

By: Representative Sanford

To: Judiciary A

HOUSE BILL NO. 1023

1 AN ACT TO AMEND SECTION 11-21-3, MISSISSIPPI CODE OF 1972, TO
 2 AUTHORIZE A COURT, IN ITS DISCRETION, TO ORDER A JOINT TENANT,
 3 TENANT IN COMMON, COPARCENER OR ANY OTHER PERSON ON LAND IN
 4 DISPUTE FOR PARTITION TO LEAVE THE LAND OR BE REMOVED; TO CREATE
 5 NEW SECTION 11-21-77.1, MISSISSIPPI CODE OF 1972, TO AUTHORIZE ANY
 6 COURT, IN ITS DISCRETION, TO ORDER ANY TENANT IN COMMON OR ANY
 7 OTHER PERSON WHO HAS POSSESSION OR CONTROL OVER PROPERTY THAT IS
 8 IN DISPUTE FOR PARTITION TO RETURN THE PROPERTY OR SEPARATE
 9 HIMSELF OR HERSELF FROM THE PROPERTY; TO AMEND SECTION 11-21-77,
 10 MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING SECTION; TO
 11 AMEND SECTION 91-31-15, MISSISSIPPI CODE OF 1972, TO AUTHORIZE A
 12 COURT, IN ITS DISCRETION, TO ORDER A JOINT TENANT, TENANT IN
 13 COMMON, CO-PARCENER OR ANY OTHER PERSON ON LAND IN DISPUTE FOR
 14 PARTITION TO LEAVE THE LAND OR BE REMOVED; AND FOR RELATED
 15 PURPOSES.

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

17 **SECTION 1.** Section 11-21-3, Mississippi Code of 1972, is
 18 amended as follows:

19 11-21-3. (1) Partition of land held by joint tenants,
 20 tenants in common, or coparceners, having an estate in possession
 21 or a right of possession and not in reversion or remainder,
 22 whether the joint interest be in the freehold or in a term of
 23 years not less than five (5), may be made by judgment of the
 24 chancery court of that county in which the lands or some part



25 thereof, are situated; or, if the lands be held by devise or
26 descent, the division may be ordered by the chancery court of the
27 county in which the will was probated or letters of administration
28 granted, although none of the lands be in that county.

29 However, any person owning an indefeasible fee simple title
30 to an undivided interest in land may procure a partition of said
31 land and have the interest of such person set apart in fee simple
32 free from the claims of life or other tenants, remaindermen or
33 reversioners, provided the life or other tenants, and other known
34 living persons having an interest in the lands, are made
35 defendants if they do not join in the proceeding as plaintiffs.

36 (2) The court may, in its discretion, order any joint
37 tenant, tenant in common, or coparcener, or any other person who
38 is on the land to leave the land and remove only his or her own
39 property from the land. If any person fails to leave the land as
40 ordered, the court may order the sheriff of the county in which
41 the land is located to remove the person and the person's
42 possessions.

43 **SECTION 2.** The following shall be codified as Section
44 11-21-77.1, Mississippi Code of 1972:

45 11-21-77.1. Any court, in its discretion, may order any
46 tenant in common or any other person who has possession or control
47 over the property to return the property or separate himself or
48 herself from the property. If any person fails to return the
49 property so ordered or separate himself or herself as ordered by



50 the court, the sheriff of the county in which the property is
51 located may be ordered to take the property or remove the person.

52 **SECTION 3.** Section 11-21-77, Mississippi Code of 1972, is
53 amended as follows:

54 11-21-77. If the petitioner makes an affidavit at the
55 commencement of his suit, or afterwards, of his right as a tenant
56 in common, and that there is danger of the removal of the
57 property, so as to defeat or endanger his right, the county court
58 or the justice of the peace, as the case may be, shall issue a
59 writ for the seizure of the property; and if the person having it
60 in possession will not give a bond with sufficient sureties,
61 approved by the officer executing the writ, conditioned to have
62 the property forthcoming to abide the final order which shall be
63 made in the case, payable to the petitioner, in a sum sufficient
64 to cover his interest in the property, it shall be delivered to
65 petitioner on his giving a bond, payable to the person from whom
66 it was taken, with sufficient sureties, approved as above
67 provided, in a penalty equal to the value of the interest of such
68 person, conditioned to have the property before the county court
69 or the justice of the peace, as the case may be, to abide the
70 final order in the case; but if neither party give the required
71 bond, the property shall remain in the hands of the officer,
72 unless it be perishable or expensive to keep, in which case it
73 shall be sold, as such property seized under attachment is sold,



74 and the proceeds of the sale shall be disposed of according to the
75 rights of the parties.

76 **SECTION 4.** Section 91-31-15, Mississippi Code of 1972, is
77 amended as follows:

78 91-31-15. (1) **Partition alternatives.** (a) If all the
79 interests of all cotenants that requested partition by sale are
80 not purchased by other cotenants pursuant to Section 91-31-13, or
81 if after conclusion of the buyout under Section 91-31-13, a
82 cotenant remains that has requested partition in kind, the court
83 shall order partition in kind unless the court, after
84 consideration of the factors listed in Section 91-31-17, finds
85 that partition in kind will result in manifest prejudice to the
86 cotenants as a group. In considering whether to order partition
87 in kind, the court shall approve a request by two (2) or more
88 parties to have their individual interests aggregated.

89 (b) If the court does not order partition in kind under
90 subsection (a), the court shall order partition by sale pursuant
91 to Section 91-31-19 or, if no cotenant requested partition by
92 sale, the court shall dismiss the action.

93 (c) If the court orders partition in kind pursuant to
94 subsection (a), the court may require that one or more cotenants
95 pay one or more other cotenants amounts so that the payments,
96 taken together with the value of the in-kind distributions to the
97 cotenants, will make the partition in kind just and proportionate
98 in value to the fractional interests held.



99 (d) If the court orders partition in kind, the court shall
100 allocate to the cotenants that are unknown, unlocatable, or the
101 subject of a default judgment, if their interests were not bought
102 out pursuant to Section 91-31-13, a part of the property
103 representing the combined interests of these cotenants as
104 determined by the court and this part of the property shall remain
105 undivided.

106 (2) The court may, in its discretion, order any joint
107 tenant, tenant in common, or coparcener, or any other person who
108 is on the land to leave the land and remove all of his or her own
109 property from the land. If any person fails to leave the land as
110 ordered, the court may order the sheriff of the county in which
111 the land is located to remove the person and the person's
112 possessions.

113 **SECTION 5.** This act shall take effect and be in force from
114 and after July 1, 2023.

