

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

**A BILL ACT 389 OF 1991**  
**HOUSE BILL 1351**

4 **By: Representatives Pryor and Shaver**

5  
6  
7

**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:

14

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)

36 and against \_\_\_\_\_, the \_\_\_\_\_,



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

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

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

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

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

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

20 (d)(1) SERVICE AND RETURN OF 'NOTICE TO DEFENDANT'; MAILING OF COPIES.  
21 The 'Notice to Defendant' together with a copy of the Writ of Execution  
22 shall be served on the judgment debtor by:

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

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

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

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

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

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

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

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

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

33 SECTION 4. All portions of Arkansas Code of 1987 Annotated § 16-66-211  
34 pertaining to claiming exemptions in actions involving Writs of Execution are  
35 hereby repealed to the extent that the provision is inconsistent with the

1 provisions of this act. All laws and parts of laws in conflict with this act  
2 are hereby repealed.

3

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

18

*/s/Pryor and Shaver*

19

20

APPROVED: 3-7-91

21

22

23

24

25

26

27

28

29

30

31

32