

1 HB457
2 184304-1
3 By Representatives Beckman, Patterson, Greer, Pettus,
4 Harbison, McMillan, Sells, Moore (B), Ball, Williams (JD)
5 and Wood
6 RFD: Judiciary
7 First Read: 04-APR-17

2
3
4
5
6
7
8 SYNOPSIS: Under existing law, a civil action for
9 eviction under the Landlord and Tenant Act is
10 required to be given precedence by the judge over
11 other cases.

12 This bill would require the judge in an
13 eviction case or unlawful detainer action to set
14 the case for a hearing date on a date within 45
15 days after the time to answer the complaint. If the
16 judge fails to comply with this provision, a
17 complaint may be warranted before the Judicial
18 Inquiry Commission and evidence that the case was
19 not set as required by this provision would be
20 sufficient for sanctions.

21
22 A BILL
23 TO BE ENTITLED
24 AN ACT
25

1 Relating to the Landlord and Tenant Act; to amend
2 Section 35-9A-461 of the Code of Alabama 1975, to further
3 provide for the setting of hearings on evictions.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Section 35-9A-461 of the Code of Alabama
6 1975, is amended to read as follows:

7 "§35-9A-461.

8 "(a) A landlord's action for eviction, rent,
9 monetary damages, or other relief relating to a tenancy
10 subject to this chapter shall be governed by the Alabama Rules
11 of Civil Procedure and the Alabama Rules of Appellate
12 Procedure except as modified by this chapter.

13 "(b) District courts and circuit courts, according
14 to their respective established jurisdictions, shall have
15 jurisdiction over eviction actions, and venue shall lie in the
16 county in which the leased property is located. Eviction
17 actions shall be entitled to precedence in scheduling over all
18 other civil cases, and the judge shall set a hearing date not
19 more than 45 days after the date an answer was filed or the
20 final date to file an answer. Failure of the judge to comply
21 with this provision may warrant a complaint before the
22 Judicial Inquiry Commission and evidence that the case was not
23 set as required by this provision shall be sufficient grounds
24 for sanctions.

25 "(c) Service of process shall be made in accordance
26 with the Alabama Rules of Civil Procedure. However, if a
27 sheriff, constable, or process server is unable to serve the

1 defendant personally, service may be had by delivering the
2 notice to any person who is sui juris residing on the
3 premises, or if after reasonable effort no person is found
4 residing on the premises, by posting a copy of the notice on
5 the door of the premises, and on the same day of posting or by
6 the close of the next business day, the sheriff, the
7 constable, the person filing the complaint, or anyone on
8 behalf of the person, shall mail notice of the filing of the
9 unlawful detainer action by enclosing, directing, stamping,
10 and mailing by first class a copy of the notice to the
11 defendant at the mailing address of the premises and if there
12 is no mailing address for the premises to the last known
13 address, if any, of the defendant and making an entry of this
14 action on the return filed in the case. Service of the notice
15 by posting shall be complete as of the date of mailing the
16 notice.

17 "(d) Notwithstanding subsection (a) of Section
18 12-12-70, any party may appeal from an eviction judgment
19 entered by a district court to the circuit court at any time
20 within seven days after the entry thereof. The filing of a
21 timely post-judgment motion pursuant to the Alabama Rules of
22 Civil Procedure shall suspend the running of the time for
23 filing a notice of appeal. In cases where post-judgment
24 motions are filed, the full time fixed for filing a notice of
25 appeal shall be computed from the date of the entry in the
26 civil docket of an order granting or denying such motion, or
27 the date of the denial of such motion by operation of law

1 pursuant to Rule 59.1 of the Alabama Rules of Civil Procedure.
2 Upon filing of an appeal by either party, the clerk of the
3 court shall schedule the action for trial as a preferred case,
4 and it shall be set for trial within 60 days from the date of
5 the filing of the appeal. In eviction actions, an appeal by a
6 tenant to circuit court or to an appellate court does not
7 prevent the issuance of a writ of restitution or possession
8 unless the tenant pays to the clerk of the circuit court all
9 rents properly payable under the terms of the lease since the
10 date of the filing of the action, and continues to pay all
11 rent that becomes due and properly payable under the terms of
12 the lease as they become due, during the pendency of the
13 appeal. In the event of dispute, the amounts properly payable
14 shall be ascertained by the court.

15 "(1) If the tenant should fail to make any payments
16 determined to be properly payable as they become due under
17 this subsection, upon motion, the court shall issue a writ of
18 restitution or possession and the landlord shall be placed in
19 full possession of the premises.

20 "(2) Upon disposition of the appeal, the court shall
21 direct the clerk as to the disposition of the funds paid to
22 the clerk pursuant to this subsection.

23 "(e) If an eviction judgment enters in favor of a
24 landlord, a writ of possession shall issue upon application by
25 the landlord. Notwithstanding Rule 62 of the Alabama Rules of
26 Civil Procedure, the automatic stay on the issuance of the
27 writ of possession or restitution shall be for a period of

1 seven days. If a tenant without just cause re-enters the
2 premises, the tenant can be held in contempt and successive
3 writs may issue as are necessary to effectuate the eviction
4 judgment.

5 "(f) In the event that the landlord is placed in
6 possession under a writ of restitution or possession, and on
7 appeal the judgment is reversed and one entered for the tenant
8 or the proceeding on appeal is quashed or dismissed, the
9 circuit court may award a writ of restitution or possession to
10 restore the tenant to possession as against the landlord, but
11 not as against a third party. The issuance of the writ rests
12 in the discretion of the appellate court, and the circuit
13 court, in all cases, may direct writs of restitution or
14 possession to be issued by the trial court when, in the
15 judgment of the circuit court, such writ is proper or
16 necessary."

17 Section 2. All laws or parts of laws which conflict
18 with this act are repealed.

19 Section 3. This act shall become effective on the
20 first day of the third month following its passage and
21 approval by the Governor, or its otherwise becoming law.