

By: Senator(s) England

To: Judiciary, Division A;
Judiciary, Division B

SENATE BILL NO. 2326

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 DECLARATION TO THE
8 SHERIFF OF THE COUNTY IN WHICH THE REAL PROPERTY IS LOCATED; TO
9 REQUIRE A SHERIFF, UPON RECEIPT OF A DECLARATION, TO IMMEDIATELY
10 SERVE A NOTICE TO VACATE ON ALL THE UNLAWFUL OCCUPANTS AND PUT THE
11 OWNER IN POSSESSION OF THE REAL PROPERTY; TO AUTHORIZE A FEE FOR
12 THE SHERIFF'S SERVICE OF THE NOTICE; TO AUTHORIZE THE PROPERTY
13 OWNER TO REQUEST THE SHERIFF REMAIN AT THE REAL PROPERTY TO KEEP
14 THE PEACE WHILE THE PROPERTY OWNER CHANGES THE LOCKS AND REMOVES
15 THE PERSONAL PROPERTY OF THE UNLAWFUL OCCUPANTS FROM THE PREMISES
16 TO OR NEAR THE PROPERTY LINE; TO PROVIDE CERTAIN EXEMPTIONS FROM
17 LIABILITY FOR THE SHERIFF AND THE PROPERTY OWNER; TO AUTHORIZE A
18 PERSON TO BRING A CIVIL CAUSE OF ACTION FOR WRONGFUL REMOVAL UNDER
19 THIS ACT; TO PROVIDE A FORM DECLARATION; TO AMEND SECTION
20 97-17-67, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ANY PERSON WHO
21 DETAINS, OCCUPIES OR TRESPASSES ANY REAL PROPERTY OF ANOTHER SHALL
22 BE GUILTY OF MALICIOUS MISCHIEF; TO PROVIDE THAT ANY PERSON WHO,
23 WITH INTENT TO DETAIN OR REMAIN, OR CAUSE ANOTHER TO DETAIN OR
24 REMAIN UPON REAL PROPERTY, KNOWINGLY AND WILLFULLY PRESENTS TO
25 ANOTHER PERSON A FALSE DOCUMENT PURPORTING TO BE A VALID LEASE
26 AGREEMENT, DEED OR OTHER INSTRUMENT CONVEYING REAL PROPERTY RIGHTS
27 SHALL BE GUILTY OF A MISDEMEANOR; TO PROVIDE THAT ANY PERSON WHO
28 LISTS OR ADVERTISES REAL PROPERTY FOR SALE KNOWING THAT THE
29 PURPORTED SELLER HAS NO LEGAL TITLE OR AUTHORITY TO SELL THE
30 PROPERTY, OR LEASES THE REAL PROPERTY TO ANOTHER PERSON KNOWING
31 THAT HE OR SHE OR THE PURPORTED LESSOR HAS NO LAWFUL OWNERSHIP IN
32 THE PROPERTY OR LEASEHOLD INTEREST IN THE PROPERTY SHALL BE GUILTY
33 OF A FELONY; AND FOR RELATED PURPOSES.



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

SECTION 1. (1) The Legislature finds:

(a) The right of property owners to exclude unauthorized persons from entering and occupying real property is paramount to the preservation of property values and the deterrence of criminal activity.

(b) The existing remedies to address persons who, without a rental agreement or other permission of the owner, unlawfully enter and occupy real property are not adequate.

(2) Therefore, the legislative intent of this act is to establish a process for property owners to quickly recover full possession of real property when it is being unlawfully occupied as a means of preserving the property and discouraging vandalism and theft.

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 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.



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

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

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

65 (f) The property owner or authorized agent has posted a
66 notice of intent to remove the unauthorized person or persons
67 under this section in a conspicuous location on the residential
68 dwelling or commercial building. The notice of intent should:

69 (i) Include contact information for the sheriff's
70 department; and

71 (ii) Be posted at least forty-eight (48) hours
72 before the property owner or authorized agent requests removal
73 under this act.

74 (g) The unauthorized person or persons are not current
75 or former tenants pursuant to a written or oral rental agreement
76 authorized by the property owner.

77 (h) The unauthorized person or persons are not
78 immediate family members of the property owner.

79 (i) There is no pending litigation related to
80 unauthorized occupancy of the real property.

81 (2) To request the immediate removal of an unlawful occupant
82 of a residential dwelling or commercial building, the property



owner or his or her authorized agent must submit a declaration under penalty of perjury in the form required by Section 6 to the sheriff of the county in which the real property is located.

(3) (a) Upon receipt of the declaration, the sheriff shall, without delay, remove the unlawful occupants from the real property and shall put the owner in possession of the real property. The sheriff shall also attempt to verify the identities of all persons occupying the dwelling and note the identities on the return of service.

(b) The sheriff is entitled to the same fee for removing unauthorized occupants from real property hereunder as the sheriff may charge under Section 25-7-19 for serving a writ of possession.

SECTION 3. (1) While the sheriff is at the real property to remove any unauthorized occupants, the property owner or authorized agent may request that the sheriff remain at the real property to keep the peace while the property owner or agent of the owner changes the locks and removes the personal property of the unlawful occupants.

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

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



SECTION 4. A person may bring a civil cause of action for 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 during the time reasonably displaced, 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 declaration required in Section 2 of this act must be in substantially the following form:

DECLARATION 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 [].
(Check one).

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. [] I have posted notice of my intent to request removal of the unauthorized person or persons on the residential dwelling or commercial building.

7. [] The person or persons are not current or former tenants pursuant to any valid lease authorized by the property owner.

8. [] 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.



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

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

11. [_____] 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.

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

13. [_____] A copy of my valid government-issued identification is attached. Provided I am not the owner, documents evidencing my authority to act on the property owner's behalf are attached.

I HAVE READ EVERY STATEMENT MADE IN THIS DECLARATION, AND EACH STATEMENT IS TRUE AND CORRECT. I UNDERSTAND THAT THE STATEMENTS MADE IN THIS DECLARATION 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:



181 97-17-67. (1) Every person who shall maliciously or
182 mischievously destroy, disfigure, or injure, or cause to be
183 destroyed, disfigured, or injured, any property of another, either
184 real or personal, shall be guilty of malicious mischief.

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

189 (* * *3) If the value of the property destroyed,
190 disfigured, detained, occupied, trespassed or injured is One
191 Thousand Dollars (\$1,000.00) or less, it shall be a misdemeanor
192 and may be punishable by a fine of not more than One Thousand
193 Dollars (\$1,000.00) or imprisonment in the county jail not
194 exceeding twelve (12) months, or both, if the court finds
195 substantial and compelling reasons why the offender cannot be
196 safely and effectively supervised in the community, is not
197 amenable to community-based treatment, or poses a significant risk
198 to public safety. If such a finding is not made, the court shall
199 suspend the sentence of imprisonment and impose a period of
200 probation not exceeding one (1) year or a fine of not more than
201 One Thousand Dollars (\$1,000.00), or both. Any person convicted
202 of a third or subsequent offense under this subsection where the
203 value of the property is not less than Five Hundred Dollars
204 (\$500.00), shall be imprisoned in the Penitentiary for a term not



205 exceeding three (3) years or fined an amount not exceeding One
206 Thousand Dollars (\$1,000.00), or both.

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

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

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

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



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

(* * *9) Anyone who by any word, deed or act directly or indirectly urges, aids, abets, suggests or otherwise instills in the mind of another the will to so act shall be considered a principal in the commission of said crime and shall be punished in 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 leases the real property to another person knowing that he or she or the purported lessor 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



254 amount not to exceed Ten Thousand Dollars (\$10,000.00), or by both
255 such fine and imprisonment.

256 **SECTION 10.** This act shall take effect and be in force from
257 and after its passage.

