

By: Representative Baker

To: Judiciary A

HOUSE BILL NO. 711
(As Sent to Governor)

1 AN ACT TO AMEND SECTIONS 89-7-31, 89-7-35, 89-7-41 AND
2 89-8-13, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE DISPOSITION
3 OF PERSONAL PROPERTY OF A TENANT REMAINING ON A LANDLORD'S
4 PREMISES AFTER THE TENANT HAS BEEN REMOVED FROM THE PREMISES; TO
5 AMEND SECTIONS 89-7-51, 89-7-57, 89-7-61 AND 89-7-69, MISSISSIPPI
6 CODE OF 1972, TO CONFORM; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 89-7-31, Mississippi Code of 1972, is
9 amended as follows:

10 89-7-31. (1) On receiving * * *~~such~~ the affidavit, the
11 county judge, justice court judge, * * *~~mayor~~ municipal judge, or
12 other officer shall issue a summons, directed to the sheriff or
13 any constable of the county, or the marshal of the * * *~~city,~~
14 ~~town, or village wherein~~ municipality in which the premises, or
15 some part thereof, are situated, describing the premises, and
16 commanding him to require the person in possession of the same or
17 claiming the possession thereof, * * *~~forthwith~~ immediately to
18 remove * * *~~therefrom~~ from the premises, or to show cause before
19 the justice court judge or other officer, on a day to be named not
20 less than three (3) nor more than five (5) days from the date of



21 the summons, why possession of the premises should not be
22 delivered to the applicant.

23 (2) In addition to other information required for the
24 summons, the summons shall state: "At the hearing, a judge will
25 determine if the landlord is granted exclusive possession of the
26 premises. If the judge grants possession of the premises to the
27 landlord and you do not remove your personal property, including
28 any manufactured home, from the premises before the date and time
29 ordered by the judge, then the landlord may dispose of your
30 personal property without any further legal action."

31 **SECTION 2.** Section 89-7-35, Mississippi Code of 1972, is
32 amended as follows:

33 89-7-35. (1) If, at the time appointed, it appears that the
34 summons has been duly served, and if sufficient cause * * *~~be~~ is
35 not shown to the contrary, the magistrate shall issue his warrant
36 to the sheriff or any constable of the county, or to a marshal of
37 the * * *~~city, town, or village~~ where municipality in which the
38 premises, or some part thereof, are situated, commanding him to
39 remove all persons from the premises, and to put the applicant
40 into full possession thereof.

41 (2) If the summons complied with the requirements of Section
42 89-7-31(2) and if the tenant has failed to remove any of tenant's
43 personal property, including any manufactured home, from the
44 premises, then, if the judge has not made some other finding
45 regarding the disposition of any personal property in the vacated



46 premises, the personal property shall be deemed abandoned and may
47 be disposed of by the landlord without further notice or
48 obligation to the tenant.

49 **SECTION 3.** Section 89-7-41, Mississippi Code of 1972, is
50 amended as follows:

51 89-7-41. (1) If the decision * * *~~be~~ is in favor of the
52 landlord or other person claiming the possession of the premises,
53 the magistrate shall issue his warrant to the sheriff, constable,
54 or other officer, commanding him * * *~~forthwith~~ immediately to
55 put * * *~~such~~ the landlord or other person into possession of the
56 premises, and to levy the costs of the proceedings of the goods
57 and chattels, lands and tenements, of the tenant or person in
58 possession of the premises who shall have controverted the right
59 of the landlord or other person.

60 (2) If the summons complied with the requirements of Section
61 89-7-31(2) and if the tenant has failed to remove any of tenant's
62 personal property, including any manufactured home, from the
63 premises, then, if the judge has not made some other finding
64 regarding the disposition of any personal property in the vacated
65 premises, the personal property shall be deemed abandoned and may
66 be disposed of by the landlord without further notice or
67 obligation to the tenant.

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



70 89-8-13. (1) If there is a material noncompliance by the
71 tenant with the rental agreement or the obligations imposed by
72 Section 89-8-25, the landlord may terminate the tenancy as set out
73 in subsection (3) of this section or resort to any other remedy at
74 law or in equity except as prohibited by this chapter.

75 (2) If there is a material noncompliance by the landlord
76 with the rental agreement or the obligations imposed by Section
77 89-8-23, the tenant may terminate the tenancy as set out in
78 subsection (3) of this section or resort to any other remedy at
79 law or in equity except as prohibited by this chapter.

80 (3) The nonbreaching party may deliver a written notice to
81 the party in breach specifying the acts and omissions constituting
82 the breach and that the rental agreement will terminate upon a
83 date not less than thirty (30) days after receipt of the notice if
84 the breach is not remedied within a reasonable time not in excess
85 of thirty (30) days; and the rental agreement shall terminate and
86 the tenant shall surrender possession as provided in the notice
87 subject to the following:

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

92 (b) In the absence of a showing of due care by the
93 breaching party, if substantially the same act or omission which
94 constituted a prior noncompliance of which notice was given recurs



95 within six (6) months, the nonbreaching party may terminate the
96 rental agreement upon at least fourteen (14) days' written notice
97 specifying the breach and the date of termination of the rental
98 agreement;

99 (c) Neither party may terminate for a condition caused
100 by his own deliberate or negligent act or omission or that of a
101 member of his family or other person on the premises with his
102 consent.

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

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

114 (6) Disposition of personal property, including any
115 manufactured home, of a tenant remaining on the landlord's
116 premises after the tenant has been removed from the premises shall
117 be governed by Section 89-7-35(2) or Section 89-7-41(2).

118 **SECTION 5.** Section 89-7-51, Mississippi Code of 1972, is
119 amended as follows:



120 89-7-51. (1) Every lessor of land shall have a lien on the
121 agricultural products of the leased premises, however and by
122 whomsoever produced, to secure the payment of the rent and of
123 money advanced to the tenant, and the fair market value of all
124 advances made by him to his tenant for supplies for the tenant and
125 others for whom he may contract, and for his business carried on
126 upon the leased premises. This lien shall be paramount to all
127 other liens, claims, or demands upon such products when perfected
128 in accordance with Uniform Commercial Code Article 9 - Secured
129 Transactions (Section 75-9-101 * * *, et seq.). The claim of the
130 lessor for supplies furnished may be enforced in the same manner
131 and under the same circumstances as his claim for rent may be; and
132 all the provisions of law as to attachment for rent and
133 proceedings under it shall be applicable to a claim for supplies
134 furnished, and such attachment may be levied on any goods and
135 chattels liable for rent, as well as on the agricultural products.

136 (2) All articles of personal property, except a stock of
137 merchandise sold in the normal course of business, owned by the
138 lessee of real property and situated on the leased premises shall
139 be subject to a lien in favor of the lessor to secure the payment
140 of rent for such premises as has been contracted to be paid,
141 whether or not then due. * * *—~~Such~~ This lien shall be subject
142 to all prior liens or other security interests perfected according
143 to law. No such articles of personal property may be removed from
144 the leased premises until such rent is paid except with the



145 written consent of the lessor. All of the provisions of law as to
146 attachment for rent and proceedings thereunder shall be applicable
147 with reference to the lessor's lien under this subsection.

148 **SECTION 6.** Section 89-7-57, Mississippi Code of 1972, is
149 amended as follows:

150 89-7-57. To obtain * * * ~~such~~ the attachment or distress,
151 the party entitled thereto, his agent or attorney, shall make
152 complaint on oath before a justice * * * ~~of the peace,~~ court judge
153 averring the facts which entitle the party seeking it to the
154 remedy; and, if anything * * * ~~be~~ is demanded on account of
155 supplies, there shall be filed with the complaint an itemized bill
156 of particulars thereof. The complainant shall enter into bond
157 with sufficient sureties, payable to the tenant, his executor or
158 administrator, in a penalty equal to double the sum claimed to be
159 due, conditioned to pay all * * * ~~such~~ damages as may be sustained
160 by the obligee by the wrongful suing out of the writ, and all
161 costs that may be awarded against the principal obligor.

162 **SECTION 7.** Section 89-7-61, Mississippi Code of 1972, is
163 amended as follows:

164 89-7-61. When the complaint * * * ~~shall have~~ has been made
165 and bond given * * * ~~,~~ and approved by the justice court judge, it
166 shall be his duty to issue a distress warrant or attachment-writ,
167 commanding the seizure of the agricultural products, if any, upon
168 which the party instituting the proceedings shall have claimed a
169 lien, and also commanding the officer to distrain the goods and



170 chattels other than the agricultural products of * * * ~~such~~ the
171 tenant, if necessary, and deal with the same as provided by law;
172 the entire seizure and distraint to be of value sufficient to
173 satisfy the sum demanded with interest and costs.

174 **SECTION 8.** Section 89-7-69, Mississippi Code of 1972, is
175 amended as follows:

176 89-7-69. The officer making a distress or seizure shall give
177 notice thereof, with the cause of taking, to the tenant or his
178 representative in person if * * * ~~to be~~ found, or if not found, by
179 leaving * * * ~~such~~ the notice at the dwelling house or other
180 conspicuous place on the premises charged with the rent distrained
181 for, and shall * * * ~~forthwith~~ immediately advertise the property
182 distrained or seized for sale as if under execution; and if the
183 tenant or owner of the goods distrained or seized shall not,
184 before the time appointed for the sale, replevy the same by giving
185 bond with sufficient sureties, to be approved by such officer,
186 payable to the plaintiff in the attachment, in double the amount
187 claimed, conditioned for the payment of the sum demanded, with
188 lawful interest for the same, and costs, at the end of three (3)
189 months after making * * * ~~such~~ the distress, the officer shall
190 sell the goods and chattels distrained or seized at public sale to
191 the highest bidder for cash, and shall, out of the proceeds of the
192 sale, pay the costs of the proceedings, and shall pay to the
193 plaintiff the amount of his demand, with interest.



194 **SECTION 9.** This act shall take effect and be in force from
195 and after July 1, 2015.

