

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 * * * the affidavit, the county
11 judge, justice court judge, * * * municipal judge, or other
12 officer shall issue a summons, directed to the sheriff or any
13 constable of the county, or the marshal of the * * * municipality
14 in which the premises, or some part thereof, are situated,
15 describing the premises, and commanding him to require the person
16 in possession of the same or claiming the possession
17 thereof, * * * immediately to remove * * * from the premises, or
18 to show cause before the justice court judge or other officer, on
19 a day to be named not less than three (3) nor more than five (5)



20 days from the date of the summons, why possession of the premises
21 should not be delivered to the applicant.

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

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

32 89-7-35. (1) If, at the time appointed, it appears that the
33 summons has been duly served, and if sufficient cause * * * is not
34 shown to the contrary, the magistrate shall issue his warrant to
35 the sheriff or any constable of the county, or to a marshal of
36 the * * * municipality in which the premises, or some part
37 thereof, are situated, commanding him to remove all persons from
38 the premises, and to put the applicant into full possession
39 thereof.

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



45 premises, the personal property shall be deemed abandoned and may
46 be disposed of by the landlord without further notice or
47 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 * * *
54 the landlord or other person into possession of the premises, and
55 to levy the costs of the proceedings of the goods and chattels,
56 lands 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 personal property, including any manufactured home, from the
62 premises, then, if the judge has not made some other finding
63 regarding the disposition of any personal property in the vacated
64 premises, the personal property shall be deemed abandoned and may
65 be disposed of by the landlord without further notice or
66 obligation to the tenant.

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



69 89-8-13. (1) If there is a material noncompliance by the
70 tenant with the rental agreement or the obligations imposed by
71 Section 89-8-25, the landlord may terminate the tenancy as set out
72 in subsection (3) of this section or resort to any other remedy at
73 law or in equity except as prohibited by this chapter.

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

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

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

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



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

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

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

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

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

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



119 89-7-51. (1) Every lessor of land shall have a lien on the
120 agricultural products of the leased premises, however and by
121 whomsoever produced, to secure the payment of the rent and of
122 money advanced to the tenant, and the fair market value of all
123 advances made by him to his tenant for supplies for the tenant and
124 others for whom he may contract, and for his business carried on
125 upon the leased premises. This lien shall be paramount to all
126 other liens, claims, or demands upon such products when perfected
127 in accordance with Uniform Commercial Code Article 9 - Secured
128 Transactions (Section 75-9-101 * * * et seq.). The claim of the
129 lessor for supplies furnished may be enforced in the same manner
130 and under the same circumstances as his claim for rent may be; and
131 all the provisions of law as to attachment for rent and
132 proceedings under it shall be applicable to a claim for supplies
133 furnished, and such attachment may be levied on any goods and
134 chattels liable for rent, as well as on the agricultural products.

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



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

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

149 89-7-57. To obtain * * * the attachment or distress, the
150 party entitled thereto, his agent or attorney, shall make
151 complaint on oath before a justice * * * court judge averring the
152 facts which entitle the party seeking it to the remedy; and, if
153 anything * * * is demanded on account of supplies, there shall be
154 filed with the complaint an itemized bill of particulars thereof.
155 The complainant shall enter into bond with sufficient sureties,
156 payable to the tenant, his executor or administrator, in a penalty
157 equal to double the sum claimed to be due, conditioned to pay
158 all * * * damages as may be sustained by the obligee by the
159 wrongful suing out of the writ, and all costs that may be awarded
160 against the principal obligor.

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

163 89-7-61. When the complaint * * * has been made and bond
164 given * * * and approved by the justice court judge, it shall be
165 his duty to issue a distress warrant or attachment-writ,
166 commanding the seizure of the agricultural products, if any, upon
167 which the party instituting the proceedings shall have claimed a
168 lien, and also commanding the officer to distrain the goods and



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

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

175 89-7-69. The officer making a distress or seizure shall give
176 notice thereof, with the cause of taking, to the tenant or his
177 representative in person if * * * found, or if not found, by
178 leaving * * * the notice at the dwelling house or other
179 conspicuous place on the premises charged with the rent distrained
180 for, and shall * * * immediately advertise the property distrained
181 or seized for sale as if under execution; and if the tenant or
182 owner of the goods distrained or seized shall not, before the time
183 appointed for the sale, replevy the same by giving bond with
184 sufficient sureties, to be approved by such officer, payable to
185 the plaintiff in the attachment, in double the amount claimed,
186 conditioned for the payment of the sum demanded, with lawful
187 interest for the same, and costs, at the end of three (3) months
188 after making * * * the distress, the officer shall sell the goods
189 and chattels distrained or seized at public sale to the highest
190 bidder for cash, and shall, out of the proceeds of the sale, pay
191 the costs of the proceedings, and shall pay to the plaintiff the
192 amount of his demand, with interest.



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

