

As Engrossed: 2/4/91 2/13/91

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**

A Bill

HOUSE BILL 1351

4 **By: Representatives Pryor and Shaver**

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For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED SECTION 16-66-104
9 RELATING TO THE PROCEDURE FOR ISSUING WRITS OF EXECUTION;
10 TO REPEAL PORTIONS OF ARKANSAS CODE ANNOTATED 16-66-211;
11 AND FOR OTHER PURPOSES."

12

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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15 SECTION 1. Arkansas Code of 1987 Annotated § 16-66-104 is hereby
16 amended to read as follows:

17 "16-66-104. Procedure in Issuing Writs of execution.

18 (a) FORM. The form of a Writ of Execution may be in substance as
19 follows:

20

21 In the _____ Court of _____ County, Arkansas
22 _____ Plaintiff
23 (Name)

24 v. No. _____
25 (Number)

26 _____ Defendant
27 (Name)

28 WRIT OF EXECUTION

29 The State of Arkansas:

30 To the Sheriff of _____ County, Greeting:
31 (Name)

32 A judgment was entered in this cause on _____,
33 (month/day) (year)

34 in favor of _____, the _____,
35 (name) (plaintiff/defendant)

1 and against _____, the _____,
 2 (name) (plaintiff/defendant)
 3 for the principal sum of \$_____, costs and disbursements
 4 (amount)
 5 in the sum of \$_____, and interest on the judgment at the rate
 6 (amount)
 7 of _____ percent per annum, until paid; and
 8 (APR)
 9 _____ has been paid and credited on the
 10 (Nothing or amount paid)
 11 judgment to the date of this Writ, leaving unpaid thereon the total sum of
 12 \$_____, including costs and interest accrued to
 13 (amount)
 14 the date hereof, and interest will accrue after the date of this Writ at the
 15 rate of \$_____ per day; all as shown by the docket
 16 (daily interest)
 17 and files of this cause.

18 You are commanded to take into your possession from
 19 _____, the judgment debtor, the following described
 20 (name)
 21 property: _____. If
 22 (description of specific property)
 23 said property is not to be found, then you shall take into your possession
 24 monetary amounts in the sum of \$_____, which is the equivalent of
 25 the value of said
 26 (amount)
 27 property.

28 You are finally commanded to fully perform this Writ, to recover said
 29 property or sums, to make return of this Writ within the statutory period
 30 required by law, and to serve the Notice attached to this Writ.

31 In Witness Whereof, I have set my hand and official seal this
 32 _____ day of _____, _____.
 33 (day) (month) (year)

34 _____
 35 (Title)

1 (Seal)

2 (b) The form of the Writ of Execution in subparagraph (a) may be varied
3 to suit each particular case.

4 (c) NOTICE TO DEFENDANT. Upon application for a Writ of Execution by a
5 qualified judgment creditor, the clerk of the court shall attach to the Writ
6 set forth in subparagraph (a) the following notice:

7 'NOTICE TO DEFENDANT OF YOUR RIGHT TO CLAIM CERTAIN PROPERTIES AS BEING
8 EXEMPT FROM EXECUTION.

9 The Writ of Execution delivered to you with this Notice means that
10 certain properties belonging to you have been executed upon in order to pay a
11 court judgment against you. HOWEVER, YOU MAY BE ABLE TO KEEP YOUR PROPERTY
12 FROM BEING TAKEN, OR TO SUBSTITUTE THE PROPERTY THAT IS TAKEN, SO READ THIS
13 NOTICE CAREFULLY.

14 State and federal laws say that certain property may not be taken to pay
15 certain types of court judgments. This money or property is said to be
16 'exempt' from execution.

17 You have the right to petition the court within twenty (20) days to
18 claim an exemption. If your claim of an exemption is contested, the court
19 shall promptly hold a hearing after your claim has been filed. YOU MUST
20 IMMEDIATELY SERVE A COPY OF YOUR CLAIM UPON THE PARTY SEEKING EXECUTION.'

21 (d) (1) SERVICE AND RETURN OF 'NOTICE TO DEFENDANT'; MAILING OF COPIES.

22 The 'Notice to Defendant' together with a copy of the Writ of Execution
23 shall be served on the judgment debtor by:

24 (A) an officer authorized to serve process simultaneously with seizure
25 or levy of property; or

26 (B) the judgment creditor in the same manner as service of writs or
27 *summons before the day the officer authorized to serve process seizes or*
28 levies on property of the judgment debtor.

29 (2) If the judgment creditor mails the Writ of Execution, and the
30 'Notice to Defendant', as provided in subparagraph (d) (1) (B), the mail shall
31 be sent to the last known address of the judgment debtor. However, if the
32 Writ and Notice are refused, unclaimed, or cannot be delivered by the post
33 office, or if the residence address of the judgment debtor is not discoverable
34 after diligent search, then the Writ of Execution and the 'Notice to
35 Defendant' shall be sent first-class mail to the judgment debtor at his last

1 known residence address and, if known, his last place of employment.

2 (e) MAILING OF ANNUAL NOTICE. The judgment creditor shall not be
3 required to serve another 'Notice to Defendant' on the judgment debtor, by
4 mail or otherwise, for future Writs of Execution on the same debt within one
5 (1) year of the original Writ of Execution. If further Writs of Execution on
6 the same debt are filed thereafter, then the Notice shall be required to be
7 served by the judgment creditor annually.

8 (f) CERTIFICATE OF SERVICE STATEMENT. The circuit clerk shall include
9 as a part of the Writ of Execution a certification statement of the service
10 required in subparagraph (d) on the judgment debtor. The judgment creditor,
11 or the authorized officer serving the Writ, must complete the certificate of
12 service statement by listing the names and address of the judgment debtor and
13 the date of mailing. The statement must be signed by the judgment creditor or
14 his attorney.

15 (g) HEARING. Upon filing a claim of exempt property, a prompt hearing
16 shall be held to determine the validity of the claimed exemptions, provided no
17 hearing shall be required and a Writ of Supersedeas shall issue as to the
18 claimed exemption(s) if the judgment creditor files a statement in writing
19 that the judgment debtor's claim of exemption is not contested.

20 (h) TIME TO CLAIM EXEMPTION. Upon receipt of a Writ of Execution and
21 Notice to Defendant, the judgment debtor shall have twenty (20) days from such
22 receipt to file a petition to claim any of the exemptions provided by law."
23

24 SECTION 2. All provisions of this act of a general and permanent nature
25 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
26 Revision Commission shall incorporate the same in the Code.

27
28 SECTION 3. If any provision of this act or the application thereof to
29 any person or circumstance is held invalid, such invalidity shall not affect
30 other provisions or applications of the act which can be given effect without
31 the invalid provision or application, and to this end the provisions of this
32 act are declared to be severable.

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34 SECTION 4. All portions of Arkansas Code of 1987 Annotated § 16-66-211
35 pertaining to claiming exemptions in actions involving Writs of Execution are

1 hereby repealed to the extent that the provision is inconsistent with the
2 provisions of this act. All laws and parts of laws in conflict with this act
3 are hereby repealed.

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5 SECTION 5. EMERGENCY. It is hereby found and determined by the General
6 Assembly that the ability of a judgment-creditor to enlist the aid of local
7 officials to execute against property of judgment-debtors is essential to
8 assure that judgments can be satisfied in a peaceful and orderly manner; that
9 since the ruling of the Arkansas Supreme Court in *Duhon v. Gravette*, 302 Ark.
10 358, 790 S.W.2d 155 (1990), no constitutional statutory procedure exists in
11 this State, and has not existed for a period of several months prior to the
12 enactment of this legislation that permits the satisfaction of judgments
13 through execution against property and that this act is immediately necessary
14 to help assure the health, safety and welfare of judgment-creditors and
15 judgment-debtors. Therefore an emergency is hereby declared to exist and this
16 act being necessary for the preservation of the public peace, health and
17 safety shall be in full force and effect from and after its passage and
18 approval.

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/s/Pryor and Shaver

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