

By: Representative Banks

To: Judiciary A

HOUSE BILL NO. 1168

1 AN ACT TO AMEND SECTION 9-1-105, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT AN ORDER APPOINTING A PERSON AS A SPECIAL JUDGE SHALL
3 DESCRIBE THE FACTUAL BASIS OF THE EMERGENCY AND SHALL LIMIT THE
4 DURATION OF THE EMERGENCY APPOINTMENT; TO GIVE PREFERENCE TO
5 RETIRED OR FORMER JUDGES AND SITTING JUDGES; AND FOR RELATED
6 PURPOSES.

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

8 **SECTION 1.** Section 9-1-105, Mississippi Code of 1972, is
9 amended as follows:

10 9-1-105. (1) Whenever any judicial officer is unwilling or
11 unable to hear a case or unable to hold or attend any of the
12 courts at the time and place required by law by reason of the
13 physical disability or sickness of such judicial officer, by
14 reason of the absence of such judicial officer from the state, by
15 reason of the disqualification of such judicial officer pursuant
16 to the provision of Section 165, Mississippi Constitution of 1890,
17 or any provision of the Code of Judicial Conduct, or for any other
18 reason, the Chief Justice of the Mississippi Supreme Court, with
19 the advice and consent of a majority of the justices of the
20 Mississippi Supreme Court, may appoint a person as a special judge
21 to hear the case or attend and hold a court.

22 (2) Upon the request of the Chief Judge of the Court of
23 Appeals or the senior judge of a chancery or circuit court
24 district, the Chief Justice of the Mississippi Supreme Court, with
25 the advice and consent of a majority of the justices of the
26 Mississippi Supreme Court, shall have the authority to appoint a
27 special judge to serve on an emergency basis in a circuit or
28 chancery court. It shall be the duty of any special judge so



29 appointed to assist the court to which he is assigned in the
30 disposition of causes so pending in such court.

31 (3) When a vacancy exists for any of the reasons enumerated
32 in Section 9-1-103, the vacancy has not been filled within seven
33 (7) days by an appointment by the Governor, and there is a pending
34 cause or are pending causes in the court where the vacancy exists
35 that in the interests of justice and in the orderly dispatch of
36 the court's business require the appointment of a special judge,
37 the Chief Justice of the Supreme Court, with the advice and
38 consent of a majority of the justices of the Mississippi Supreme
39 Court, may appoint a qualified person as a special judge to fill
40 the vacancy until the Governor makes his appointment and such
41 appointee has taken the oath of office.

42 (4) If the Chief Justice pursuant to this section shall make
43 an appointment within the authority vested in the Governor by
44 reason of Section 165, Mississippi Constitution of 1890, the
45 Governor may at his election appoint a person to so serve. In the
46 event that the Governor makes such an appointment, any appointment
47 made by the Chief Justice pursuant to this section shall be void
48 and of no further force or effect from the date of the Governor's
49 appointment.

50 (5) When a judicial officer is unwilling or unable to hear a
51 case or unable or unwilling to hold court for a period of time not
52 to exceed two (2) weeks, the trial judge or judges of the affected
53 district or county and other trial judges may agree among
54 themselves regarding the appointment of a person for such case or
55 such limited period of time. The trial judges shall submit a
56 notice to the Chief Justice of the Supreme Court informing him of
57 their appointment. If the Chief Justice does not appoint another
58 person to serve as special judge within seven (7) days after
59 receipt of such notice, the person designated in such order shall
60 be deemed appointed.



61 (6) A person appointed to serve as a special judge may be
62 any presently sitting or retired chancery, circuit or county court
63 judge, Court of Appeals judge or Supreme Court Justice, or any
64 other person possessing the qualifications of the judicial office
65 for which the appointment is made; provided, however, that a judge
66 or justice who was retired from service at the polls shall not be
67 eligible for appointment as a special judge in the district in
68 which he served prior to his defeat. Retired judges, other
69 persons who have formerly served as judges and current sitting
70 judges shall be given preference for the appointments made under
71 this section.

72 (7) Except as otherwise provided in subsection (2) of this
73 section, the need for an appointment pursuant to this section may
74 be certified to the Chief Justice of the Mississippi Supreme Court
75 by any attorney in good standing or other officer of the court.

76 (8) The order appointing a person as a special judge
77 pursuant to this section shall describe as specifically as
78 possible the factual basis of the emergency and the duration of
79 the appointment, which shall be for no more than one hundred
80 eighty (180) days.

81 (9) A special judge appointed pursuant to this section shall
82 take the oath of office, if necessary, and shall, for the duration
83 of his appointment, enjoy the full power and authority of the
84 office to which he is appointed.

85 (10) Any presently sitting justice or judge appointed as a
86 special judge under this section shall receive no additional
87 compensation for his or her service as special judge. Any other
88 person appointed as a special judge hereunder shall, for the
89 period of his service, receive compensation from the state for
90 each day's service a sum equal to one two-hundred-sixtieths
91 (1/260) of the current salary in effect for the judicial office;
92 provided, however, that no retired chancery, circuit or county
93 court judge, retired Court of Appeals judge or any retired Supreme



94 Court justice appointed as a special judge pursuant to this
95 section may, during any fiscal year, receive compensation in
96 excess of twenty-five percent (25%) of the current salary in
97 effect for a chancery or circuit court judge. Any person
98 appointed as a special judge shall be reimbursed for travel
99 expenses incurred in the performance of the official duties to
100 which he may be appointed hereunder in the same manner as other
101 public officials and employees as provided by Section 25-3-41,
102 Mississippi Code of 1972.

103 (11) If any person appointed as such special judge is
104 receiving retirement benefits by virtue of the provisions of the
105 Public Employees' Retirement Law of 1952, appearing as Sections
106 25-11-1 through 25-11-139, Mississippi Code of 1972, such benefits
107 shall not be reduced in any sum whatsoever because of such
108 service, nor shall any sum be deducted as contributions toward
109 retirement under said law.

110 (12) The Supreme Court shall have authority to prescribe
111 rules and regulations reasonably necessary to implement and give
112 effect to the provisions of this section.

113 (13) Nothing in this section shall abrogate the right of
114 attorneys engaged in a case to agree upon a member of the bar to
115 preside in a case pursuant to Section 165 of the Mississippi
116 Constitution of 1890.

117 (14) The Supreme Court shall prepare the necessary payroll
118 for special judges appointed pursuant to this section and shall
119 submit such payroll to the Department of Finance and
120 Administration.

121 (15) Special judges appointed pursuant to this section shall
122 direct requests for reimbursement for travel expenses authorized
123 pursuant to this section to the Supreme Court and the Supreme
124 Court shall submit such requests to the Department of Finance and
125 Administration. The Supreme Court shall have the power to adopt



126 rules and regulations regarding the administration of travel
127 expenses authorized pursuant to this section.

128 **SECTION 2.** This act shall take effect and be in force from
129 and after July 1, 2003.

