

By: Representatives Cameron, Robertson

To: Judiciary A

HOUSE BILL NO. 292

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  
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, 2002, and shall apply to all causes of actions  
85 filed on or after that date.

