

By: Representative Tullos

To: Ways and Means

HOUSE BILL NO. 797

1 AN ACT TO AMEND SECTIONS 85-3-21, 85-3-23, 85-3-27, 85-3-31,
 2 85-3-35 AND 85-3-37, MISSISSIPPI CODE OF 1972, TO INCREASE THE
 3 VALUE OF LAND THAT MAY BE INCLUDED IN THE HOMESTEAD EXEMPTION FOR
 4 PURPOSES OF PROPERTY THAT MAY BE EXEMPTED FROM SEIZURE OR SALE
 5 UNDER EXECUTION OR ATTACHMENT; TO AMEND SECTION 85-3-1,
 6 MISSISSIPPI CODE OF 1972, TO INCREASE THE VALUE OF A MOBILE HOME,
 7 TRAILER, MANUFACTURED HOUSING, OR SIMILAR TYPE DWELLING OWNED AND
 8 OCCUPIED AS THE PRIMARY RESIDENCE BY A DEBTOR, THAT MAY BE
 9 EXEMPTED FROM SEIZURE UNDER EXECUTION OR ATTACHMENT; AND FOR
 10 RELATED 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. Every citizen of this state, male or female, being
 15 a householder shall be entitled to hold exempt from seizure or
 16 sale, under execution or attachment, the land and buildings owned
 17 and occupied as a residence by him, or her, but the quantity of
 18 land shall not exceed one hundred sixty (160) acres, nor the value
 19 thereof, inclusive of improvements, save as hereinafter provided,
 20 the sum of * * * One Hundred Thousand Dollars (\$100,000.00);
 21 provided, however, that in determining this value, existing
 22 encumbrances on such land and buildings, including taxes and all



23 other liens, shall first be deducted from the actual value of such
24 land and buildings. But husband or wife, widower or widow, over
25 sixty (60) years of age, who has been an exemptionist under this
26 section, shall not be deprived of such exemption because of not
27 residing therein.

28 **SECTION 2.** Section 85-3-23, Mississippi Code of 1972, is
29 amended as follows:

30 85-3-23. Every citizen of this state, male or female, being
31 a householder shall be entitled to hold exempt from seizure or
32 sale under execution or attachment the land and buildings owned
33 and occupied as a residence by such person, also the proceeds of
34 any insurance, fire or otherwise, on any such buildings destroyed
35 or damaged by fire, tornado or otherwise, not to exceed in value,
36 save as hereinafter provided, * * * One Hundred Thousand Dollars
37 (\$100,000.00), and personal property to be selected by him or her
38 not to exceed in value Two Hundred Fifty Dollars (\$250.00) or the
39 articles specified as exempt to the head of a family; provided,
40 however, that no sum or amount due, or to become due such person,
41 nor any part thereof, for or on account of wages, salaries or
42 commissions, shall in any proceedings be selected or claimed as
43 exempt under this section. But husband or wife, widower or widow,
44 over sixty (60) years of age, who has been an exemptionist under
45 this section, shall not be deprived of such exemption because of
46 not residing therein.



47 **SECTION 3.** Section 85-3-27, Mississippi Code of 1972, is
48 amended as follows:

49 85-3-27. The declaration, for not more than one hundred
50 sixty (160) acres, and not exceeding in value * * * One Hundred
51 Thousand Dollars (\$100,000.00); or, if the homestead be in a city,
52 town or village, not exceeding in value * * * One Hundred Thousand
53 Dollars (\$100,000.00) after being filed for record, shall be
54 notice to all persons to be affected thereby; and shall bind the
55 exemptionist, the spouse of the exemptionist if the exemptionist
56 be married, and the creditors of the exemptionist until the
57 exemptionist shall execute and file a new declaration which shall
58 nullify the preceding one, and otherwise have like effect; and
59 shall moreover entitle the exemptionist thereafter to hold the
60 same as exempt to the extent of such value; but subject to contest
61 and legal designation or allotment, if the exemptionist had
62 declared for too much, or has insufficiently or improperly
63 described the premises; and to contest by creditors on the ground
64 that the exemptionist was not entitled to a homestead, and by the
65 spouse of the exemptionist on the ground that it was intended to
66 defraud or circumvent such spouse.

67 **SECTION 4.** Section 85-3-31, Mississippi Code of 1972, is
68 amended as follows:

69 85-3-31. The homestead of every citizen entitled to such an
70 exemption who shall not select or who has improperly selected his
71 homestead by declaration, shall be, namely: A tract of land in



72 the form of, first, a square, or second, a parallelogram, if
73 practicable, and composed, if practicable, of contiguous parcels,
74 and including the dwelling house, and, if practicable, the other
75 principal buildings, and not to exceed one hundred sixty (160)
76 acres in area, nor * * * One Hundred Thousand Dollars
77 (\$100,000.00) in value. And in all cases where the homestead may
78 be composed of detached parcels of land, it shall be made up of
79 those nearest the forty (40) acre or other less tract containing
80 the dwelling house.

81 **SECTION 5.** Section 85-3-35, Mississippi Code of 1972, is
82 amended as follows:

83 85-3-35. If the land on which the person claiming the
84 exemption resides exceeds one hundred sixty (160) acres in
85 quantity or * * * One Hundred Thousand Dollars (\$100,000.00) in
86 value, inclusive of improvements, and a proper selection of a
87 homestead has not been made and filed for record, the officer
88 holding an execution against such persons, and not finding other
89 property to satisfy the same, shall levy the execution on the
90 whole land, and shall notify the defendant, if to be found, and
91 the plaintiff or his attorney, if in his county, each to select
92 one (1) householder or freeholder; and each party may select one
93 (1), and inform the officer of his selection, and the officer
94 shall select a third; or, if defendant or plaintiff or his
95 attorney be absent from the county, or if he shall not make a
96 selection, or if the person selected will not act, the officer



97 shall select the three (3) householders or freeholders, who, on
98 oath to be administered by him, shall set off to such person a
99 portion of the land, embracing the dwelling house and outhouses
100 and not exceeding one hundred sixty (160) acres in quantity
101 nor * * * One Hundred Thousand Dollars (\$100,000.00) in value, and
102 the allotment, distinctly indicated by metes and bounds or other
103 sufficient description, shall be returned with the execution; and
104 the levy of the execution shall be dismissed as to the part so
105 allotted; and the officer may advertise and sell the remainder of
106 the land. In making such allotment, the homestead shall be laid
107 off as designated by law in case of the debtor's failure to select
108 his homestead and file his declaration thereof for record.

109 **SECTION 6.** Section 85-3-37, Mississippi Code of 1972, is
110 amended as follows:

111 85-3-37. If the premises be not capable of being so divided
112 as to set off the debtor a part, including the dwelling house and
113 not exceeding * * * One Hundred Thousand Dollars (\$100,000.00) in
114 value, inclusive of improvements, or if the debtor has made a
115 valid homestead declaration, and the homestead exceeds * * * One
116 Hundred Thousand Dollars (\$100,000.00) in value, the householders
117 or freeholders shall value the land, inclusive of the dwelling
118 house and buildings; and if the surplus of the valuation, over and
119 above the exempt value, shall, within sixty (60) days, be paid by
120 the execution-debtor, the premises shall not be sold; but if the
121 surplus be not paid within sixty (60) days after the valuation,



122 the officer may advertise and sell the premises, if the same shall
123 bring a greater sum than the exempt value; and out of the proceeds
124 of the sale he shall pay to the execution-debtor the sum of * * *
125 One Hundred Thousand Dollars (\$100,000.00).

126 **SECTION 7.** Section 85-3-1, Mississippi Code of 1972, is
127 amended as follows:

128 85-3-1. There shall be exempt from seizure under execution
129 or attachment:

130 (a) Tangible personal property of the following kinds
131 selected by the debtor, not exceeding Ten Thousand Dollars
132 (\$10,000.00) in cumulative value:

133 (i) Household goods, wearing apparel, books,
134 animals or crops;

135 (ii) Motor vehicles;

136 (iii) Implements, professional books or tools of
137 the trade;

138 (iv) Cash on hand;

139 (v) Professionally prescribed health aids;

140 (vi) Any items of tangible personal property worth
141 less than Two Hundred Dollars (\$200.00) each.

142 Household goods, as used in this paragraph (a), means
143 clothing, furniture, appliances, one (1) radio and one (1)
144 television, one (1) firearm, one (1) lawn mower, linens, china,
145 crockery, kitchenware, and personal effects (including wedding
146 rings) of the debtor and his dependents; however, works of art,



147 electronic entertainment equipment (except one (1) television and
148 one (1) radio), jewelry (other than wedding rings), and items
149 acquired as antiques are not included within the scope of the term
150 "household goods." This paragraph (a) shall not apply to distress
151 warrants issued for collection of taxes due the state or to wages
152 described in Section 85-3-4.

153 (b) (i) The proceeds of insurance on property, real
154 and personal, exempt from execution or attachment, and the
155 proceeds of the sale of such property.

156 (ii) Income from disability insurance.

157 (c) All property in this state, real, personal and
158 mixed, for the satisfaction of a judgment or claim in favor of
159 another state or political subdivision of another state for
160 failure to pay that state's or that political subdivision's income
161 tax on benefits received from a pension or other retirement plan.
162 As used in this paragraph (c), "pension or other retirement plan"
163 includes:

164 (i) An annuity, pension, or profit-sharing or
165 stock bonus or similar plan established to provide retirement
166 benefits for an officer or employee of a public or private
167 employer or for a self-employed individual;

168 (ii) An annuity, pension, or military retirement
169 pay plan or other retirement plan administered by the United
170 States; and

171 (iii) An individual retirement account.



172 (d) One (1) mobile home, trailer, manufactured housing,
173 or similar type dwelling owned and occupied as the primary
174 residence by the debtor, not exceeding a value of * * * Forty
175 Thousand Dollars (\$40,000.00); in determining this value, existing
176 encumbrances on the dwelling, including taxes and all other liens,
177 shall first be deducted from the actual value of the dwelling. A
178 debtor is not entitled to the exemption of a mobile home as
179 personal property who claims a homestead exemption under Section
180 85-3-21, and the exemption shall not apply to collection of
181 delinquent taxes under Sections 27-41-101 through 27-41-109.

182 (e) Assets held in, or monies payable to the
183 participant or beneficiary from, whether vested or not, (i) a
184 pension, profit-sharing, stock bonus or similar plan or contract
185 established to provide retirement benefits for the participant or
186 beneficiary and qualified under Section 401(a), 403(a), or 403(b)
187 of the Internal Revenue Code (or corresponding provisions of any
188 successor law), including a retirement plan for self-employed
189 individuals qualified under one (1) of such enumerated sections,
190 (ii) an eligible deferred compensation plan described in Section
191 457(b) of the Internal Revenue Code (or corresponding provisions
192 of any successor law), or (iii) an individual retirement account
193 or an individual retirement annuity within the meaning of Section
194 408 of the Internal Revenue Code (or corresponding provisions of
195 any successor law), including a simplified employee pension plan.



196 (f) Monies paid into or, to the extent payments out are
197 applied to tuition or other qualified higher education expenses at
198 eligible educational institutions, as defined in Section 529 of
199 the Internal Revenue Code or corresponding provisions of any
200 successor law, monies paid out of the assets of and the income
201 from any validly existing qualified tuition program authorized
202 under Section 529 of the Internal Revenue Code or corresponding
203 provisions of any successor law, including, but not limited to,
204 the Mississippi Prepaid Affordable College Tuition (MPACT) Program
205 established under Sections 37-155-1 through 37-155-27 and the
206 Mississippi Affordable College Savings (MACS) Program established
207 under Sections 37-155-101 through 37-155-125.

208 (g) The assets of a health savings account, including
209 any interest accrued thereon, established pursuant to a health
210 savings account program as provided in the Health Savings Accounts
211 Act (Sections 83-62-1 through 83-62-9).

212 (h) In addition to all other exemptions listed in this
213 section, there shall be an additional exemption of property having
214 a value of Fifty Thousand Dollars (\$50,000.00) of whatever type,
215 whether real, personal or mixed, tangible or intangible, including
216 deposits of money, available to any Mississippi resident who is
217 seventy (70) years of age or older.

218 (i) An amount not to exceed Five Thousand Dollars
219 (\$5,000.00) of earned income tax credit proceeds.



220 (j) An amount not to exceed Five Thousand Dollars
221 (\$5,000.00) of federal tax refund proceeds.

222 (k) An amount not to exceed Five Thousand Dollars
223 (\$5,000.00) of state tax refund proceeds.

224 (l) Subject to the provisions of Section 27-7-1003(2),
225 the assets of a catastrophe savings account, including any
226 interest accrued thereon, established under Sections 27-7-1001
227 through 27-7-1007.

228 (m) Nothing in this section shall in any way affect the
229 rights or remedies of the holder or owner of a statutory lien or
230 voluntary security interest.

231 **SECTION 8.** This act shall take effect and be in force from
232 and after July 1, 2018.

