

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.