

By: Representative Baker

To: Judiciary A

HOUSE BILL NO. 711

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 BRING FORWARD SECTIONS 89-7-49, 89-7-51, 89-7-55, 89-7-57, 89-7-61
6 AND 89-7-69, MISSISSIPPI CODE OF 1972, FOR THE PURPOSES OF
7 POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

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

11 89-7-31. (1) On receiving such affidavit, the county judge,
12 justice court judge, * * * municipal judge, or other officer shall
13 issue a summons, directed to the sheriff or any constable of the
14 county, or the marshal of the * * * municipality in which the
15 premises, or some part thereof, are situated, describing the
16 premises, and commanding him to require the person in possession
17 of the same or claiming the possession thereof, * * * immediately
18 to remove * * * from the premises, or to show cause before the
19 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 property, including any
28 manufactured home, from the premises before the date and time
29 ordered by the judge, then the landlord may dispose of such
30 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 * * * is not
35 shown to the contrary, the magistrate shall issue his warrant to
36 the sheriff or any constable of the county, or to a marshal of
37 the * * * municipality in which the premises, or some part
38 thereof, are situated, commanding him to remove all persons from
39 the premises, and to put the applicant into full possession
40 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 property, including any manufactured home, from the premises,
44 then, provided that the judge has not made some other finding
45 regarding the disposition of any property in the vacated premises,



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

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

50 89-7-41. (1) If the decision * * * is in favor of the
51 landlord or other person claiming the possession of the premises,
52 the magistrate shall issue his warrant to the sheriff, constable,
53 or other officer, commanding him * * * immediately to put such
54 landlord or other person into possession of the premises, and to
55 levy the costs of the proceedings of the goods and chattels, lands
56 and tenements, of the tenant or person in possession of the
57 premises who shall have controverted the right of the landlord or
58 other person.

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

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

68 89-8-13. (1) If there is a material noncompliance by the
69 tenant with the rental agreement or the obligations imposed by
70 Section 89-8-25, the landlord may terminate the tenancy as set out



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

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

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

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

90 (b) In the absence of a showing of due care by the
91 breaching party, if substantially the same act or omission which
92 constituted a prior noncompliance of which notice was given recurs
93 within six (6) months, the nonbreaching party may terminate the
94 rental agreement upon at least fourteen (14) days' written notice



95 specifying the breach and the date of termination of the rental
96 agreement;

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

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

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

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

116 **SECTION 5.** Section 89-7-49, Mississippi Code of 1972, is
117 brought forward as follows:

118 89-7-49. If a tenant of lands, being in arrear for rent,
119 shall desert the demised premises and leave the same uncultivated



120 or unoccupied, so that a sufficient distress cannot be had to
121 satisfy the arrears of rent, any constable of the county may, at
122 the request of the landlord, and upon due proof by affidavit that
123 the premises have been deserted, leaving rent in arrear, and not
124 sufficient distress thereon, go upon and view the premises, and
125 upon being satisfied that the premises have been so deserted, he
126 shall affix a notice, in writing, upon a conspicuous part of the
127 premises, stating what day he will return to take a second view
128 thereof, not less than five (5) days nor more than fifteen (15)
129 days thereafter, and requiring the tenant then to appear and pay
130 the rent due. At the time specified in the notice the constable
131 shall again view the premises, and if, upon second view, the
132 tenant shall not pay the rent due, or there shall not be
133 sufficient distress upon the premises, then the justice court may
134 put the landlord in possession of the premises, and the lease
135 thereof to such tenant shall become void. The tenant may appeal
136 to the circuit court from the proceedings of the justice court at
137 any time within thirty (30) days after possession delivered, by
138 serving notice in writing thereof upon the landlord, and by giving
139 bond, with sufficient sureties, to be approved by the justice
140 court, for the payment to the landlord of the costs of appeal,
141 which may be adjudged against the tenant; and thereupon the
142 justice court shall return the proceedings before him to the next
143 term of the circuit court, and said court shall, at the return
144 term, examine the proceedings in a summary way, and may order



145 restitution to be made to the tenant, with costs of appeal, to be
146 paid by the landlord; or in case of affirming the proceedings,
147 shall award costs against the tenant and sureties in his bond.

148 **SECTION 6.** Section 89-7-51, Mississippi Code of 1972, is
149 brought forward as follows:

150 89-7-51. (1) Every lessor of land shall have a lien on the
151 agricultural products of the leased premises, however and by
152 whomsoever produced, to secure the payment of the rent and of
153 money advanced to the tenant, and the fair market value of all
154 advances made by him to his tenant for supplies for the tenant and
155 others for whom he may contract, and for his business carried on
156 upon the leased premises. This lien shall be paramount to all
157 other liens, claims, or demands upon such products when perfected
158 in accordance with Uniform Commercial Code Article 9 - Secured
159 Transactions (Section 75-9-101, et seq.). The claim of the lessor
160 for supplies furnished may be enforced in the same manner and
161 under the same circumstances as his claim for rent may be; and all
162 the provisions of law as to attachment for rent and proceedings
163 under it shall be applicable to a claim for supplies furnished,
164 and such attachment may be levied on any goods and chattels liable
165 for rent, as well as on the agricultural products.

166 (2) All articles of personal property, except a stock of
167 merchandise sold in the normal course of business, owned by the
168 lessee of real property and situated on the leased premises shall
169 be subject to a lien in favor of the lessor to secure the payment



170 of rent for such premises as has been contracted to be paid,
171 whether or not then due. Such lien shall be subject to all prior
172 liens or other security interests perfected according to law. No
173 such articles of personal property may be removed from the leased
174 premises until such rent is paid except with the written consent
175 of the lessor. All of the provisions of law as to attachment for
176 rent and proceedings thereunder shall be applicable with reference
177 to the lessor's lien under this subsection.

178 **SECTION 7.** Section 89-7-55, Mississippi Code of 1972, is
179 brought forward as follows:

180 89-7-55. An attachment or distress may be sued out by the
181 lessor of lands, his executors, administrators, or assigns. It
182 may be had for rent of the leased premises due and in arrear, or
183 to become due, as the case may be, and for advances made by the
184 landlord or his administrator or executor for supplies for the
185 tenant and others for whom the tenant may have contracted and for
186 his business carried on upon the leased premises.

187 **SECTION 8.** Section 89-7-57, Mississippi Code of 1972, is
188 brought forward as follows:

189 89-7-57. To obtain such attachment or distress, the party
190 entitled thereto, his agent or attorney, shall make complaint on
191 oath before a justice of the peace, averring the facts which
192 entitle the party seeking it to the remedy; and, if anything be
193 demanded on account of supplies, there shall be filed with the
194 complaint an itemized bill of particulars thereof. The



195 complainant shall enter into bond with sufficient sureties,
196 payable to the tenant, his executor or administrator, in a penalty
197 equal to double the sum claimed to be due, conditioned to pay all
198 such damages as may be sustained by the obligee by the wrongful
199 suing out of the writ, and all costs that may be awarded against
200 the principal obligor.

201 **SECTION 9.** Section 89-7-61, Mississippi Code of 1972, is
202 brought forward as follows:

203 89-7-61. When the complaint shall have been made and bond
204 given, and approved by the justice, it shall be his duty to issue
205 a distress warrant or attachment-writ, commanding the seizure of
206 the agricultural products, if any, upon which the party
207 instituting the proceedings shall have claimed a lien, and also
208 commanding the officer to distrain the goods and chattels other
209 than the agricultural products of such tenant, if necessary, and
210 deal with the same as provided by law; the entire seizure and
211 distraint to be of value sufficient to satisfy the sum demanded
212 with interest and costs.

213 **SECTION 10.** Section 89-7-69, Mississippi Code of 1972, is
214 brought forward as follows:

215 89-7-69. The officer making a distress or seizure shall give
216 notice thereof, with the cause of taking, to the tenant or his
217 representative in person if to be found, or if not found, by
218 leaving such notice at the dwelling house or other conspicuous
219 place on the premises charged with the rent distrained for, and



220 shall forthwith advertise the property distrained or seized for
221 sale as if under execution; and if the tenant or owner of the
222 goods distrained or seized shall not, before the time appointed
223 for the sale, replevy the same by giving bond with sufficient
224 sureties, to be approved by such officer, payable to the plaintiff
225 in the attachment, in double the amount claimed, conditioned for
226 the payment of the sum demanded, with lawful interest for the
227 same, and costs, at the end of three (3) months after making such
228 distress, the officer shall sell the goods and chattels distrained
229 or seized at public sale to the highest bidder for cash, and
230 shall, out of the proceeds of the sale, pay the costs of the
231 proceedings, and shall pay to the plaintiff the amount of his
232 demand, with interest.

233 **SECTION 11.** This act shall take effect and be in force from
234 and after July 1, 2015.

