

By: Representative Cameron

To: Judiciary A

HOUSE BILL NO. 622

1 AN ACT TO AMEND SECTIONS 11-55-5 AND 11-55-7, MISSISSIPPI
2 CODE OF 1972, TO PROVIDE THAT A PARTY AND HIS ATTORNEY SHALL BE
3 LIABLE FOR COSTS IN A FRIVOLOUS SUIT; AND FOR RELATED PURPOSES.

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

5 SECTION 1. Section 11-55-5, Mississippi Code of 1972, is
6 amended as follows:

7 11-55-5. (1) Except as otherwise provided in this chapter,
8 in any civil action commenced or appealed in any court of record
9 in this state, the court shall award, as part of its judgment and
10 in addition to any other costs otherwise assessed, reasonable
11 attorney's fees, * * * costs and the amount of cost incurred by
12 the defendant in defending the action against any party or
13 attorney if the court, upon the motion of any party or on its own
14 motion, finds that an attorney or party brought an action, or
15 asserted any claim or defense, that is without substantial
16 justification, or that the action, or any claim or defense
17 asserted, was interposed for delay or harassment, or if it finds
18 that an attorney or party unnecessarily expanded the proceedings
19 by other improper conduct including, but not limited to, abuse of
20 discovery procedures available under the Mississippi Rules of
21 Civil Procedure. The award shall be assessed upon the party and
22 the attorney representing the party.

23 (2) No attorney's fees or costs shall be assessed if a
24 voluntary dismissal is filed as to any action, claim or defense
25 within a reasonable time after the attorney or party filing the
26 action, claim or defense knows or reasonably should have known

27 that it would not prevail on the action, claim or defense.

28 (3) When a court determines reasonable attorney's fees or
29 costs should be assessed, it shall assess the payment against the
30 offending attorneys and parties * * * and shall allocate the
31 payment among them, and the offending party shall be liable for
32 the fees or costs.

33 (4) No party, except an attorney licensed to practice law in
34 this state, who is appearing without an attorney shall be assessed
35 attorney's fees unless the court finds that the party clearly knew
36 or reasonably should have known that such party's action, claim or
37 defense or any part of it was without substantial justification.

38 SECTION 2. Section 11-55-7, Mississippi Code of 1972, is
39 amended as follows:

40 11-55-7. In determining the amount of an award of costs,
41 costs incurred by the defendant or attorney's fees, the court
42 shall exercise its sound discretion. When granting an award of
43 costs and attorney's fees, the court shall specifically set forth
44 the reasons for the award and shall consider the following
45 factors, among others, in determining whether to assess attorney's
46 fees and costs and the amount to be assessed:

47 (a) The extent to which any effort was made to determine the
48 validity of any action, claim or defense before it was asserted,
49 and the time remaining within which the claim or defense could be
50 filed;

51 (b) The extent of any effort made after the commencement of
52 an action to reduce the number of claims being asserted or to
53 dismiss claims that have been found not to be valid;

54 (c) The availability of facts to assist in determining the
55 validity of an action, claim or defense;

56 (d) Whether or not the action was prosecuted or defended, in
57 whole or in part, in bad faith or for improper purpose;

58 (e) Whether or not issues of fact, determinative of the
59 validity of a party's claim or defense, were reasonably in
60 conflict;

61 (f) The extent to which the party prevailed with respect to
62 the amount of and number of claims or defenses in controversy;

63 (g) The extent to which any action, claim or defense was

64 asserted by an attorney or party in a good faith attempt to
65 establish a new theory of law in the state, which purpose was made
66 known to the court at the time of filing;

67 (h) The amount or conditions of any offer of judgment or
68 settlement in relation to the amount or conditions of the ultimate
69 relief granted by the court;

70 (i) The extent to which a reasonable effort was made to
71 determine before to the time of filing of an action or claim that
72 all parties sued or joined were proper parties owing a legally
73 defined duty to any party or parties asserting the claim or
74 action;

75 (j) The extent of any effort made after the commencement of
76 an action to reduce the number of parties in the action; and

77 (k) The period of time available to the attorney for the
78 party asserting any defense before the defense was interposed.

79 SECTION 3. This act shall take effect and be in force from
80 and after July 1, 1999, and shall apply to all causes of actions
81 filed on or after that date.