

By: Representative Zuber

To: Judiciary B

HOUSE BILL NO. 1622

1 AN ACT TO AMEND SECTION 11-9-127, MISSISSIPPI CODE OF 1972,
2 TO PRESERVE THE DUE PROCESS RIGHTS OF DEFENDANTS WHILE
3 STREAMLINING CIVIL DOCKET AND AVOIDING UNNECESSARY COSTS AND THE
4 BURDEN OF NEEDLESS HEARING PREPARATION FOR PLAINTIFFS; TO
5 FORMALIZE THE AVAILABILITY OF CERTAIN REMEDIES IN JUSTICE COURTS
6 AS RECOGNIZED BY A SERIES OF OPINIONS OF THE ATTORNEY GENERAL; TO
7 AMEND SECTION 11-53-81, MISSISSIPPI CODE OF 1972, TO CONFIRM THE
8 AVAILABILITY OF THE OPEN ACCOUNT REMEDY TO COLLECT MEDICAL AND
9 HOSPITAL BILLS; TO AMEND SECTION 25-7-13, MISSISSIPPI CODE OF
10 1972, TO ENCOURAGE COLLECTION OF MODEST FINES AND JUDGMENTS
11 OBTAINED IN MUNICIPAL COURTS; AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** Section 11-9-127, Mississippi Code of 1972, is
14 amended as follows:

15 11-9-127. Any defendant desiring a hearing before the
16 justice court must notify the clerk of the court that a hearing is
17 desired no later than the close of business two (2) working days
18 before the return day of the summons. On the return day of the
19 summons, unless continued, the justice court judge shall hear and
20 determine the cause if the defendant has requested a hearing and
21 both parties appear; give judgment by default if the defendant did
22 not request a hearing, or fails to appear and contest plaintiff's
23 demand after requesting a hearing, or judgment of nonsuit against
24 the plaintiff if the defendant has requested a hearing and the
25 plaintiff fails to appear and prosecute his claim; enter judgment
26 in favor of the defendant where, in case of setoff, it shall
27 appear that there is a balance due him, for the amount of such
28 balance, and, when requested, issue execution against the goods
29 and chattels, lands and tenements, of the party against whom
30 judgment is rendered, for the amount of the judgment and costs, or
31 costs alone, as the case may require, returnable to a day more

32 than twenty (20) days after the rendition of the judgment, and not
33 more than six (6) months after the issuance of the execution; and
34 the execution may be directed to the proper officer of any county
35 in this state.

36 **SECTION 2.** The statutory remedies of garnishment and
37 examination of judgment debtor, and all defenses thereto, shall be
38 available in justice court.

39 **SECTION 3.** Section 11-53-81, Mississippi Code of 1972, is
40 amended as follows:

41 11-53-81. When any person fails to pay a medical or hospital
42 bill or other open account within thirty (30) days after receipt
43 of written demand therefor correctly setting forth the amount owed
44 and an itemized statement of the account in support thereof, that
45 person shall be liable for reasonable attorney's fees to be set by
46 the judge for the prosecution and collection of such claim when
47 judgment on the claim is rendered in favor of the plaintiff.
48 Evidence of receipt of written demand by the spouse of the debtor
49 when they are living together as husband and wife on behalf of the
50 debtor may be introduced as evidence of written demand on the
51 debtor. If that person sued on the open account shall prevail in
52 the suit, he shall be entitled to reasonable attorney's fees to be
53 set by the judge.

54 If delivery of written demand on the debtor is attempted, but
55 not accomplished because circumstances made delivery of written
56 demand impossible, a notation, on the envelope containing the
57 written demand, made by the person attempting delivery stating the
58 date of the attempted delivery, the reasons why delivery could not
59 be accomplished along with the initials of the person attempting
60 delivery and making said notation may be introduced as evidence of
61 written demand on the debtor, and if the judge in his discretion
62 finds that sufficient evidence of due diligence in delivery of
63 written demand has been made, he may make a conclusion of written

64 demand for purposes of justice and find that there has been
65 written demand on the debtor.

66 **SECTION 4.** Section 25-7-13, Mississippi Code of 1972, is
67 amended as follows:

68 25-7-13. (1) The clerks of the circuit court shall charge
69 the following fees:

70 (a) Docketing, filing, marking and registering each
71 complaint, petition and indictment..... \$75.00

72 The fee set forth in this paragraph shall be the total fee
73 for all services performed by the clerk up to and including entry
74 of judgment with respect to each complaint, petition or
75 indictment, including all answers, claims, orders, continuances
76 and other papers filed therein, issuing each writ, summons,
77 subpoena or other such instruments, swearing witnesses, taking and
78 recording bonds and pleas, and recording judgments, orders, fiats
79 and certificates; the fee shall be payable upon filing and shall
80 accrue to the clerk at the time of collection. The clerk or his
81 successor in office shall perform all duties set forth above
82 without additional compensation or fee.

83 (b) Docketing and filing each suggestion for a writ of
84 garnishment, suggestion for a writ of execution and judgment
85 debtor actions and issuing all process, filing and recording
86 orders or other papers and swearing witnesses..... \$30.00

87 (2) Except as provided in subsection (1) of this section,
88 the clerks of the circuit court shall charge the following fees:

89 (a) Filing and marking each order or other paper and
90 recording and indexing same..... \$ 2.00

91 (b) Issuing each writ, summons, subpoena, citation,
92 capias and other such instruments..... \$ 1.00

93 (c) Administering an oath and taking bond..... \$ 2.00

94 (d) Certifying copies of filed documents, for each
95 complete document..... \$ 1.00

96 (e) Recording orders, fiats, licenses, certificates,
97 oaths and bonds:

98 First page..... \$ 2.00

99 Each additional page..... \$ 1.00

100 (f) Furnishing copies of any papers of record or on
101 file and entering marginal notations on documents of record:

102 If performed by the clerk or his employee,
103 per page..... \$ 1.00

104 If performed by any other person, per page.. \$.25

105 (g) Judgment roll entry..... \$ 5.00

106 Notwithstanding any other law to the contrary, the circuit
107 clerk shall not collect any other fine, assessment or other item
108 of cost other than the fee authorized by this paragraph (g) when
109 enrolling a municipal court judgment.

110 (h) Taxing cost and certificate..... \$ 1.00

111 (i) For taking and recording application for marriage
112 license, for filing and recording consent of parents when required
113 by law, for filing and recording medical certificate, filing and
114 recording proof of age, recording and issuing license, recording
115 and filing returns..... \$20.00

116 The clerk shall deposit Fourteen Dollars (\$14.00) of each fee
117 collected for a marriage license in the Victims of Domestic
118 Violence Fund established in Section 93-21-117, on a monthly
119 basis.

120 (j) For certified copy of marriage license and search
121 of record, the same fee charged by the Bureau of Vital Statistics
122 of the State Board of Health.

123 (k) For public service not particularly provided for,
124 the circuit court may allow the clerk, per annum, to be paid by
125 the county on presentation of the circuit court's order, the
126 following amount..... \$5,000.00

127 However, in the counties having two (2) judicial districts,
128 such above allowance shall be made for each judicial district.

129 (1) For drawing jurors and issuing venire, to be paid
130 by the county..... \$ 5.00

131 (m) For each day's attendance upon the circuit court
132 term, for himself and necessary deputies allowed by the court,
133 each to be paid by the county..... \$30.00

134 (n) Summons, each juror to be paid by the county upon
135 the allowance of the court..... \$ 1.00

136 (o) For issuing each grand jury subpoena, to be paid by
137 the county on allowance by the court, not to exceed Twenty-five
138 Dollars (\$25.00) in any one (1) term of court..... \$ 1.00

139 (3) On order of the court, clerks and deputies may be
140 allowed five (5) extra days for attendance upon the court to get
141 up records.

142 (4) The clerk's fees in state cases where the state fails in
143 the prosecution, or in cases of felony where the defendant is
144 convicted and the cost cannot be made out of his estate, in an
145 amount not to exceed Four Hundred Dollars (\$400.00) in one (1)
146 year, shall be paid out of the county treasury on approval of the
147 circuit court, and the allowance thereof by the board of
148 supervisors of the county. In counties having two (2) judicial
149 districts, such allowance shall be made in each judicial district;
150 however, the maximum thereof shall not exceed Eight Hundred
151 Dollars (\$800.00). Clerks in the circuit court, in cases where
152 appeals are taken in criminal cases and no appeal bond is filed,
153 shall be allowed by the board of supervisors of the county after
154 approval of their accounts by the circuit court, in addition to
155 the above fees, for making such transcript the rate of Two Dollars
156 (\$2.00) per page.

157 (5) The clerk of the circuit court may retain as his
158 commission on all money coming into his hands, by law or order of
159 the court, a sum to be fixed by the court not exceeding one-half
160 of one percent (1/2 of 1%) on all such sums.

161 (6) For making final records required by law, including, but
162 not limited to, circuit and county court minutes, and furnishing
163 transcripts of records, the circuit clerk shall charge Two Dollars
164 (\$2.00) per page. The same fees shall be allowed to all officers
165 for making and certifying copies of records or papers which they
166 are authorized to copy and certify.

167 (7) The circuit clerk shall prepare an itemized statement of
168 fees for services performed, cost incurred, or for furnishing
169 copies of any papers of record or on file, and shall submit the
170 statement to the parties or, if represented, to their attorneys
171 within sixty (60) days. A bill for same shall accompany the
172 statement.

173 **SECTION 5.** Section 2 of this act shall be codified in Title
174 11, Chapter 9, Mississippi Code of 1972.

175 **SECTION 6.** This act shall take effect and be in force from
176 and after July 1, 2004.