

By: Senator(s) Nunnelee

To: Judiciary, Division B

SENATE BILL NO. 2238

1 AN ACT TO AMEND SECTION 11-9-105, MISSISSIPPI CODE OF 1972,
 2 TO REVISE THE FORM OF SUMMONS IN JUSTICE COURT; TO AMEND SECTION
 3 11-9-107, MISSISSIPPI CODE OF 1972, TO REVISE THE ISSUANCE OF
 4 PROCESS IN JUSTICE COURT; TO AMEND SECTIONS 11-9-109 AND 11-9-113,
 5 MISSISSIPPI CODE OF 1972, TO REVISE AND CLARIFY PERSONS ELIGIBLE
 6 TO SERVE PROCESS IN JUSTICE COURT; TO AMEND SECTION 11-9-117,
 7 MISSISSIPPI CODE OF 1972, TO REVISE THE ENTRY OF JUDGMENT NISI IN
 8 JUSTICE COURT; TO AMEND SECTION 11-9-123, MISSISSIPPI CODE OF
 9 1972, TO REVISE THE ENTRY OF FINAL DEFAULT JUDGMENT IN JUSTICE
 10 COURT; TO AMEND SECTION 11-9-127, MISSISSIPPI CODE OF 1972, TO
 11 REVISE CIVIL TRIAL ON AN ALLEGED DEBT IN JUSTICE COURT; AND FOR
 12 RELATED PURPOSES.

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

14 **SECTION 1.** Section 11-9-105, Mississippi Code of 1972, is
 15 amended as follows:

16 11-9-105. (1) Anyone desiring to sue in the justice court
 17 shall lodge with the clerk of the justice court the evidence of
 18 debt, statement of account, or other written statement of the
 19 cause of action. The clerk shall render assistance in preparation
 20 of a statement of claim upon request. The clerk shall record all
 21 filings and shall, as far as practicable, assign the cases to each
 22 justice court judge in the county on a rotating basis to insure
 23 equal distribution of the cases among the judges of the county;
 24 however, in all counties in which the courtrooms provided by the
 25 county for use of the justice court judges are located in more
 26 than one (1) place in the county, the clerk, in addition to
 27 assigning cases to the judges on a rotating basis, may also assign
 28 a courtroom for each case, such assignment may be made based upon
 29 the proximity of the courtroom to the defendant's residence or
 30 place of business.

31 (2) The clerk shall issue a summons for the defendant, which
 32 shall be dated and signed by the clerk, be under the seal of the

33 court, contain the name of the court and the names of the parties,
34 be directed to the defendant, state the name and address of the
35 plaintiff's attorney, if any, otherwise the plaintiff's address,
36 and time within which the defendant is required to appear and
37 defend, and shall notify him that in case of his failure to do so,
38 judgment by default will be rendered against him. Any summons
39 issued within fourteen (14) days before a term of the court shall
40 be made returnable to the next succeeding term, unless a shorter
41 day be named, in pursuance of the provision for a trial without
42 delay in the case of nonresident or transient defendants. When
43 the case has been recorded and assigned and process issued, the
44 clerk shall, within two (2) working days, forward certified copies
45 of all documents pertaining to the case to the justice court judge
46 to which the case is assigned for further processing.

47 **SECTION 2.** Section 11-9-107, Mississippi Code of 1972, is
48 amended as follows:

49 11-9-107. (1) When any process has not been returned by a
50 constable within ten (10) working days after issuance by the clerk
51 of the justice court, the clerk shall direct the sheriff of his
52 county and his deputies to execute any such process of the justice
53 court; and the sheriff and his deputies shall execute any process
54 so directed to him by any clerk of the justice court.

55 (2) (a) Alternatively, a summons and statement of claim may
56 be served upon a defendant by mailing a copy of the summons and of
57 the statement of claim by first class mail, postage prepaid, to
58 the person to be served, together with two (2) copies of a notice
59 and acknowledgment and a return envelope, postage prepaid,
60 addressed to the sender.

61 (b) Unless good cause is shown for not doing so, the
62 court shall order the payment of the costs of personal service by
63 the person served if such person does not complete and return
64 within twenty (20) days after mailing the notice and
65 acknowledgment of receipt of summons and statement of claim.

66 (c) The notice and acknowledgment of receipt of summons
67 and statement of claim shall be executed under oath or
68 affirmation.

69 **SECTION 3.** Section 11-9-109, Mississippi Code of 1972, is
70 amended as follows:

71 11-9-109. In cases of emergency, and where a constable or
72 sheriff or deputy sheriff cannot be had in time, the clerk of the
73 justice court may appoint some reputable person who is not a party
74 and who is not less than eighteen (18) years of age to execute any
75 process, the clerk to be liable on his bond for all damage which
76 may result to a party to the cause or other person from his
77 appointment of an insolvent or incompetent person.

78 **SECTION 4.** Section 11-9-113, Mississippi Code of 1972, is
79 amended as follows:

80 11-9-113. The process so delivered to the sheriff or
81 constable or other person authorized by law shall be returned by
82 him to the clerk of the justice court, according to its command.

83 **SECTION 5.** Section 11-9-117, Mississippi Code of 1972, is
84 amended as follows:

85 11-9-117. (1) If the defendant does not file an answer
86 within fourteen (14) days from the date of service, the plaintiff
87 may make application for default judgment.

88 (2) The judgment nisi against a defaulting witness, may be
89 in the following form, viz.: "_____, being subpoenaed to
90 appear this day as a witness for _____, the _____, in the
91 case of _____ v. _____, No. _____, and having made
92 default, judgment is given against said _____, the defaulting
93 witness, for Ten Dollars, (\$10.00) in favor of _____, to be
94 made final unless said _____, the witness, shall show cause
95 against it according to law."

96 (3) Notice of the entry of judgment nisi shall be sent to
97 the defendant by first class mail, postage prepaid.

98 **SECTION 6.** Section 11-9-123, Mississippi Code of 1972, is
99 amended as follows:

100 11-9-123. (1) If the defendant does not file an answer
101 within thirty (30) days from the date of mailing of the judgment
102 nisi, the entry of final judgment in such case may be in the
103 following form, viz.: "_____ being duly summoned to appear and
104 show cause against the judgment nisi for Ten Dollars (\$10.00)
105 entered against him in favor of _____, as a defaulting witness
106 in the case of _____ v. _____ No. _____ on the _____
107 day of _____ A.D. _____, and having failed to show cause for
108 such default, the said judgment nisi for Ten Dollars (\$10.00) is
109 now made final, as well as judgment for costs in said matter, this
110 the _____ day of _____ A.D. _____."

111 **SECTION 7.** Section 11-9-127, Mississippi Code of 1972, is
112 amended as follows:

113 11-9-127. (1) If the defendant files an answer admitting
114 the debt, the plaintiff may file for a consent judgment. If the
115 defendant files an answer denying the debt, the case will be set
116 for trial and the clerk of the justice court shall notify the
117 parties of the trial date.

118 (2) The justice court judge, when requested, may issue
119 execution against the goods and chattels, lands and tenements, of
120 the party against whom judgment is rendered, for the amount of the
121 judgment and costs, or costs alone, as the case may require,
122 returnable to a day more than twenty (20) days after the rendition
123 of the judgment, and not more than six (6) months after the
124 issuance of the execution; and the execution may be directed to
125 the proper officer of any county in this state.

126 **SECTION 8.** This act shall take effect and be in force from
127 and after July 1, 2004.