply only in the event that the President of the

161 United States has declared that an emergency or major disaster
162 exists in this state and shall apply only to persons or property
163 directly damaged in an enemy attack, or a man-made, technological
164 or natural disaster declared by the Governor in which Sections
165 89-1-301 through 89-1-329 was specifically included as a relief
166 measure for those counties covered by such disaster declaration.
167 The provisions of Sections 89-1-301 through 89-1-329 shall apply
168 to any mortgage or deed of trust on real property executed prior
169 to the date of the disaster declaration by the Governor, and to
170 any such instruments executed after the date of the disaster
171 declaration by the Governor which renewed or extended any mortgage
172 or deed of trust executed prior to the date of the disaster
173 declaration by the Governor. When the mortgagee, or owner, or
174 holder, or trustee, or other person having like power shall
175 hereafter determine to foreclose a mortgage or deed of trust on
176 real estate covered by the provisions of Sections 89-1-301 through
177 89-1-329, he may proceed by bill in chancery, and in the same
178 manner as in proceedings to foreclose under existing statutes in
179 cases where the mortgage or deed of trust contains no provisions
180 for sale by a trustee or otherwise. Any stipulations in the
181 mortgage or deed of trust as to the manner of foreclosure
182 thereunder shall not preclude proceedings to foreclose any
183 mortgage or deed of trust under the provisions of Sections
184 89-1-301 through 89-1-329. If any mortgagee, holder, owner,
185 trustee, or other person shall attempt to foreclose otherwise than
186 as herein provided, such proceedings may be enjoined by the
187 mortgagor or owner in possessing of the mortgaged premises, or
188 anyone claiming under the mortgagor, or anyone liable for the
189 mortgage debt. Upon the filing of a sworn petition which
190 affirmatively sets forth that neither the petitioner nor any other
191 person owning an interest in the legal title to the mortgaged
192 premises is able to pay the sums in arrears on the mortgaged debt,
193 that no such person or persons have been able to secure a

194 refinancing of the mortgaged debt up to the date of the filing of
195 the petition, after diligent effort, and that because of the
196 destruction of or damage to improvements on the mortgaged premises
197 or because of economic conditions brought about by the effects of
198 such an enemy attack or man-made, technological or natural
199 disaster declared by the Governor, the mortgaged property has
200 depreciated in value as a proximate result of said disaster in an
201 amount in excess of fifteen percent (15%) of its fair market value
202 prior to said disaster, the chancellor of any chancery court of
203 competent jurisdiction shall issue a preliminary injunction
204 enjoining any foreclosure proceedings which have been commenced.
205 The chancellor shall likewise issue a preliminary injunction
206 enjoining any foreclosure proceedings which have been commenced if
207 a sworn petition shall be filed which affirmatively sets forth
208 that as a direct and proximate result of said disaster the
209 petitioner or any other person owning an interest in the legal
210 title to the mortgaged premises is unable to pay the sums in
211 arrears on the mortgage debt, that the petitioner or such other
212 person or persons have not been able to secure the refinancing of
213 the mortgage debt up to the date of the filing of the petition
214 after diligent effort, and that the petitioner has actually
215 sustained a loss in income derived from the mortgaged property, or
216 is presently threatened with such loss as a proximate result of
217 such disaster, in an amount in excess of fifteen percent (15%) of
218 the average annual income from the mortgaged property for the
219 three (3) years immediately prior to said disaster; provided,
220 however, for mortgages or deeds of trust on real property leased
221 or rented for residential purposes from the mortgagor to a third
222 party or parties, the provisions of Sections 89-1-301 through
223 89-1-329 shall apply only if the mortgagor or landlord has made or
224 is making a good-faith effort to rehabilitate the property to a
225 reasonable standard of habitability.

226 Upon the issuance of any such preliminary injunction, the
227 mortgagee may file a motion to dissolve said injunction, which
228 motion shall be heard in termtime or in vacation, at a time to be
229 fixed by the court not less than thirty (30) days from the date of
230 the filing thereof. The mortgagor may implead any and all persons
231 owning or claiming an interest in the legal title to said property
232 and all persons who may be primarily or secondarily liable on the
233 mortgaged indebtedness. Process shall be issued for all parties
234 so impleaded in the manner now provided by law in suits to confirm
235 titles and the cause shall be triable five (5) days after
236 completion of service of process on all parties. The court may
237 grant such continuances as may be necessary for the completion of
238 service of process on all parties.

239 Upon the hearing of the motion to dissolve, unless the
240 petitioner shall prove all of the material allegations of his
241 petition by a preponderance of the evidence, the preliminary
242 injunction shall be dissolved. No injunction bond shall be
243 required for the issuance of the preliminary injunction. If the
244 court shall find the petition was filed solely for the purpose of
245 hindering and delaying collection of the mortgaged debt and
246 without reasonable grounds therefor, reasonable attorney's fees
247 shall be allowed as in other cases upon dissolution of preliminary
248 injunctions, but not otherwise.

249 If, upon hearing of the motion to dissolve, it shall be
250 determined that said motion should not be granted, then the
251 hearing shall continue in the same manner as provided for in
252 Section 89-1-303, and the court shall enter its order granting the
253 relief provided for by Sections 89-1-301 through 89-1-329 in the
254 case of bills to foreclose. All the terms and provisions of
255 Sections 89-1-301 through 89-1-329 relating to the proceedings had
256 on, or to relief granted under, bills to foreclose shall be
257 applicable.

258 Provided, however, if a deed of trust be foreclosed according
259 to the provisions therein contained, and the sale be actually
260 consummated without the mortgagor or his heirs or assigns availing
261 themselves of the right to enjoin said sale as provided in
262 Sections 89-1-301 through 89-1-329, the foreclosure and the title
263 resting thereon, if otherwise regular, shall not be controverted
264 on account of any of the provisions of Sections 89-1-301 through
265 89-1-329, and this limitation shall also apply to minors and all
266 others under legal disability. The provisions of this section
267 shall apply to advertisements for sales already published at the
268 time of the disaster declaration by the Governor in which he
269 specifically included the relief provided for in Sections 89-1-301
270 through 89-1-329, but in which the sale has not been made;
271 provided that in such case the costs of the advertisement be
272 tendered in cash with the bill for injunction.

273 A mortgage company who forgives payments immediately
274 following a disaster shall add those forgiven payments to the end
275 of the mortgage schedule and shall not be authorized to demand
276 such payments at the end of the forgiveness period.

277 **SECTION 7.** Section 89-1-303, Mississippi Code of 1972, is
278 amended as follows:

279 89-1-303. Suits for the foreclosure of mortgages and deeds
280 of trust shall be deemed ready for final hearing at any time after
281 the expiration of thirty (30) days from the completion of the
282 service of legal process on all parties. On the hearing, the
283 court or chancellor in vacation shall receive evidence tending to
284 establish the reasonable, normal, actual value of the mortgaged
285 property, may fix a minimum price or reasonable and equitable
286 price thereon, and shall determine the reasonable value of the
287 income on said property, if any. If it has no income, then the
288 court or chancellor in vacation shall determine the reasonable
289 rental value, and in lieu of a present order of sale shall direct
290 and require the mortgagor or those interested therein to pay all

291 or a reasonable part of said income or rental value to be used for
292 the payment of taxes, insurance and interest on the mortgage
293 indebtedness, together with a reasonable sum for the upkeep of
294 said property. Said payments shall be made at such times and in
295 such manner as shall be fixed and determined and ordered by the
296 court or chancellor in vacation which, according to the
297 circumstances, may appear just and equitable for a term not to
298 extend beyond two (2) years from the date of the disaster
299 declaration by the Governor in which he specifically included the
300 relief provided for in Sections 89-1-301 through 89-1-329. After
301 the expiration of two (2) years from the date of the disaster
302 declaration by the Governor in which he specifically included the
303 relief provided for in Sections 89-1-301 through 89-1-329, if any
304 past due principal, interest, taxes and the like have not been
305 paid, a final order for sale may be made. Forgiven payments shall
306 be governed by Section 89-1-301.

307 **SECTION 8.** Section 89-1-305, Mississippi Code of 1972, is
308 amended as follows:

309 89-1-305. If the mortgagor or owner of the mortgaged
310 premises, or other interested person for whose relief Sections
311 89-1-301 through 89-1-329 are enacted, shall make default in the
312 carrying charge payments, or any of them, required in the order
313 mentioned in the foregoing section, or shall commit any waste, his
314 or her right to a further postponement of a final sale shall
315 terminate thirty (30) days after such default, and the mortgagee
316 or trustee or other persons having the right to foreclose shall
317 thereupon be entitled to apply to the court in termtime or
318 vacation for a final decree of sale upon a satisfactory showing to
319 the court that the default aforesaid has occurred; provided that
320 if the default be explained on the grounds of casualty, inevitable
321 accident, or other good reason wholly beyond the control of the
322 defaulter, and be one which in the judgment of the court can be
323 remedied and made good by the defaulter within a reasonably short

324 period to be fixed by the court, then the court or chancellor in
325 vacation shall have power to excuse the default and to make such
326 order in reference thereto as may be just and equitable. The
327 chancellor shall have power in vacation, at any time after the
328 period mentioned in Section 89-1-303, to hear and determine and to
329 order or decree in respect to any matter that shall arise under
330 Sections 89-1-301 through 89-1-329, to the same extent and as
331 fully as the court could do in termtime, legal notice having been
332 given to all parties of the said hearing in vacation. The court
333 or chancellor in vacation shall have power to revoke the period of
334 extension theretofore granted for the making of the final order of
335 sale in case it may be made to appear to the chancellor in
336 vacation, or to the court in termtime, that the occasion for said
337 postponement no longer exists or is no longer just and reasonable;
338 and, in general, the court, or chancellor in vacation, shall have
339 power to alter and revise its orders theretofore made in any
340 respect insofar as the changed circumstances and conditions may
341 require. Provided further, that prior to two (2) years from the
342 date of the disaster declaration by the Governor in which he
343 specifically included the relief provided for in Sections 89-1-301
344 through 89-1-329, no action shall be maintained in this state for
345 a deficiency judgment until the period of time extension allowed
346 in any proceeding begun under the provisions of Sections 89-1-301
347 through 89-1-329 shall have expired. Forgiven payments shall be
348 governed by Section 89-1-301.

349 **SECTION 9.** This act shall take effect and be in force from
350 and after its passage.