

By: Representative Fillingane

To: Judiciary A

HOUSE BILL NO. 428

1 AN ACT TO AMEND SECTION 89-5-33, MISSISSIPPI CODE OF 1972, TO
2 REQUIRE INDEXING INSTRUCTIONS FOR DEEDS OF TRUST; AND FOR RELATED
3 PURPOSES.

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

5 **SECTION 1.** Section 89-5-33, Mississippi Code of 1972, is
6 amended as follows:

7 89-5-33. (1) The clerk of the chancery court shall provide
8 a general index, direct and reverse, on which shall be entered, in
9 regular alphabetical order under the appropriate letter, the name
10 of each maker of the instrument and the name of each person to
11 whom made; and in like alphabetical order under its appropriate
12 title shall be entered the name of each person to whom the
13 instrument is made and the name of each person by whom made. A
14 general index, both direct and reverse, of mortgages and deeds of
15 trust on land shall be kept separate from the general index to
16 other records which the chancery clerk is required to keep, and he
17 shall make the proper entries in it as he is required to make in
18 the other general index. Immediately on receipt of any instrument
19 to be recorded, the clerk shall make these entries in the
20 appropriate general index and, after recording the instrument, the
21 book and page in which the record is made shall be noted opposite
22 each name thus placed in such general index, both direct and
23 reverse.

24 (2) The clerk of the chancery court shall maintain a
25 sectional index to instruments describing land which are also
26 entered in the general index. Each entry shall state the name of
27 each maker of the instrument, the name of each person to whom

28 made, and the date, type of instrument and the appropriate
29 reference where recorded. Opposite each such entry, the sectional
30 index shall indicate the location of the land described in the
31 instrument (a) by quarter section or governmental lot or other
32 applicable subdivision of each section, township and range
33 established by governmental survey, or (b) by lot number for
34 platted subdivisions, official surveys, and unofficial
35 subdivisions and surveys commonly in use. The clerk may elect to
36 keep the sectional index by quarter-quarter section rather than by
37 the quarter section, but shall not require a preparer's indexing
38 instruction to describe the quarter-quarter section. Except as
39 otherwise provided in this section, every instrument describing
40 land and required to be entered in the general index shall also be
41 entered in the sectional index. In the event of conflict between
42 the general and the sectional indices, the notice imparted by the
43 general index shall prevail except to the extent the land is
44 described by lot number for platted subdivisions, official surveys
45 and unofficial subdivisions and surveys commonly in use, the
46 sectional index shall prevail.

47 (3) Every surveyor or other person who prepares a legal
48 description of land or who prepares an instrument utilizing an
49 existing description and every person who prepares a deed of trust
50 shall (except as herein provided) include an indexing instruction
51 which shall state the section, township and range and one or more
52 quarter sections or governmental lots or other applicable
53 subdivisions of each section in which the land is located. The
54 preparer, at his option, may elect to note the quarter-quarter
55 section in which the land is located, but shall not be required to
56 do so. However, if the section or quarter sections or
57 governmental lots or other applicable subdivisions of the section
58 cannot feasibly be determined by such surveyor or other person,
59 the indexing instruction shall contain a statement to that effect
60 and shall then state all of the sections and quarter sections or

61 governmental lots or other applicable subdivisions of the section
62 in which the described land could possibly be located. The
63 indexing instruction shall be distinctly set apart in the
64 instrument so as to be readily apparent to the chancery clerk. A
65 chancery clerk shall refuse to accept delivery of an instrument
66 which does not contain the indexing instruction required in this
67 section unless the instrument otherwise discloses the information
68 required to be included in an indexing instruction. To be
69 accepted for recording, and instrument shall state the name,
70 address and telephone number of the person, entity or firm
71 preparing it. The fact that the indexing instruction or preparer
72 information may be omitted, incorrect, incomplete or false shall
73 not invalidate the instrument or the filing thereof for record.
74 The chancery clerk shall enter the instrument in the sectional
75 index according to the indexing instruction, or equivalent
76 information if accepted for filing without an indexing
77 instruction, and shall make no entries under any other quarter
78 sections or governmental lots or subdivisions of the section.
79 Notwithstanding the foregoing, the following kinds of instruments
80 shall be indexed as stated:

81 (a) Instruments describing land by reference to
82 officially platted subdivisions or to official surveys or to
83 unofficial subdivisions and surveys commonly in use will not
84 require an indexing instruction and shall be indexed in the
85 general index and the sectional index for such subdivision or
86 survey without further requirement.

87 (b) Instruments describing land or interests in land
88 solely by reference to previously recorded instruments or
89 affecting previously recorded instruments shall not require an
90 indexing instruction and need not be entered in the sectional
91 index but shall be entered in the general index and noted on the
92 margin of the previously recorded instrument. Instruments
93 describing land or interests in land by specific description of

94 certain parcels and, for other parcels, by reference to previously
95 recorded instruments, shall be entered in the sectional index
96 according to the indexing instruction for the specific description
97 and also noted on the margin of the previously recorded
98 instrument, in addition to the general index.

99 (c) Instruments containing blanket descriptions of all
100 land within a stated geographic area without specific description
101 shall be entered in a separate part of the sectional index or in
102 an index of indefinite records or an index of blanket conveyances
103 in addition to the general index.

104 (d) Instruments describing land in irregular sections
105 (all or any part of a section not capable of being divided into
106 quarter sections for indexing purposes) shall be entered in the
107 general index and in an appropriate sectional index maintained by
108 the chancery clerk. The indexing instruction, however, shall be
109 proper and complete if it states no more than the number of the
110 irregular section or sections in which the land is located or, as
111 above provided, in which the land could possibly be located. When
112 an instrument describes land within an irregular section according
113 to officially platted subdivisions or to official surveys or to
114 unofficial subdivisions or surveys commonly in use, it shall be
115 indexed in the sectional index for such subdivisions or surveys.

116 (4) When an instrument has been restored to service from
117 microfilm or other archived record, the chancery clerk shall enter
118 a notation on the margin stating that it is a substituted record
119 and stating the date on which it was restored to service. Such
120 marginal notation shall then constitute notice that the general
121 index must be examined for instruments filed prior to such date
122 which may have been noted on the margin of the original record but
123 do not appear on the margin of the restored record.

124 (5) The clerk of the chancery court shall enter instruments
125 in the sectional index by the end of the twentieth day the office

126 is open following the day on which the instrument is filed, except
127 for records of tax sales.

128 (6) If the chancery clerk elects to abbreviate the names of
129 parties to an instrument in the indices, the clerk shall maintain
130 a list of standard abbreviations used for that purpose and shall
131 adhere to such list.

132 (7) The clerk of the chancery court shall not correct or
133 alter an entry made in any index, whether kept manually or by
134 computer, unless the date and time of the change is clearly
135 disclosed on the revised record.

136 (8) If insufficient space is available for making entries on
137 the margin of a recorded instrument, the chancery clerk may enter
138 on the margin a reference where a continuation sheet is located.

139 (9) Except as expressly provided herein, nothing contained
140 in this section shall be construed to modify the requirements of
141 other statutes regarding the duties of the clerk of the chancery
142 court to index and record instruments affecting the title to land.

143 **SECTION 2.** This act shall take effect and be in force from
144 and after its passage.