

By: Representative McInnis

To: Judiciary A

HOUSE BILL NO. 634

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 JOINTLY LIABLE FOR COSTS AND DAMAGES IN A FRIVOLOUS SUIT; AND FOR
4 RELATED PURPOSES.

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

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

8 11-55-5. (1) Except as otherwise provided in this chapter,
9 in any civil action commenced or appealed in any court of record
10 in this state, the court shall award, as part of its judgment and
11 in addition to any other costs otherwise assessed, reasonable
12 attorney's fees, * * * costs and the amount of damages sought in
13 the complaint against any party or attorney if the court, upon the
14 motion of any party or on its own motion, finds that an attorney
15 or party brought an action, or asserted any claim or defense, that
16 is without substantial justification, or that the action, or any
17 claim or defense asserted, was interposed for delay or harassment,
18 or if it finds that an attorney or party unnecessarily expanded
19 the proceedings by other improper conduct including, but not
20 limited to, abuse of discovery procedures available under the
21 Mississippi Rules of Civil Procedure. The award shall be assessed
22 jointly upon the party and 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 attorney and party shall be
32 jointly liable for 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 damages or attorney's fees, the court shall exercise its sound
42 discretion. When granting an award of costs and attorney's fees,
43 the court shall specifically set forth the reasons for the award
44 and shall consider the following factors, among others, in
45 determining whether to assess attorney's fees and costs and the
46 amount to be assessed:

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

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

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

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

60 (e) Whether or not issues of fact, determinative of the

61 validity of a party's claim or defense, were reasonably in
62 conflict;

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

66 (g) The extent to which any action, claim or defense
67 was asserted by an attorney or party in a good faith attempt to
68 establish a new theory of law in the state, which purpose was made
69 known to the court at the time of filing;

70 (h) The amount or conditions of any offer of judgment
71 or settlement in relation to the amount or conditions of the
72 ultimate relief granted by the court;

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

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

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

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