

By: Senator(s) Michel

To: Judiciary, Division A;
Judiciary, Division B

SENATE BILL NO. 2328

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; TO AMEND SECTION 89-8-17, MISSISSIPPI CODE OF 1972,
34 TO PROVIDE THAT IF A RESIDENTIAL PREMISES BECOMES OCCUPIED BY ANY



PERSON WHO HAS NO ORAL OR WRITTEN AGREEMENT WITH THE LANDLORD AFTER A TENANT HAS VACATED FOLLOWING THE TERMINATION OR EXPIRATION OF A RENTAL AGREEMENT, THE LANDLORD MAY PROVIDE WRITTEN NOTICE TO ANY SUCH PERSONS THAT THE LANDLORD WILL COMMENCE AN EVICTION PROCEEDING; TO AMEND SECTION 89-8-35, MISSISSIPPI CODE OF 1972, TO CLARIFY A PROVISION OF THE NOTICE PROVIDED TO TENANTS IN AN EVICTION PROCEEDING RELATED TO THE TIMEFRAME FOR THE REMOVAL OF PERSONAL PROPERTY FROM THE PREMISES; TO AMEND SECTION 89-8-39, MISSISSIPPI CODE OF 1972, TO CLARIFY WHEN A WRIT OF REMOVAL SHALL BE CONSIDERED EXECUTED; TO AMEND SECTIONS 89-8-3 AND 89-8-31, MISSISSIPPI CODE OF 1972, TO CONFORM; 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:



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

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

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

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

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

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

81 (i) Include contact information for the sheriff's
82 department; and

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

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

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



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

(2) To request the immediate removal of an unlawful occupant 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]



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

193 97-17-67. (1) Every person who shall maliciously or
194 mischievously destroy, disfigure, or injure, or cause to be
195 destroyed, disfigured, or injured, any property of another, either
196 real or personal, shall be guilty of malicious mischief.

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

201 (* * *3) If the value of the property destroyed,
202 disfigured, detained, occupied, trespassed or injured is One
203 Thousand Dollars (\$1,000.00) or less, it shall be a misdemeanor
204 and may be punishable by a fine of not more than One Thousand
205 Dollars (\$1,000.00) or imprisonment in the county jail not
206 exceeding twelve (12) months, or both, if the court finds
207 substantial and compelling reasons why the offender cannot be
208 safely and effectively supervised in the community, is not
209 amenable to community-based treatment, or poses a significant risk
210 to public safety. If such a finding is not made, the court shall
211 suspend the sentence of imprisonment and impose a period of
212 probation not exceeding one (1) year or a fine of not more than
213 One Thousand Dollars (\$1,000.00), or both. Any person convicted
214 of a third or subsequent offense under this subsection where the
215 value of the property is not less than Five Hundred Dollars



216 (\$500.00), shall be imprisoned in the Penitentiary for a term not
217 exceeding three (3) years or fined an amount not exceeding One
218 Thousand Dollars (\$1,000.00), or both.

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

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

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

235 (* * *7) In all cases restitution to the victim for all
236 damages shall be ordered. The value of property destroyed,
237 disfigured, detained, occupied, trespassed or injured by the same
238 party as part of a common crime against the same or multiple
239 victims may be aggregated together and if the value exceeds One
240 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



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

SECTION 10. Section 89-8-17, Mississippi Code of 1972, is amended as follows:

89-8-17. (1) A rental agreement that fixes a definite term expires on the date stated in the rental agreement.

(2) Notwithstanding the provisions of Section 89-8-13, the landlord may, at any time after the expiration of a rental agreement, provide notice to the tenant in writing, or by email or text message, if the tenant has agreed to be notified by email or text message, specifying that the tenant is holding over after expiration of the rental agreement and that the landlord will commence eviction proceedings no earlier than three (3) days after such notice is provided. The landlord may also demand an increase in rent after the expiration of the rental agreement if such actions by the landlord did not have the dominant purpose of retaliation against the tenant for his actions authorized under this chapter and the landlord received written notice of each condition which was the subject of such actions of the tenant.

(3) If the premises becomes occupied by any person who has no oral or written agreement with the landlord after a tenant has vacated following the termination or expiration of a rental agreement, the landlord may provide written notice to any such persons that the landlord will commence an eviction proceeding no earlier than three (3) days after such notice is provided. If the



landlord does not know the identity of such persons, the landlord may post the notice on the door of the premises or some other conspicuous location of the premises.

SECTION 11. Section 89-8-35, Mississippi Code of 1972, is amended as follows:

89-8-35. (1) Upon the filing of the sworn affidavit or complaint, a summons shall be issued for service upon the person in possession of the identified premises or claiming possession thereof. The summons shall command such person to immediately vacate the premises or to show cause before the judge, on a day to be named in the summons, why possession of the premises should not be delivered to the applicant.

(2) In addition to the information required by subsection (1) of this section and the applicable Mississippi Rules of Court, the summons shall state:

"You are being sued for eviction. At the eviction hearing, the judge will determine if the landlord is entitled to possession of your rental unit.

If the landlord is granted possession of the rental unit, then you will have at least seven (7) days from the date of the judgment to move out, unless a shorter or longer period of time for vacating the premises is ordered because of an emergency or other compelling circumstances.

If the landlord seeks possession based on nonpayment of rent, you do not have to move out if you pay all the sums owed to the



316 landlord either before the eviction hearing or, afterwards, by the
317 court-ordered move-out date.

318 If you move out by the date ordered by the court, leaving
319 personal property behind, then the landlord may dispose of such
320 abandoned property without further notice.

321 If you do not move out by the date and time ordered by the
322 court, the landlord can have you removed by law enforcement * * *.
323 You will have no right to reside at the premises once you have
324 been removed. The landlord must grant you reasonable access to
325 the premises during the seventy-two (72) hours following your
326 removal to retrieve your personal property.

327 After seventy-two (72) hours, the landlord may remove any
328 personal property remaining on the premises to the curb, an area
329 designated for garbage or some other location agreed to by you and
330 the landlord. You may still retrieve your personal property, but
331 the landlord will have no obligation to preserve the personal
332 property upon removal."

333 (3) Service of summons shall be pursuant to applicable
334 Mississippi Rules of Court.

335 **SECTION 12.** Section 89-8-39, Mississippi Code of 1972, is
336 amended as follows:

337 89-8-39. (1) If a judgment of possession is granted to the
338 landlord, either after a hearing or by default judgment, then the
339 judge shall order the tenant to vacate the premises in seven (7)
340 days from the date of the judgment, unless the court finds that a



shorter or longer period of time is justified because of an emergency or other compelling circumstances. Circumstances that justify setting the move-out date less than seven (7) days from the date of the judgment, include, but are not limited to:

(a) The tenant has committed a substantial violation of the rental agreement or of this chapter that materially affects health or safety; or

(b) The tenant poses an immediate and significant risk of damage to the premises or of harm or injury to persons on the premises.

Prior to the court-ordered move-out date, the tenant shall have the same access to the premises as previously allowed under the terms of the rental agreement. Unless the tenant makes the payment contemplated by subsection (4)(i) of this section, the tenant will have no right to reside in the premises after the court-ordered move out date. If the tenant moves out by the date ordered by the court, leaving personal property behind, then the landlord may dispose of such abandoned property without further notice.

(2) After the court-ordered move-out date, the landlord may request a warrant for removal. Upon such request and the payment of applicable fees, the judge shall, except as otherwise prohibited under subsection (4) of this section, immediately issue a warrant to the sheriff or any constable of the county in which the premises, or some part thereof, are situated, immediately



366 commanding the sheriff or constable to remove all persons from the
367 premises, and to put the landlord into full possession thereof.
368 The warrant of removal shall not be considered executed by law
369 enforcement posting the warrant of removal on the door of the
370 premises. Law enforcement must remove any occupants from the
371 premises and place the landlord into physical possession of the
372 premises.

373 (3) During the seventy-two (72) hours, after the warrant for
374 removal has been executed, the landlord shall allow the tenant
375 reasonable access to the premises * * * to enable the tenant to
376 remove the tenant's personal property, including any manufactured
377 home. If the tenant moves out within seventy-two (72) hours of
378 the execution of the warrant of removal, leaving personal property
379 behind, then the landlord may dispose of such abandoned property
380 without further notice. After said seventy-two (72) hours, the
381 landlord may remove any property remaining on the premises to the
382 curb, an area designated for garbage or some other location agreed
383 to by the tenant and the landlord.

384 (4) (a) In cases in which the possession judgment is based
385 solely on the tenant's nonpayment of rent, the judge shall not
386 issue a warrant for removal if:

387 (i) By the court-ordered move-out date, the tenant
388 has paid in full all unpaid rent and other sums awarded to
389 landlord in the judgment; or



(ii) After such date, the landlord has accepted payment of such amounts.

(b) A landlord has an obligation of good faith to accept full payment of all sums owed pursuant to the money judgment entered if so tendered on or before the court-ordered move-out date.

(5) The same processes set forth herein with respect to the enforcement of eviction judgments shall be followed in cases in which the landlord gives notice pursuant to Section 89-8-17(3).

SECTION 13. Section 89-8-3, Mississippi Code of 1972, is amended as follows:

89-8-3. (1) This chapter shall apply to, regulate and determine rights, obligations and remedies under any rental agreement entered into after July 1, 1991, wherever made, for a dwelling unit located within this state, including the parties' rights to possession following the termination or expiration of such an agreement. Any rights, obligations, or remedies at law or in equity not prohibited by this chapter remain available to residential landlords and tenants.

(2) The following arrangements are not governed by this chapter:

(a) Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious or similar service;



(b) Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to the purchaser's interest;

(c) Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

(d) Transient occupancy in a hotel, motel or lodgings;

(e) Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative; or

(f) Occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes or when the occupant is performing agricultural labor for the owner and the premises are rented for less than fair rental value.

SECTION 14. Section 89-8-31, Mississippi Code of 1972, is amended as follows:

89-8-31. A landlord may commence eviction proceedings * * *:

(a) For breach of the rental agreement or for violation of this chapter pursuant to Section 89-8-13; or

(b) For failing to vacate after the termination or expiration of the rental agreement pursuant to Sections 89-8-17 and 89-8-19.

SECTION 15. This act shall take effect and be in force from and after its passage.

