

House Bill 1104

By: Representatives Benton of the 31<sup>st</sup>, Smith of the 13<sup>th</sup>, and Smith of the 113<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 3 of Chapter 7 of Title 44 of the Official Code of Georgia Annotated,  
2 relating to landlord and tenant, so as to provide that a landlord may initiate dispossessory  
3 proceedings immediately after refusal by tenant of demand for possession; to provide that  
4 a service by posting the summons to the premises and mailing a copy to the defendant shall  
5 be sufficient for entry of a default judgment for possession in the absence of an answer being  
6 filed; to require payment of rent and utility payments into court at the time the answer is due;  
7 to provide for the payment of certain sums into the registry of the court; to repeal conflicting  
8 laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Article 3 of Chapter 7 of Title 44 of the Official Code of Georgia Annotated, relating to  
12 landlord and tenant, is amended by striking in its entirety subsection (a) of Code Section  
13 44-7-50, relating to demand for possession and procedure upon tenant's refusal, and inserting  
14 in lieu thereof the following:

15 "(a) In all cases where a tenant holds possession of lands or tenements over and beyond  
16 the term for which they were rented or leased to the tenant or fails to pay the rent when it  
17 becomes due and in all cases where lands or tenements are held and occupied by any tenant  
18 at will or sufferance, whether under contract of rent or not, when the owner of the lands or  
19 tenements desires possession of the lands or tenements, the owner may, individually or by  
20 an agent, attorney in fact, or attorney at law, demand the possession of the property so  
21 rented, leased, held, or occupied. If the tenant refuses or fails to deliver possession when  
22 so demanded, the owner or the agent, attorney at law, or attorney in fact of the owner may  
23 immediately go before the judge of the superior court, the judge of the state court, or the  
24 clerk or deputy clerk of either court, or the judge or the clerk or deputy clerk of any other  
25 court with jurisdiction over the subject matter, or a magistrate in the district where the land  
26 lies and make an affidavit under oath to the facts. The affidavit may likewise be made

1 before a notary public, subject to the same requirements for judicial approval specified in  
2 Code Section 18-4-61, relating to garnishment affidavits."

3 **SECTION 2.**

4 Said article is further amended by inserting at the end of Code Section 44-7-51, relating to  
5 issuance of summons, service, time of answer, and defenses and counterclaims, the  
6 following:

7 "(c) If service is by posting a copy of the summons and the affidavit on the door of the  
8 premises and mailing a copy of the summons and the affidavit to the defendant, as provided  
9 in subsection (a) of this Code section, the court shall have jurisdiction to enter a default  
10 judgment for possession of the premises in the absence of an answer being filed, but in  
11 such instance a default judgment for money owed may not be entered unless the defendant  
12 files an answer or otherwise make an appearance in the case."

13 **SECTION 3.**

14 Said article is further amended by striking in its entirety subsection (a) of Code Section  
15 44-7-54, relating to payment of rent and utility payments into court after the filing of a  
16 dispossessory proceeding, issuance of writ upon failure to pay, and disposition of funds, and  
17 inserting in lieu thereof the following:

18 "(a) At the time the answer is due pursuant to Code Section 44-7-51 ~~In any case where the~~  
19 ~~issue of the right of possession cannot be finally determined within two weeks from the~~  
20 ~~date of service of the copy of the summons and the copy of the affidavit,~~ the tenant shall  
21 be required to pay into the registry of the trial court:

22 (1) All rent and utility payments which are the responsibility of the tenant payable to the  
23 landlord under terms of the lease which become due after the issuance of the  
24 dispossessory warrant, said rent and utility payments to be paid as such become due. If  
25 the landlord and the tenant disagree as to the amount of rent, either or both of them may  
26 submit to the court any written rental contract for the purpose of establishing the amount  
27 of rent to be paid into the registry of the court. If the amount of rent is in controversy and  
28 no written rental agreement exists between the tenant and landlord, the court shall require  
29 the amount of rent to be a sum equal to the last previous rental payment made by the  
30 tenant and accepted by the landlord without written objection; and

31 (2) All rent and utility payments which are the responsibility of the tenant payable to the  
32 landlord under terms of the lease allegedly owed prior to the issuance of the  
33 dispossessory warrant; provided, however, that, in lieu of such payment, the tenant shall  
34 be allowed to submit to the court a receipt indicating that payment has been made to the  
35 landlord. In the event that the amount of rent is in controversy, the court shall determine

1 the amount of rent to be paid into court in the same manner as provided in paragraph (1)  
2 of this subsection."

3 **SECTION 4.**

4 Said article is further amended by striking in its entirety Code Section 44-7-56, relating to  
5 appeal and possession and payment of rent pending appeal, and inserting in lieu thereof the  
6 following:

7 "44-7-56.

8 Any judgment by the trial court shall be appealable pursuant to Chapters 2, 3, 6, and 7 of  
9 Title 5, provided that any such appeal shall be filed within seven days of the date such  
10 judgment was entered and provided, further, that, after the notice of appeal is filed with the  
11 clerk of the trial court, the clerk shall immediately notify the trial judge of the notice of  
12 appeal and the trial judge may, within 15 days, supplement the record with findings of fact  
13 and conclusions of law which will be considered as a part of the order of the judge in that  
14 case. If the judgment of the trial court is against the tenant and the tenant appeals this  
15 judgment, ~~the court may upon motion of the landlord and upon good cause shown order the~~  
16 tenant shall be required to pay into the registry of the court all sums found by the trial court  
17 to be due for rent in order to remain in possession of the premises. The tenant shall also  
18 be required to pay all future rent as it becomes due into the registry of the trial court  
19 pursuant to paragraph (1) of subsection (a) of Code Section 44-7-54 until the issue has been  
20 finally determined on appeal. Payments required by this Code section shall be a condition  
21 to remaining in possession of the premises pending appeal."

22 **SECTION 5.**

23 All laws and parts of laws in conflict with this Act are repealed.