MISSISSIPPI LEGISLATURE REGULAR SESSION 2021

By: Senator(s) Branning, Fillingane To: Finance

SENATE BILL NO. 2811

AN ACT TO ESTABLISH A PROCEDURE FOR THE DISPOSITION OF ABANDONED MANUFACTURED OR MOBILE HOMES AND ASSOCIATED PERSONAL PROPERTY; TO PROVIDE DEFINITIONS; TO PROVIDE FOR A COMPLAINT FOR DISPOSITION OF ABANDONED MANUFACTURED OR MOBILE HOMES; TO PROVIDE FOR THE ENTRY OF AN ORDER BY THE COURT NAMING A COMMISSIONER TO HANDLE THE DISPOSITION AND SETTING THE DATE AND TIME OF THE SALE; TO PROVIDE FOR ADVERTISEMENT AND PROCEDURES FOR THE SALE; TO PROVIDE FOR PAYMENT OF DEBT AND EXERCISE OF POSSESSION; TO PROVIDE FOR DISBURSEMENT OF BID AMOUNT BY THE COMMISSIONER; TO PROVIDE FOR ENTRY OF A FINAL ORDER AND SUBMISSION OF THE BILL OF SALE TO THE MISSISSIPPI DEPARTMENT OF REVENUE; TO PROVIDE THAT THIS PROCEEDING IS A GOOD FAITH DEFENSE OF THE OWNER OF REAL PROPERTY TO CLAIMS OF WRONGFUL SALE; TO AMEND SECTION 19-3-85, MISSISSIPPI CODE OF 1972, IN CONFORMITY; AND FOR RELATED PURPOSES.

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

SECTION 1. Definitions. As used in this act, unless the context clearly indicates otherwise:

(a) "Abandoned" means that no person is occupying the manufactured home or mobile home at the present, nor has any person occupied it for the past sixty (60) days, nor has the owner or any representative of the owner informed the community owner or landowner of a reason that the manufactured home or mobile home is not occupied.

(b) "Abandoned manufactured or mobile home" means a manufactured home or mobile home that has been abandoned for at least sixty (60) consecutive days, located on property owned by another community owner or landowner.

(c) "Associated personal property" means any personal property excluding motor vehicles located within or adjacent to the abandoned manufactured or mobile home.

(d) "Commissioner" shall mean a resident of the county where the abandoned manufactured or mobile home is located who, by a sale order issued by a court in a proceeding, shall act pursuant to the sale order, including, but not limited to, advertising the sale, receiving funds paid at any sale ordered by the court of the abandoned manufactured or mobile home and associated personal property, and making all disbursements arising out of the sale with the sale being conducted by the sheriff. The commissioner need not be a disinterested third party and may be counsel or a representative of the community owner or landowner and shall not be disqualified, nor shall the acts of such person be invalid because of the relationship of such person to the community owner or landowner.

(e) "Community" means a contiguous residential real estate development operated by a community owner as one (1) development consisting of six (6) or more lots for lease to the public where at least one (1) of such lots is vacant and may be subject to a lease, lease-purchase or other agreement with the

owner of a manufactured or mobile home who may locate such owner's manufactured or mobile home on the lot.

(f) "Community owner" means a person other than the owner of the manufactured or mobile home who owns fee simple or ground leasehold interest in residential real property developed and operated as a community on which an abandoned manufactured or mobile home and any associated personal property is located pursuant to a lease, lease-purchase or other agreement.

(g) "Complaint" means the pleading filed by the community owner or landowner in the proceeding seeking a judicial sale of an abandoned manufactured or mobile home and associated personal property.

(h) "Date of abandonment" means the date on which the community owner or landowner determines that the manufactured or mobile home and associated personal property may be in fact have been vacated by the owner in a manner that may lead to an abandonment.

(i) "Final order" means the final order entered by a court in a proceeding adjudicating the disposition of an abandoned manufactured or mobile home and associated personal property, that confirms the sale of the abandoned manufactured or mobile home and associated personal property or makes other adjudications as deemed appropriate by the court.

(j) "Inventory" means an itemized list of associated personal property with an estimate of value for the sum and not

individual component parts of all associated personal property located within or adjacent to a manufactured or mobile home by a disinterested third party with items of like kind being grouped together for inventory purposes.

(k) "Last known address" shall mean the last known address of the owner of an abandoned manufactured or mobile home or any forwarding address or emergency contact address known to the community owner or landowner.

(l) "Lien" means an interest, other than a lien for the payment of taxes, on or against an abandoned manufactured home or mobile home or associated personal property imposed by law or by written instrument providing for an indebtedness or obligation of a person secured in a manner that in the event of a default provides the lienholder a right to recover the manufactured home or mobile home or associated personal property or title thereto using lawful means.

(m) "Lienholder" means any person holding a lien on an abandoned manufactured home or mobile home or associated personal property.

(n) "Manufactured home" shall have the meaning set forth in Section 75-49-3(a), Mississippi Code of 1972.

(o) "Mobile home" shall have the meaning set forth in Section 75-49-3(b), Mississippi Code of 1972.

(p) "Necessary party" shall mean the owner, any lienholder, or any other person known to have a lien or claim upon

the abandoned manufactured or mobile home or associated personal property except the following who are not to be a party to the proceeding to dispose of the abandoned manufactured or mobile home or associated personal property: any commissioner appointed by the court, County Tax Assessor, County Tax Collector, County Board of Supervisors, County Sheriff or any Deputy Sheriff, State Tax Commission of the State of Mississippi and the Department of Revenue of the State of Mississippi.

(q) "Notice of abandonment" shall mean a written notice by the community owner or landowner to the owner notifying the owner at least thirty (30) days after the date of abandonment that the manufactured or mobile home and any associated personal property in or adjacent to the abandoned manufactured home or mobile home should be immediately removed or be subject to a judicial finding of abandonment which may lead to a sale of the abandoned manufactured or mobile home and all associated personal property.

(r) "Notice of sale" shall mean the notice advertising the sale of the abandoned manufactured or mobile home.

(s) "Owner" of a manufactured home or mobile home means the person holding legal title to the manufactured home or mobile home.

(t) "Person" means any individual, firm, corporation, partnership, association or other type of business entity.

(u) "Proceeding" shall mean the civil action filed or to be filed in a court of competent jurisdiction depending upon the amount in controversy being the Justice Court, County Court or Chancery Court of the State of Mississippi in the county where the manufactured or mobile home is located seeking relief including the disposition of the abandoned manufactured or mobile home and associated personal property.

(v) "Purchaser" shall mean the successful bidder at the sale of the abandoned manufactured or mobile home and associated personal property who purchases the same.

(w) "Sale order" means an interim order in the proceeding authorizing the sale of the abandoned manufactured or mobile home and associated personal property and addressing other matters in the discretion of the court.

(x) "Sheriff" means the sheriff (or any deputy sheriff appointed by the sheriff) of the county where the abandoned manufactured or mobile home and any associated personal property is located.

(y) "Title" means the writing evidencing ownership by the owner of a manufactured home or mobile home.

(z) "Uninhabitable" means an abandoned manufactured or mobile home where, in the opinion of an independent third party who is an appraiser, contractor or other person familiar with cost of repair of manufactured or mobile homes, the cost to repair to the home to a condition where it is habitable for human occupation

as a residence considering the health, safety and general welfare of the occupant, is more than the cost of demolition and removal of the abandoned manufactured or mobile home.

(aa) "Value" in the case of an abandoned manufactured or mobile home shall mean the estimated fair market value of the abandoned manufactured home or mobile home from an independent third party based upon: (i) a written statement from an appraiser or other person familiar with such values; or (ii) a recognized national publisher of values of manufactured homes or mobile homes; provided, however, that if the abandoned manufactured or mobile home is uninhabitable the value shall be based upon a written estimate from a third party of demolition and removal of the abandoned manufactured or mobile home. "Value" in the case of an inventory of personal property means the estimate of the fair market value of the personal property of the owner within or adjacent to an abandoned manufactured home or mobile home based upon similar values that an individual might use in claiming a deduction for United States Income Tax purposes for a charitable contribution of used personal property to a qualified charitable organization for charitable purposes including estimated consignment or thrift shop values for the lot.

SECTION 2. Complaint for disposition of abandoned manufactured or mobile homes. Any community owner or landowner, his agent or attorney, may initiate a proceeding by filing a complaint under oath for the disposition of an abandoned

manufactured or mobile home and associated personal property, setting forth:

(a) A statement that the abandoned manufactured home or mobile home is abandoned, including the address and county where it is abandoned and the date when it was vacated by the owner in a manner that the community owner or landowner believes led to an abandonment.

(b) A description of the abandoned manufactured home or mobile home, including all reasonably available information as to the year, make, model number and serial number.

(c) A copy of the notice of abandonment sent by the community owner or landowner to the owner at the owner's last known address, on a date at least thirty (30) days after the date of abandonment and at least thirty (30) days before the commencement of the proceeding, and any response thereto.

(d) The value of the abandoned manufactured home or mobile home.

(e) A statement as to whether or not the abandoned manufactured home or mobile home is believed to be uninhabitable and, if so, the statement of the person making such determination and the bid of the person establishing the cost of demolition and removal, which may be one and the same person.

(f) An inventory of any personal property within or adjacent to the abandoned manufactured home or mobile home and a statement of value.

(g) A statement as to the current, delinquent or other status of the personal property taxes on the home.

(h) A statement as to known or presumed owner of the abandoned manufactured or mobile home and the last known address of the owner.

(i) A statement as to the known or presumed liens and lienholders of the abandoned manufactured or mobile home and associated personal property and the amount of such liens.

(j) A statement as to whether the property owner has knowledge of any other person having or asserting a lien or claim upon the abandoned manufactured or mobile home.

(k) A statement that, in addition to the manufactured or mobile home being abandoned, the owner is in breach of a lease, lease-purchase or agreement with the community owner or landowner of the lot on which the manufactured or mobile home is situated and setting out the damages incurred by the community owner or landowner, including any credit for a security or other deposit by the owner.

(l) A statement requesting that a commissioner be appointed for the public sale of the abandoned manufactured or mobile home and designating the proposed commissioner by name, address and phone number.

(m) A statement identifying all necessary parties who shall be made defendants and served with process in the time and manner required by law.

(n) Such other statements as may be appropriate under the circumstances.

SECTION 3. Filing of complaint constitutes consent by the community owner or landowner to a temporary easement for removal of the manufactured or mobile home and associated personal property. The filing of a complaint by the community owner or landowner shall constitute consent by the community owner or landowner to the purchaser receiving a Bill of Sale from the sheriff exercising an implied temporary easement to remove the manufactured or mobile home and associated personal property in a reasonable manner and for a reasonable time following the entry of the final order. Such purchaser shall repair any damage to the real property caused by such removal leaving the real property in an unreasonable condition and such purchaser shall be liable to the community owner or landowner for unreasonable damage to the real property.

SECTION 4. Entry of an order naming the commissioner and setting the date and time of the sale. Upon finding that the manufactured or mobile home and associated personal property that are the subject of the complaint are in fact abandoned and have not been claimed and the indebtedness of the community owner or landowner has not been paid in full, the court shall enter an order adjudicating whether or not the manufactured or mobile home is uninhabitable, approving the inventory, approving the sale by the sheriff of the abandoned manufactured or mobile home and the

associated personal property as reflected on the inventory and setting a date, time and place for the sale, with the advertisement, determination of liens and financial responsibility for the sale to be the responsibility of the commissioner appointed by the court.

SECTION 5. Oath of commissioner. Before the commissioner enters upon the discharge of the commissioner's duties, the commissioner shall take and subscribe an oath before some competent officer, and shall file a copy of the same in the proceeding, that the commissioner will honestly, faithfully and impartially advertise the sale, receive the highest bid, disburse the same and file a report as to such disbursement required by law, and perform the duties required of a commissioner to the best of the commissioner's skill, knowledge and judgment.

SECTION 6. Advertisement for the sale. The commissioner shall advertise a notice of sale by publication and posting. The notice of sale shall be published one (1) time a week for three (3) weeks prior to the sale in a newspaper published in the county where the manufactured or mobile home is located, or, if none such paper is so published in said county, in some paper having a general circulation therein. The notice of sale shall be posted by the commissioner at the courthouse of the county where the abandoned manufactured or mobile home is located. The notice of sale shall contain a detailed description of the abandoned manufactured or mobile home and a general description of the

associated personal property to be sold and the date, time and place of the sale. Upon request, the commissioner shall provide the inventory to any interested person. The commissioner shall mail a copy of the notice of sale by United States mail postage prepaid to the last known address of the owner as shown in the complaint if the owner has not appeared as a party to the proceeding.

SECTION 7. Procedure for the sale. The sale shall be made at the place, on the date and during the time set by the court. The sheriff shall conduct the sale and shall charge a reasonable fee for conducting the sale with the fee to be applied to the sheriff's operating fund. The abandoned manufactured or mobile home and associated personal property shall be sold for cash to the highest bidder. Each bidder shall submit a bid in at least a minimum amount that will pay the sheriff's fee, the tax collector for any past due taxes, the lien creditors in their order of priority and all costs of court and commissioner's fees. The community owner or landowner may purchase at any sale, and any such sale shall not be invalid because of the relationship of such purchaser to the community owner or landowner or any lienholder. The community owner or landowner and any lienholder may credit bid by deducting the amount due to such bidder from the bidder's bid. The highest bid accepted by the sheriff at the sale shall be paid to the commissioner. The sheriff, promptly upon completion of the sale, shall deliver to the commissioner a report of the sale,

including a copy of the notice of sale authorizing the sale of the abandoned manufactured or mobile home and a list of the associated personal property sold along with the same, the total amount paid, the name of the commissioner to whom it was paid, the name of the sheriff conducting the sale and the name of the person to whom the sale was made. The sheriff shall execute and deliver a bill of sale to the purchaser who shall be the highest bidder with the commissioner to witness the bill of sale. The signature by the sheriff and the commissioner to the bill of sale is a certification by them that the sale was conducted pursuant to the sale order and to the highest bidder for cash. The bill of sale may be conditioned upon the entry by the court of the final order. If there is no bidder at the sale, the sheriff's fees shall be paid by the community owner or landowner with such costs to be assessed as costs of court, upon filing of proof of payment of the same in the proceeding. If there is no bid, the community owner or landowner may seek a new sale order providing for another sale of the manufactured or mobile home and associated personal property.

SECTION 8. Payment of debt and exercise of possession. Any interested party may, at any time before a sale is made under the terms and provisions of the sale order, stop a threatened sale of a manufactured or mobile home by paying the amount due to the community owner or landowner on the amount actually past due rather than any amount accelerated, along with all accrued costs,

attorneys' fees, commissioners' fees, sheriffs' fees, such taxes due and not paid, with proper interest and penalties thereon. Any such payment or payments shall reinstate, according to the terms of the agreement with the community owner or landowner, the amount so accelerated, the same as if such amount had not been accelerated or put in default.

SECTION 9. Disbursement of bid amount by commissioner. The commissioner shall disburse the bid proceeds as follows: first, to the sheriff for the sheriff's fee; second, to the tax collector for any past due taxes, liens and assessments; third, to the lien creditors in their order of priority; fourth, to the community owner or landowner for the indebtedness, interest and attorney's fees owed thereto and all costs of court and commissioner's fees; and fifth, to the owner, or if the abandoned manufactured or mobile home was adjudicated by the sale order as uninhabitable, then to the community owner or landowner in the amount of the estimate of demolition and removal. If the owner has appeared in the proceeding or was served with process other than by publication, any amount to be paid to the owner and not paid directly to the owner may be paid by interpleading the same with the clerk of court where the proceeding is pending for the benefit of the owner. If the owner has not appeared in the proceeding and service of process was obtained by publication, then the commissioner shall pay the same to the Treasurer of the State of Mississippi as unclaimed funds on such forms as may be prescribed

by the Treasurer. The commissioner shall have the right to delay disbursement of the bid amount until the court has entered a final order.

SECTION 10. Entry of a final order. Upon the commissioner filing a report with the court attaching a copy of the sheriff's report of the sale and a list of the actual or proposed disbursements from the accepted bid, the court may enter a final order approving the sale and the disbursement of the proceeds from the accepted bid and include such other provisions as deemed appropriate by the court. The court may enter any other order finally disposing of the proceeding, including an order of dismissal.

SECTION 11. Submission to the Department of Revenue. The purchaser shall submit a copy of the Bill of Sale and the Final Order to the Department of Revenue along with such forms as may be prescribed by it for the issuance of a new title to the purchaser.

SECTION 12. Good faith defense of owner of real property to claims of wrongful sale of a manufactured or mobile home and associated personal property. A community owner or landowner who believes in good faith that the manufactured or mobile home and associated personal property that was the subject of a proceeding to dispose of the same was in fact abandoned shall not be liable for any damages whatsoever to the owner or a lienholder or other interested person arising from the proceedings provided the owner served process by publication to all unknown persons having an

interest in the manufactured or mobile home and associated personal property.

SECTION 13. Section 19-3-85, Mississippi Code of 1972, is amended as follows:

19-3-85. The board of supervisors of any county, upon the receipt or recovery of any lost, stolen, abandoned or misplaced personal property by the sheriff or other law enforcement officers of the county, shall cause to be posted, in three (3) public places in the county, notice that such property has been received or recovered. Such notice shall contain an accurate and detailed description of such property and, if the board of supervisors is advised as to who owns the property, a copy of the notice shall be mailed to such person or persons in addition to being posted as required in this section. The owner may recover the property by filing a claim with the board of supervisors and establishing his right to the property. The board may require bond of the person claiming the property before delivering it to him. Parties having adverse claims to the property may proceed according to law.

If no person claims the property within one hundred twenty (120) days from the date the notice is given, the board of supervisors shall cause the property to be sold at public auction to the highest bidder for cash after first posting notice of the sale in three (3) public places in the county at least ten (10) days before the date of the sale. The notice shall contain a detailed and accurate description of the property to be sold and

shall be addressed to the unknown owners or other persons interested in the property to be sold. The notice shall also set forth the date, time and place the sale is to be conducted and shall designate the sheriff to make the sale.

However, lost, stolen, abandoned or misplaced motor vehicles and bicycles may be sold in the manner provided in the preceding paragraph after the expiration of ninety (90) days from their receipt or recovery by law enforcement officers of the county.

The sheriff, promptly upon completion of the sale, shall deliver to the chancery clerk a copy of the notice authorizing the sale, a list of the property sold, the amount paid for each item, the person to whom each item was sold, and all monies received from such sale. The clerk then shall deposit the monies into the county treasury and the proceeds of the sale shall be first applied to the necessary costs and expenses of the sale, with the remainder to be credited to the special supplemental budget of the sheriff to be expended by the sheriff for any law enforcement purpose upon approval of the board of supervisors. The chancery clerk shall file the information concerning the sale among the other records of his office. If, within ninety (90) days after the date of the sale, any person claims to be the owner of the property sold, the board, upon satisfactory proof of ownership, shall pay to such person the amount for which the property was sold, and the board may require of such person a bond in such cases as the board deems advisable. No action shall be maintained

against the county or any of its officers or employees or the purchaser at the sale for any property sold or the proceeds therefrom after the expiration of ninety (90) days from the date of the sales as authorized in this section.

The provisions of Sections 1 through 12 of this act relating to the disposition of abandoned manufactured or mobile homes and associated personal property shall be in addition to, and shall supersede, the provisions of this section.

SECTION 14. This act shall take effect and be in force from and after July 1, 2021.