

By: Representative Cameron

To: Judiciary A

HOUSE BILL NO. 125

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 the
12 defendant in defending the action against any party or attorney if
13 the court, upon the motion of any party or on its own motion,
14 finds that an attorney or party brought an action, or asserted any
15 claim or defense, that is without substantial justification, or
16 that the action, or any claim or defense asserted, was interposed
17 for delay or harassment, or if it finds that an attorney or party
18 unnecessarily expanded the proceedings by other improper conduct
19 including, but not limited to, abuse of discovery procedures
20 available under the Mississippi Rules of Civil Procedure. The
21 award shall be assessed upon the party and the attorney
22 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 the time of filing of an action or claim that all
75 parties sued or joined were proper parties owing a legally defined
76 duty to any party or parties asserting the claim or action;

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

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

82 **SECTION 3.** This act shall take effect and be in force from
83 and after July 1, 2003, and shall apply to all causes of actions
84 filed on or after that date.

