

By: Senator(s) Hill

To: Judiciary, Division A;
Judiciary, Division B

SENATE BILL NO. 2209

1 AN ACT TO STATE LEGISLATIVE FINDINGS AND INTENT CONCERNING
2 THE RIGHTS OF REAL PROPERTY OWNERS; TO AUTHORIZE AN OWNER OF REAL
3 PROPERTY TO REQUEST FROM THE SHERIFF OF THE COUNTY IN WHICH THE
4 REAL PROPERTY IS LOCATED THE IMMEDIATE REMOVAL OF A PERSON OR
5 PERSONS UNLAWFULLY OCCUPYING A RESIDENTIAL DWELLING OR COMMERCIAL
6 BUILDING LOCATED ON THE REAL PROPERTY IF CERTAIN CONDITIONS ARE
7 MET; TO REQUIRE THE PROPERTY OWNER TO SUBMIT A COMPLAINT TO THE
8 SHERIFF OF THE COUNTY IN WHICH THE REAL PROPERTY IS LOCATED; TO
9 REQUIRE A SHERIFF, UPON RECEIPT OF A COMPLAINT, TO VERIFY THAT THE
10 COMPLAINANT IS THE OWNER OF THE REAL PROPERTY AND APPEARS ENTITLED
11 TO THE RELIEF SOUGHT; TO REQUIRE THE SHERIFF TO IMMEDIATELY SERVE
12 A NOTICE TO VACATE ON ALL THE UNLAWFUL OCCUPANTS AND PUT THE OWNER
13 IN POSSESSION OF THE REAL PROPERTY; TO AUTHORIZE A FEE FOR THE
14 SHERIFF'S SERVICE OF THE NOTICE; TO AUTHORIZE THE PROPERTY OWNER
15 TO REQUEST THE SHERIFF REMAIN AT THE REAL PROPERTY TO KEEP THE
16 PEACE WHILE THE PROPERTY OWNER CHANGES THE LOCKS AND REMOVES THE
17 PERSONAL PROPERTY OF THE UNLAWFUL OCCUPANTS FROM THE PREMISES TO
18 OR NEAR THE PROPERTY LINE; TO PROVIDE CERTAIN EXEMPTIONS FROM
19 LIABILITY FOR THE SHERIFF AND THE PROPERTY OWNER; TO AUTHORIZE A
20 PERSON TO BRING A CIVIL CAUSE OF ACTION FOR WRONGFUL REMOVAL UNDER
21 THIS ACT; TO PROVIDE A FORM COMPLAINT; TO AMEND SECTION 97-17-67,
22 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ANY PERSON WHO DETAINS,
23 OCCUPIES OR TRESPASSES ANY REAL PROPERTY OF ANOTHER SHALL BE
24 GUILTY OF MALICIOUS MISCHIEF; TO PROVIDE THAT ANY PERSON WHO, WITH
25 INTENT TO DETAIN OR REMAIN UPON REAL PROPERTY, KNOWINGLY AND
26 WILLFULLY PRESENTS TO ANOTHER PERSON A FALSE DOCUMENT PURPORTING
27 TO BE A VALID LEASE AGREEMENT, DEED OR OTHER INSTRUMENT CONVEYING
28 REAL PROPERTY RIGHTS COMMITS A MISDEMEANOR; TO PROVIDE THAT ANY
29 PERSON WHO LISTS OR ADVERTISES REAL PROPERTY FOR SALE KNOWING THAT
30 THE PURPORTED SELLER HAS NO LEGAL TITLE OR AUTHORITY TO SELL THE
31 PROPERTY, OR RENTS OR LEASES THE REAL PROPERTY TO ANOTHER PERSON
32 KNOWING THAT HE OR SHE HAS NO LAWFUL OWNERSHIP IN THE PROPERTY OR
33 LEASEHOLD INTEREST IN THE PROPERTY, COMMITS A FELONY; TO PROVIDE
34 CRIMINAL PENALTIES; AND FOR RELATED PURPOSES.



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

SECTION 1. (1) The Legislature finds:

(a) The right to exclude others from entering, and the right to direct others to immediately vacate, real property are the most important real property rights.

(b) The existing remedies regarding unauthorized persons who unlawfully remain on real property fail to adequately protect the rights of the property owner and fail to adequately discourage theft and vandalism.

(2) Therefore, the legislative intent of this act is to quickly restore possession of real property to the lawful owner of the property when the property is being unlawfully occupied and to thereby preserve property rights while limiting the opportunity for criminal activity.

SECTION 2. (1) An owner of real property or his or her authorized agent may request from the sheriff of the county in which the real property is located the immediate removal of a person or persons unlawfully occupying a residential dwelling or commercial building located on the real property pursuant to this act if all of the following conditions are met:

(a) The requesting person is the owner of the real property or is the authorized agent of the property owner.

(b) The real property that is being occupied includes a residential dwelling or commercial building.



59 (c) An unauthorized person or persons have unlawfully
60 entered and remain or continue to reside on the owner's real
61 property.

62 (d) The real property was not open to members of the
63 public at the time the unauthorized person or persons entered.

64 (e) The property owner has directed the unauthorized
65 person or persons to leave the property.

66 (f) The unauthorized person or persons are not current
67 or former tenants pursuant to a written or oral rental agreement
68 authorized by the property owner.

69 (g) The unauthorized person or persons are not
70 immediate family members of the property owner.

71 (h) There is no pending litigation related to the real
72 property between the property owner and any known unauthorized
73 person.

74 (2) To request the immediate removal of an unlawful occupant
75 of a residential dwelling or commercial building, the property
76 owner or his or her authorized agent must submit a complaint by
77 presenting a completed and verified Complaint to Remove Persons
78 Unlawfully Occupying Real Property to the sheriff of the county in
79 which the real property is located.

80 (3) (a) Upon receipt of the complaint, the sheriff shall
81 verify that the complainant is the record owner of the real
82 property or the authorized agent of the owner and appears
83 otherwise entitled to relief under this act. If verified, the



84 sheriff shall, without delay, serve a notice to immediately vacate
85 on all the unlawful occupants and shall put the owner in
86 possession of the real property. Service may be accomplished by
87 hand delivery of the notice to an occupant or by posting the
88 notice on the front door or entrance of the dwelling. The sheriff
89 shall also attempt to verify the identities of all persons
90 occupying the dwelling and note the identities on the return of
91 service.

92 (b) The sheriff is entitled to the same fee for service
93 of the notice to immediately vacate as if the sheriff were serving
94 a writ of possession under Section 25-7-19.

95 **SECTION 3.** (1) After the sheriff serves the notice to
96 immediately vacate, the property owner or authorized agent may
97 request that the sheriff remain at the real property to keep the
98 peace while the property owner or agent of the owner changes the
99 locks and removes the personal property of the unlawful occupants
100 from the premises to or near the property line.

101 (2) The sheriff is not liable to the unlawful occupant or
102 any other party for loss, destruction or damage of property.

103 (3) The real property owner or his or her authorized agent
104 is not liable to an unlawful occupant or any other party for the
105 loss, destruction or damage to the personal property unless the
106 removal was wrongful.

107 **SECTION 4.** A person may bring a civil cause of action for
108 wrongful removal under this act. A person harmed by a wrongful



removal under this act may be restored to possession of the real property and may recover actual costs and damages incurred, statutory damages equal to triple the fair market rent of the dwelling, court costs and reasonable attorney fees. In an action brought under this section, the court shall give priority on its docket and an expedited review and may grant injunctive or other equitable relief.

SECTION 5. This act shall not limit:

- (a) The rights of a property owner;
- (b) The authority of a law enforcement officer to arrest an unlawful occupant for trespassing, vandalism, theft or other crimes; or
- (c) The authority of a sheriff, who is serving the notice provided in this act, from arresting any person found in the dwelling for trespass, outstanding warrants or any other legal cause.

SECTION 6. The complaint required in Section 2 of this act must be in substantially the following form:

COMPLAINT TO REMOVE PERSONS UNLAWFULLY
OCCUPYING REAL PROPERTY

I, the owner or authorized agent of the owner of the real property located at [Address of real property], declare under the penalty of perjury that [initial each space]:

1. [_____] I am the owner of the real property or the authorized agent of the owner of the real property.



2. [_____] The real property is a residential dwelling or commercial building.

3. [_____] An unauthorized person or persons have unlawfully entered and are remaining or residing unlawfully on the real property.

4. [_____] The real property was not open to members of the public at the time the unauthorized person or persons entered.

5. [_____] I have directed the unauthorized person or persons to leave the real property, but they have not done so.

6. [_____] The person or persons are not current or former tenants pursuant to any valid lease authorized by the property owner, and any lease that may be produced by an occupant is fraudulent.

7. [_____] The unauthorized person or persons sought to be removed are not an owner or a co-owner of the property and have not been listed on the title to the property unless the person or persons have engaged in title fraud.

8. [_____] The unauthorized person or persons are not immediate family members of the property owner.

9. [_____] There is no litigation related to the real property pending between the property owner and any person sought to be removed.

10. [_____] I understand that a person or persons removed from the property pursuant to this procedure may bring a cause of action against me for any false statements made in this complaint,



or for wrongfully using this procedure, and that as a result of such action I may be held liable for actual damages, penalties, costs and reasonable attorney fees.

11. [_____] I am requesting the sheriff to immediately remove the unauthorized person or persons from the residential or commercial property.

12. [_____] A copy of my valid government-issued identification is attached, or I am an agent of the property owner, and documents evidencing my authority to act on the property owner's behalf are attached.

I HAVE READ EVERY STATEMENT MADE IN THIS PETITION AND EACH STATEMENT IS TRUE AND CORRECT. I UNDERSTAND THAT THE STATEMENTS MADE IN THIS PETITION ARE BEING MADE UNDER PENALTY OF PERJURY, PUNISHABLE AS PROVIDED IN SECTION 97-9-59.

[Signature of Property Owner or Agent of Owner]

SECTION 7. Section 97-17-67, Mississippi Code of 1972, is amended as follows:

97-17-67. (1) Every person who shall maliciously or mischievously destroy, disfigure, or injure, or cause to be destroyed, disfigured, or injured, any property of another, either real or personal, shall be guilty of malicious mischief.

(2) Every person who unlawfully or maliciously detains, occupies or trespasses or causes to be detained, occupied or trespassed, any real property of another, shall be guilty of malicious mischief.



184 (* * *3) If the value of the property destroyed,
185 disfigured, detained, occupied, trespassed or injured is One
186 Thousand Dollars (\$1,000.00) or less, it shall be a misdemeanor
187 and may be punishable by a fine of not more than One Thousand
188 Dollars (\$1,000.00) or imprisonment in the county jail not
189 exceeding twelve (12) months, or both, if the court finds
190 substantial and compelling reasons why the offender cannot be
191 safely and effectively supervised in the community, is not
192 amenable to community-based treatment, or poses a significant risk
193 to public safety. If such a finding is not made, the court shall
194 suspend the sentence of imprisonment and impose a period of
195 probation not exceeding one (1) year or a fine of not more than
196 One Thousand Dollars (\$1,000.00), or both. Any person convicted
197 of a third or subsequent offense under this subsection where the
198 value of the property is not less than Five Hundred Dollars
199 (\$500.00), shall be imprisoned in the Penitentiary for a term not
200 exceeding three (3) years or fined an amount not exceeding One
201 Thousand Dollars (\$1,000.00), or both.

202 (* * *4) If the value of the property destroyed,
203 disfigured, detained, occupied, trespassed or injured is in excess
204 of One Thousand Dollars (\$1,000.00) but less than Five Thousand
205 Dollars (\$5,000.00), it shall be a felony punishable by a fine not
206 exceeding Ten Thousand Dollars (\$10,000.00) or imprisonment in the
207 Penitentiary not exceeding five (5) years, or both.



208 (* * *5) If the value of the property is Five Thousand
209 Dollars (\$5,000.00) or more but less than Twenty-five Thousand
210 Dollars (\$25,000.00), it shall be punishable by a fine of not more
211 than Ten Thousand Dollars (\$10,000.00) or imprisonment in the
212 Penitentiary not exceeding ten (10) years, or both.

213 (* * *6) If the value of the property is Twenty-five
214 Thousand Dollars (\$25,000.00) or more, it shall be punishable by a
215 fine of not more than Ten Thousand Dollars (\$10,000.00) or
216 imprisonment in the Penitentiary not exceeding twenty (20) years,
217 or both.

218 (* * *7) In all cases restitution to the victim for all
219 damages shall be ordered. The value of property destroyed,
220 disfigured, detained, occupied, trespassed or injured by the same
221 party as part of a common crime against the same or multiple
222 victims may be aggregated together and if the value exceeds One
223 Thousand Dollars (\$1,000.00), shall be a felony.

224 (* * *8) For purposes of this statute, value shall be the
225 cost of repair or replacement of the property damaged or
226 destroyed.

227 (* * *9) Anyone who by any word, deed or act directly or
228 indirectly urges, aids, abets, suggests or otherwise instills in
229 the mind of another the will to so act shall be considered a
230 principal in the commission of said crime and shall be punished in
231 the same manner.



SECTION 8.

Any person who, with intent to detain or remain, or cause another to detain or remain upon real property, knowingly and willfully presents to another person a false document purporting to be a valid lease agreement, deed or other instrument conveying real property rights commits a misdemeanor. Upon conviction, the person shall be imprisoned for a term less than one (1) year in the county jail, fined an amount not more than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

SECTION 9.

Any person who lists or advertises real property for sale knowing that the purported seller has no legal title or authority to sell the property, or rents or leases the real property to another person knowing that he or she has no lawful ownership in the property or leasehold interest in the property, commits a felony. Upon conviction, the person shall be imprisoned for a term not to exceed thirty (30) years in the custody of the Mississippi Department of Corrections, fined an amount not to exceed Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment.

SECTION 10.

This act shall take effect and be in force from and after its passage.

