

By: Representative Sanford

To: Judiciary A

HOUSE BILL NO. 729

1 AN ACT TO CREATE THE MISSISSIPPI UNIFORM REAL PROPERTY  
2 TRANSFER ON DEATH ACT; TO DEFINE CERTAIN TERMS; TO PROVIDE THAT  
3 THE ACT IS APPLICABLE TO TRANSFER ON DEATH DEEDS EXECUTED AFTER  
4 JULY 1, 2020; TO DECLARE THAT THE ACT DOES NOT AFFECT ANY OTHER  
5 METHOD OF TRANSFERRING REAL PROPERTY; TO AUTHORIZE A TRANSFER ON  
6 DEATH DEED THAT IS BOTH REVOCABLE AND NONTESTAMENTARY; TO REQUIRE  
7 CAPACITY ON THE PART OF THE TRANSFEROR AND PRESCRIBE OTHER  
8 REQUIREMENTS; TO WAIVE NOTICE, DELIVERY, ACCEPTANCE AND  
9 CONSIDERATION FOR TRANSFER ON DEATH DEEDS; TO PRESCRIBE  
10 REQUIREMENTS FOR EFFECTIVE REVOCATION OF A TRANSFER ON DEATH DEED;  
11 TO PROVIDE FOR THE EFFECT OF A TRANSFER ON DEATH DEED WHILE THE  
12 TRANSFEROR IS STILL LIVING; TO PROVIDE FOR THE EFFECT, DURING A  
13 TRANSFEROR'S LIFETIME, OF A SUBSEQUENT CONVEYANCE OF REAL PROPERTY  
14 SUBJECT TO A TRANSFER ON DEATH DEED; TO PROVIDE FOR THE EFFECT AT  
15 THE TRANSFEROR'S DEATH AND THE EFFECT OF LIENS, ENCUMBRANCES AND  
16 CREDITORS' CLAIMS; TO AUTHORIZE A DESIGNATED BENEFICIARY TO  
17 DISCLAIM HIS INTEREST; TO CREATE OPTIONAL FORMS FOR A TRANSFER ON  
18 DEATH DEED AND FOR REVOCATION; AND FOR RELATED PURPOSES.

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

20 **SECTION 1. Short title.** This act may be cited as the  
21 "Mississippi Uniform Real Property Transfer on Death Act."

22 **SECTION 2. Definitions.** As used in this chapter, the  
23 following words and phrases have the meanings ascribed in this  
24 section:

25 (1) "Beneficiary" means a person who receives real  
26 property under a transfer on death deed.



27           (2) "Designated beneficiary" means a person designated  
28 to receive real property in a transfer on death deed.

29           (3) "Joint owner with right of survivorship" or "joint  
30 owner" means an individual who owns real property concurrently  
31 with one or more other individuals with a right of survivorship.  
32 The term includes a joint tenant and tenant by the entirety. The  
33 term does not include a tenant in common.

34           (4) "Person" means an individual, corporation, business  
35 trust, estate, trust, partnership, limited liability company,  
36 association, joint venture, public corporation, government or  
37 governmental subdivision, agency, or instrumentality, or any other  
38 legal or commercial entity.

39           (5) "Real property" means an interest in real property  
40 located in this state.

41           (6) "Transfer on death deed" means a deed authorized  
42 under this chapter and does not refer to any other deed that  
43 transfers an interest in real property on the death of an  
44 individual.

45           (7) "Transferor" means an individual who makes a  
46 transfer on death deed.

47           (8) In this chapter, the terms "cancel" and "revoke"  
48 are synonymous.

49           **SECTION 3. Applicability.** This chapter applies to a  
50 transfer on death deed executed and acknowledged on or after July  
51 1, 2020, by a transferor who dies on or after July 1, 2020.



52           **SECTION 4. Nonexclusivity.** This chapter does not affect any  
53 method of transferring real property otherwise permitted under the  
54 laws of this state.

55           **SECTION 5. Transfer on death deed authorized.** An individual  
56 may transfer the individual's interest in real property to one or  
57 more beneficiaries effective at the transferor's death by a  
58 transfer on death deed.

59           **SECTION 6. Transfer on death deed revocable.** A transfer on  
60 death deed shall be executed as set forth in Section 89-3-1 and  
61 need not be executed with the formalities of a will.

62           **SECTION 7. Transfer on death deed nontestamentary.** A  
63 transfer on death deed is a nontestamentary instrument.

64           **SECTION 8. Capacity of transferor.** (a) The capacity  
65 required to make or revoke a transfer on death deed is the same as  
66 the capacity required to make a contract.

67           (b) A transfer on death deed may not be created through use  
68 of a power of attorney unless the transfer of real property  
69 through a transfer on death deed is specifically authorized in the  
70 power of attorney.

71           **SECTION 9. Requirements.** To be effective, a transfer on  
72 death deed must:

73           (1) Except as otherwise provided in paragraph (2),  
74 contain the essential elements and formalities of a recordable  
75 deed;



76                   (2) State that the transfer of an interest in real  
77 property to the designated beneficiary is to occur at the  
78 transferor's death;

79                   (3) Be recorded before the transferor's death in the  
80 deed records in the official records of the chancery clerk of the  
81 county where the real property is located.

82                   **SECTION 10. Notice, delivery, acceptance, consideration not**  
83 **required.** A transfer on death deed is effective without:

84                   (1) Notice or delivery to or acceptance by the  
85 designated beneficiary during the transferor's life; or

86                   (2) Consideration.

87                   **SECTION 11. Revocation by instrument authorized; revocation**  
88 **by act not permitted.** (a) Subject to subsections (d) and (e), an  
89 instrument is effective to revoke a recorded transfer on death  
90 deed, or any part of it, if the instrument:

91                   (1) Is one (1) of the following:

92                   (A) A subsequent transfer on death deed that  
93 revokes the preceding transfer on death deed or part of the deed  
94 expressly or by inconsistency; or

95                   (B) Except as provided by subsection (b), an  
96 instrument of revocation that expressly revokes the transfer on  
97 death deed or part of the deed;

98                   (2) Is acknowledged by the transferor after the  
99 acknowledgment of the deed being revoked; and



100 (3) Is recorded before the transferor's death in the  
101 official records of the chancery clerk of the county where the  
102 deed being revoked is recorded.

103 (b) A will may not revoke or supersede a transfer on death  
104 deed.

105 (c) If a marriage between the transferor and a designated  
106 beneficiary is dissolved after a transfer on death deed is  
107 recorded, a final judgment of the court dissolving the marriage  
108 operates to revoke the transfer on death deed as to that  
109 designated beneficiary.

110 (d) If a transfer on death deed is made by more than one (1)  
111 transferor, revocation by a transferor does not affect the deed as  
112 to the interest of another transferor who does not make that  
113 revocation.

114 (e) A transfer on death deed made by joint owners with right  
115 of survivorship is revoked only if it is revoked by all of the  
116 living joint owners.

117 (f) This section does not limit the effect of an inter vivos  
118 transfer of the real property.

119 **SECTION 12. Effect of transfer on death deed during**  
120 **transferor's life.** During a transferor's life, a transfer on  
121 death deed does not:

122 (1) Affect an interest or right of the transferor or  
123 any other owner, including:



124 (A) The right to transfer or encumber the real  
125 property that is the subject of the deed;

126 (B) Homestead rights in the real property, if  
127 applicable; and

128 (C) Ad valorem tax exemptions, including  
129 exemptions for residence homestead, persons sixty-five (65) years  
130 of age or older, persons with disabilities, and veterans.

131 (2) Affect an interest or right of a transferee of the  
132 real property that is the subject of the deed, even if the  
133 transferee has actual or constructive notice of the deed;

134 (3) Affect an interest or right of a secured or  
135 unsecured creditor or future creditor of the transferor, even if  
136 the creditor has actual or constructive notice of the deed;

137 (4) Affect the transferor's or designated beneficiary's  
138 eligibility for any form of public assistance, subject to  
139 applicable federal law;

140 (5) Constitute a transfer triggering a "due on sale" or  
141 similar clause;

142 (6) Invoke statutory real estate notice or disclosure  
143 requirements;

144 (7) Create a legal or equitable interest in favor of  
145 the designated beneficiary; or

146 (8) Subject the real property to claims or process of a  
147 creditor of the designated beneficiary.



148           **SECTION 13.**   **Effect of subsequent conveyance on transfer on**  
149 **death deed.**   An otherwise valid transfer on death deed is void as  
150 to any interest in real property that is conveyed by the  
151 transferor during the transferor's lifetime after the transfer on  
152 death deed is executed and recorded if:

153                   (1)   A valid instrument conveying the interest is  
154 recorded in the official records of the chancery clerk of the same  
155 county in which the transfer on death deed is recorded; and

156                   (2)   The recording of the instrument occurs before the  
157 transferor's death.

158           **SECTION 14.**   **Effect of transfer on death deed at transferor's**  
159 **death.**   Except as otherwise provided in the transfer on death  
160 deed, this section, or any other statute or the common law of this  
161 state governing a decedent's estate, on the death of the  
162 transferor, the following rules apply to an interest in real  
163 property that is the subject of a transfer on death deed and owned  
164 by the transferor at death:

165                   (1)   If a transferor is a joint owner with right of  
166 survivorship who is survived by one or more other joint owners,  
167 the real property that is the subject of the transfer on death  
168 deed belongs to the surviving joint owner or owners.   If a  
169 transferor is a joint owner with right of survivorship who is the  
170 last-surviving joint owner, the transfer on death deed is  
171 effective.



172 (2) The last-surviving joint owner may revoke the  
173 transfer on death deed subject to Section 11.

174 (3) A transfer on death deed transfers real property  
175 without covenant of warranty of title even if the deed contains a  
176 contrary provision.

177 **SECTION 15. Transfer on death deed property subject to liens**

178 **and encumbrances at transferor's death; creditors' claims.** (a)

179 Except as otherwise provided in the transfer on death deed, in  
180 this section, in Section 91-1-25 relating to the prohibition on  
181 inheriting from a person one has killed, in Title 91, Chapter 3,  
182 Mississippi Code of 1972 (the Uniform Simultaneous Death Act), and  
183 in Section 91-5-25 relating to the spousal right to renounce a  
184 will, on the death of the transferor, the following rules apply to  
185 property that is the subject of a transfer on death deed and owned  
186 by the transferor at death:

187 (1) Subject to paragraph (2), the interest in the  
188 property is transferred to a designated beneficiary in accordance  
189 with the deed.

190 (2) The interest of a designated beneficiary is  
191 contingent on the designated beneficiary surviving the transferor.  
192 The interest of a designated beneficiary that fails to survive the  
193 transferor lapses.

194 (3) Subject to paragraph (4), concurrent interests are  
195 transferred to the beneficiaries in equal and undivided shares  
196 with no right of survivorship.





197 (4) If the transferor has identified two (2) or more  
198 designated beneficiaries to receive concurrent interests in the  
199 property, the share of one which lapses or fails for any reason is  
200 transferred to the other, or to the others in proportion to the  
201 interest of each in the remaining part of the property held  
202 concurrently.

203 (b) Subject to Title 89, Chapter 5, Mississippi Code of  
204 1972, relating to recordation of instruments, a designated  
205 beneficiary takes the real property subject to all conveyances,  
206 encumbrances, assignments, contracts, mortgages, liens, and other  
207 interests to which the real property is subject at the  
208 transferor's death. For purposes of this subsection and Section  
209 89-5-1 et seq., the recording of the transfer on death deed is  
210 considered to have occurred at the transferor's death.

211 **SECTION 16. Disclaimer.** A designated beneficiary may  
212 disclaim all or part of the designated beneficiary's interest as  
213 provided by the Uniform Disclaimer of Property Interests Act  
214 (Chapter 21, Title 89, Mississippi Code of 1972).

215 **SECTION 17. Optional form for transfer on death deed.** The  
216 following form may be used to create a transfer on death deed.  
217 The other sections of this chapter govern the effect of this or  
218 any other instrument used to create a transfer on death deed:

219 REVOCABLE TRANSFER ON DEATH DEED

220 NOTICE TO OWNER



221 You should carefully read all information on the other side  
222 of this form. YOU MAY WANT TO CONSULT A LAWYER BEFORE USING THIS  
223 FORM.

224 This form must be recorded before your death, or it will not  
225 be effective.

226 IDENTIFYING INFORMATION

227 Owner or Owners Making This Deed:

228 \_\_\_\_\_

229 Printed name Mailing address

230 \_\_\_\_\_

231 Printed name Mailing address

232 Legal description of the property:

233 \_\_\_\_\_

234 PRIMARY BENEFICIARY

235 I designate the following beneficiary if the beneficiary survives  
236 me.

237 \_\_\_\_\_

238 Printed name Mailing address, if available

239 ALTERNATE BENEFICIARY - Optional

240 If my primary beneficiary does not survive me, I designate the  
241 following alternate beneficiary if that beneficiary survives me.

242 \_\_\_\_\_

243 Printed name Mailing address, if available

244 TRANSFER ON DEATH



245 At my death, I transfer my interest in the described property  
246 to the beneficiaries as designated above.

247 Before my death, I have the right to revoke this deed as set  
248 forth in Section 11 of this act, the Mississippi Uniform Real  
249 Property Transfer on Death Act.

250 SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

251 \_\_\_\_\_ [(SEAL)] \_\_\_\_\_

252 Signature Date

253 \_\_\_\_\_ [(SEAL)] \_\_\_\_\_

254 Signature Date

255 ACKNOWLEDGMENT

256 (insert acknowledgment for deed here)

257 **SECTION 18. Optional form of revocation.** The following form  
258 may be used to create an instrument of revocation of a transfer on  
259 death deed. The other sections of this chapter govern the effect  
260 of this or any other instrument used to revoke a transfer on death  
261 deed.

262 REVOCATION OF TRANSFER ON DEATH DEED

263 NOTICE TO OWNER

264 This revocation must be recorded before you die or it will  
265 not be effective. This revocation is effective only as to the  
266 interests in the property of owners who sign this revocation.

267 IDENTIFYING INFORMATION

268 Owner or Owners of Property Making This Revocation:

269 \_\_\_\_\_



270 Printed name Mailing address  
271 \_\_\_\_\_  
272 Printed name Mailing address  
273 Legal description of the property:  
274 \_\_\_\_\_

275 REVOCATION

276 I revoke all my previous transfers of this property by  
277 transfer on death deed.

278 SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

279 \_\_\_\_\_ [(SEAL)] \_\_\_\_\_

280 Signature Date

281 \_\_\_\_\_ [(SEAL)] \_\_\_\_\_

282 Signature Date

283 ACKNOWLEDGMENT

284 (insert acknowledgment here)

285 **SECTION 19. Relation to electronic signatures in Global and**

286 **National Commerce Act.** This chapter modifies, limits, and  
287 supersedes the federal Electronic Signatures in Global and  
288 National Commerce Act, 15 U.S.C. Section 7001, et seq., but does  
289 not modify, limit, or supersede Section 101(c) of that act, 15  
290 U.S.C. Section 7001(c), or authorize electronic delivery of any of  
291 the notices described in Section 103(b) of that act, 15 U.S.C.

292 **SECTION 20.** Sections 1 through 19 of this act shall be  
293 codified as a new chapter in Title 89, Mississippi Code of 1972.



294           **SECTION 21.** This act shall take effect and be in force from  
295 and after July 1, 2020.

