

By: Representative Sanford

To: Judiciary A

HOUSE BILL NO. 1086

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 91-31-5, MISSISSIPPI CODE OF 1972, TO PROVIDE
 12 DISCRETION TO THE PERSON FILING THE PARTITION ACTION TO DECIDE IF
 13 THE UNIFORM HEIR PROPERTY PROVISIONS WILL BE APPLIED; TO AMEND
 14 SECTION 91-31-15, MISSISSIPPI CODE OF 1972, TO AUTHORIZE A COURT,
 15 IN ITS DISCRETION, TO ORDER A JOINT TENANT, TENANT IN COMMON,
 16 COPARCENER OR ANY OTHER PERSON ON LAND IN DISPUTE FOR PARTITION TO
 17 LEAVE THE LAND OR BE REMOVED; AND FOR RELATED PURPOSES.

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

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

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



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

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

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

45 **SECTION 2.** The following shall be codified as Section
46 11-21-77.1, Mississippi Code of 1972:

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



51 property so ordered or separate himself or herself as ordered by
52 the court, the sheriff of the county in which the property is
53 located may be ordered to take the property or remove the person.

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

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



76 and the proceeds of the sale shall be disposed of according to the
77 rights of the parties.

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

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

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

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



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

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

115 **SECTION 5.** Section 91-31-5, Mississippi Code of 1972, is
116 amended as follows:

117 91-31-5. **Applicability; relation to other law.** (a) This
118 chapter applies to partition actions filed on or after July 1,
119 2020.

120 (b) In an action to partition real property under Title 11,
121 Chapter 21, Mississippi Code of 1972, the court shall determine
122 whether the property is heir property. If the court determines
123 that the property is heir property, the property must be
124 partitioned under this chapter unless * * * the party filing the
125 motion requests to proceed under Sections 11-21-1 et seq.



126 (c) This chapter supplements Title 11, Chapter 21,
127 Mississippi Code of 1972, and, if an action is governed by this
128 chapter, replaces provisions that are inconsistent with this
129 chapter.

130 **SECTION 6.** This act shall take effect and be in force from
131 and after July 1, 2024.

