

By: Representative Smith (39th)

To: Judiciary A

HOUSE BILL NO. 1169

1 AN ACT TO AMEND SECTIONS 91-7-41, 91-7-55, 91-7-67, 91-7-75  
2 AND 93-13-17, MISSISSIPPI CODE OF 1972, TO REVISE THE EXECUTION OR  
3 TAKING OF REQUIRED OATHS SO THAT THE EXECUTION OR TAKING THEREOF  
4 MAY PRECEDE IN TIME THE SIGNING OF THE ORDER BY THE JUDGE; AND FOR  
5 RELATED PURPOSES.

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

7 SECTION 1. Section 91-7-41, Mississippi Code of 1972, is  
8 amended as follows:

9 91-7-41. Every executor or administrator with the will  
10 annexed, at or prior to the time of obtaining letters testamentary  
11 or of administration, shall take and subscribe the following oath,  
12 viz.:

13 "I do swear that the writing exhibited by me is the  
14 true last will and testament of \_\_\_\_\_, as far as I know  
15 and believe, and that I, if and when appointed as  
16 executor, will well and truly execute the same according  
17 to its tenor, and discharge the duties required by law."  
18 In the case of an administrator with the will annexed,  
19 then say "I, as administrator, will," and "when  
20 appointed as administrator, will" etc.

21 He will also give bond in such penalty as will be equal to  
22 the full value of the estate, and with such sureties as may be  
23 approved of by the court or by the clerk, payable to the state,  
24 with the following conditions, viz.:

25 "The condition of this bond is, that if the above  
26 bound \_\_\_\_\_, as executor of the last will and testament  
27 of \_\_\_\_\_, shall well and truly execute the will as far as  
28 the same may be consistent with law, and faithfully

29 discharge all the duties required of him by law, then  
30 this obligation shall be void." If the obligor be  
31 administrator with the will annexed, then say "the above  
32 bound \_\_\_\_\_, as administrator with the will of \_\_\_\_\_  
33 annexed, will," etc.

34 SECTION 2. Section 91-7-55, Mississippi Code of 1972, is  
35 amended as follows:

36 91-7-55. Before the temporary administrator shall act as  
37 such, he shall take and subscribe an oath at or prior to the time  
38 of his appointment to faithfully discharge the duties required of  
39 him by law as such temporary administrator, and shall give bond,  
40 payable to the state, in such penalty and with such sureties as  
41 may be approved by the court or clerk, conditioned for the  
42 faithful discharge of the duties required of him as such temporary  
43 administrator by law or by order of the court or clerk.  
44 Thereupon, the estate shall be appraised as now provided by law  
45 upon the grant of letters testamentary or of administration,  
46 unless the same shall be dispensed with by the court or clerk.  
47 The temporary administrator shall make and return to the court a  
48 complete inventory of the estate, as is required by law to be made  
49 by executors in general or regular administrators, and, as soon as  
50 practicable, shall publish the notice provided by law to be  
51 published by executors and administrators, requiring creditors to  
52 have their claims against the estate probated and registered. All  
53 the provisions of the law governing such notice, the proof and  
54 registering of claims, and the bar of such as are not proved and  
55 registered shall apply when the notice is published by the  
56 temporary administrator, as when published by an executor or a  
57 general or regular administrator. When the temporary  
58 administrator shall have published such notice, no further notice  
59 to creditors to have their claims probated and registered shall be  
60 given or published upon any subsequent grant of letters  
61 testamentary or of administration; and where the estate has been

62 appraised upon the appointment of a temporary administrator, no  
63 other appraisement shall be made upon the grant of letters  
64 testamentary or of the administration thereafter, unless the court  
65 or clerk shall deem the appraisement necessary or advisable.

66 SECTION 3. Section 91-7-67, Mississippi Code of 1972, is  
67 amended as follows:

68 91-7-67. The person to whom administration is granted, at or  
69 prior to the granting thereof, shall take and prescribe the  
70 following oath:

71 "I do swear that \_\_\_\_\_, deceased, died without any  
72 will, as far as I know or believe, and that I, if and  
73 when appointed, will well and truly administer all the  
74 goods, chattels, and credits of the deceased, and pay  
75 his debts as far as his goods, chattels, and credits  
76 will extend and the law requires me, and that I will  
77 make a true and perfect inventory of the said goods,  
78 chattels, and credits, and a just account, when thereto  
79 required. So help me God."

80 He shall give bond in a penalty equal to the value of all the  
81 personal estate, with such sureties as may be approved by the  
82 court or clerk, payable to the state, with condition in form or to  
83 the effect following, to wit:

84 "The condition of this bond is, that if the above  
85 bound \_\_\_\_\_, as administrator of the goods, chattels,  
86 rights, and credits of \_\_\_\_\_, deceased, shall faithfully  
87 discharge all the duties required of him by law, then  
88 this obligation shall be void."

89 The chancellor, in termtime or in vacation, may waive or  
90 reduce the bond if the administrator is the decedent's sole heir  
91 or if all the heirs are competent and present their sworn petition  
92 to waive or reduce such bond.

93 SECTION 4. Section 91-7-75, Mississippi Code of 1972, is  
94 amended as follows:

95           91-7-75. Before a county administrator shall perform any of  
96 the duties or functions of the office, and before any letters  
97 shall be granted to him, he shall execute and file in the office  
98 of the clerk of the chancery court a bond with two (2) or more  
99 sufficient sureties, to be approved by the chancellor in termtime  
100 or vacation, in a penalty of Five Thousand Dollars (\$5,000.00)  
101 payable to the state, conditioned that he will discharge all the  
102 duties of the office of county administrator, which bond may be  
103 sued on at the instance of any person interested. He shall also  
104 take an oath at or prior to the granting of letters of  
105 administration, to be filed in the clerk's office, to administer  
106 according to law every estate which may be committed to his  
107 charge, and that he will account for and pay over all monies in  
108 his hands by virtue of his office when thereto required by order  
109 of the court.

110           SECTION 5. Section 93-13-17, Mississippi Code of 1972, is  
111 amended as follows:

112           93-13-17. Every guardian, before he shall have authority to  
113 act, shall, unless security be dispensed with by will or writing  
114 or as hereinafter provided, enter into bond payable to the state,  
115 in such penalty and with such sureties as the court may require;  
116 and the bond shall be recorded and may be put in suit for any  
117 breach of the condition, whether the appointment be legal or not;  
118 and the condition shall be as follows:

119           "The condition of the above obligation is that if  
120 the above bound \_\_\_\_\_, as guardian of \_\_\_\_\_, of \_\_\_\_\_  
121 County, shall faithfully discharge all the duties  
122 required of him by law, then the above obligation shall  
123 cease."

124           And the guardian shall also take and subscribe an oath, at or  
125 prior to the time of his appointment, faithfully to discharge the  
126 duties of guardian of the ward according to law.

127           A guardian need not enter into bond, however, as to such part  
128 of the assets of the ward's estate as may, pursuant to an order of  
129 the court in its discretion, be deposited in any one or more  
130 banking corporations, building and loan associations or savings  
131 and loan associations in this state so long as such deposits are  
132 fully insured, such deposits there to remain until the further  
133 order of the court, and a certified copy of the order for deposit  
134 having been furnished the depository or depositories and its  
135 receipt acknowledged.

136           SECTION 6. This act shall take effect and be in force from  
137 and after July 1, 2001.