MISSISSIPPI LEGISLATURE REGULAR SESSION 2001

By: Representative Smith (39th)

To: Judiciary A

HOUSE BILL NO. 1169

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

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

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

91-7-41. Every executor or administrator with the will annexed, at <u>or prior to</u> the time of obtaining letters testamentary or of administration, shall take and subscribe the following oath, viz.:

"I do swear that the writing exhibited by me is the true last will and testament of ____, as far as I know and believe, and that I, <u>if and when appointed</u> as executor, will well and truly execute the same according to its tenor, and discharge the duties required by law." <u>In the case of an administrator with the will annexed, then say "I, as administrator, will," and "when appointed as administrator, will" etc.</u>

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

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

discharge all the duties required of him by law, then this obligation shall be void." If the obligor be administrator with the will annexed, then say "the above bound _____, as administrator with the will of _____ annexed, will," etc.

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

91-7-55. Before the temporary administrator shall act as such, he shall take and subscribe an oath <u>at or prior to the time of his appointment</u> to faithfully discharge the duties required of him by law as such temporary administrator, and shall give bond, payable to the state, in such penalty and with such sureties as may be approved by the court or clerk, conditioned for the faithful discharge of the duties required of him as such temporary administrator by law or by order of the court or clerk. Thereupon, the estate shall be appraised as now provided by law upon the grant of letters testamentary or of administration, unless the same shall be dispensed with by the court or clerk. The temporary administrator shall make and return to the court a complete inventory of the estate, as is required by law to be made by executors in general or regular administrators, and, as soon as practicable, shall publish the notice provided by law to be published by executors and administrators, requiring creditors to have their claims against the estate probated and registered. All the provisions of the law governing such notice, the proof and registering of claims, and the bar of such as are not proved and registered shall apply when the notice is published by the temporary administrator, as when published by an executor or a general or regular administrator. When the temporary administrator shall have published such notice, no further notice to creditors to have their claims probated and registered shall be given or published upon any subsequent grant of letters testamentary or of administration; and where the estate has been

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

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

91-7-67. The person to whom administration is granted<u>, at or prior to the granting thereof,</u> shall take and prescribe the following oath:

> "I do swear that ____, deceased, died without any will, as far as I know or believe, and that I<u>, if and when appointed,</u> will well and truly administer all the goods, chattels, and credits of the deceased, and pay his debts as far as his goods, chattels, and credits will extend and the law requires me, and that I will make a true and perfect inventory of the said goods, chattels, and credits, and a just account, when thereto required. So help me God."

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

> "The condition of this bond is, that if the above bound ____, as administrator of the goods, chattels, rights, and credits of ____, deceased, shall faithfully discharge all the duties required of him by law, then this obligation shall be void."

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

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

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

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

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

"The condition of the above obligation is that if the above bound ____, as guardian of ____, of ____ County, shall faithfully discharge all the duties required of him by law, then the above obligation shall cease."

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

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

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

ST: Execution of oaths; revise so taking may precede in time the signing of the order.