

By: Senator(s) Burton

To: Judiciary, Division A

SENATE BILL NO. 2512

1 AN ACT TO AMEND SECTION 11-9-127, MISSISSIPPI CODE OF 1972,
2 TO DEFINE THE DUE PROCESS RIGHTS OF DEFENDANTS IN JUSTICE COURT;
3 TO FORMALIZE THE AVAILABILITY OF CERTAIN REMEDIES IN JUSTICE
4 COURTS; TO AMEND SECTION 11-53-81, MISSISSIPPI CODE OF 1972, TO
5 CONFIRM THE AVAILABILITY OF THE OPEN ACCOUNT REMEDY TO COLLECT
6 MEDICAL AND HOSPITAL BILLS; TO AMEND SECTION 25-7-13, MISSISSIPPI
7 CODE OF 1972, TO ENCOURAGE COLLECTION OF MODEST FINES AND
8 JUDGMENTS OBTAINED IN MUNICIPAL COURTS; AND FOR RELATED PURPOSES.

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

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

12 11-9-127. Any defendant desiring a hearing before the
13 justice court must notify the clerk of the court that a hearing is
14 desired no later than the close of business two (2) working days
15 before the return day of the summons. On the return day of the
16 summons, unless continued, the justice court judge shall hear and
17 determine the cause if the defendant has requested a hearing and
18 both parties appear; give judgment by default if the defendant did
19 not request a hearing, or fails to appear and contest plaintiff's
20 demand after requesting a hearing, or judgment of nonsuit against
21 the plaintiff if the defendant has requested a hearing and the
22 plaintiff fails to appear and prosecute his claim; enter judgment
23 in favor of the defendant where, in case of setoff, it shall
24 appear that there is a balance due him, for the amount of such
25 balance, and, when requested, issue execution against the goods
26 and chattels, lands and tenements, of the party against whom
27 judgment is rendered, for the amount of the judgment and costs, or
28 costs alone, as the case may require, returnable to a day more
29 than twenty (20) days after the rendition of the judgment, and not
30 more than six (6) months after the issuance of the execution; and

31 the execution may be directed to the proper officer of any county
32 in this state.

33 **SECTION 2.** The statutory remedies of garnishment and
34 examination of judgment debtor, and all defenses thereto, shall be
35 available in justice court.

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

38 11-53-81. When any person fails to pay a medical or hospital
39 bill or other open account within thirty (30) days after receipt
40 of written demand therefor correctly setting forth the amount owed
41 and an itemized statement of the account in support thereof, that
42 person shall be liable for reasonable attorney's fees to be set by
43 the judge for the prosecution and collection of such claim when
44 judgment on the claim is rendered in favor of the plaintiff.
45 Evidence of receipt of written demand by the spouse of the debtor
46 when they are living together as husband and wife on behalf of the
47 debtor may be introduced as evidence of written demand on the
48 debtor. If that person sued on the open account shall prevail in
49 the suit, he shall be entitled to reasonable attorney's fees to be
50 set by the judge.

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

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

65 25-7-13. (1) The clerks of the circuit court shall charge
66 the following fees:

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

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

80 (b) Docketing and filing each suggestion for a writ of
81 garnishment, suggestion for a writ of execution and judgment
82 debtor actions and issuing all process, filing and recording
83 orders or other papers and swearing witnesses..... 30.00

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

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

88 (b) Issuing each writ, summons, subpoena, citation,
89 capias and other such instruments..... 1.00

90 (c) Administering an oath and taking bond..... 2.00

91 (d) Certifying copies of filed documents, for each
92 complete document..... 1.00

93 (e) Recording orders, fiats, licenses, certificates,
94 oaths and bonds:

95 First page..... 2.00

96 Each additional page..... 1.00

97 (f) Furnishing copies of any papers of record or on

98 file and entering marginal notations on documents of record:

99 If performed by the clerk or his employee,

100 per page..... 1.00

101 If performed by any other person, per page. .25

102 (g) Judgment roll entry..... 5.00

103 Notwithstanding any other law to the contrary, the circuit

104 clerk shall not collect any other fine, assessment or other item

105 of cost other than the fee authorized by this paragraph (g) when

106 enrolling a municipal court judgment.

107 (h) Taxing cost and certificate..... 1.00

108 (i) For taking and recording application for marriage

109 license, for filing and recording consent of parents when required

110 by law, for filing and recording medical certificate, filing and

111 recording proof of age, recording and issuing license, recording

112 and filing returns..... 20.00

113 The clerk shall deposit Fourteen Dollars (\$14.00) of each fee

114 collected for a marriage license in the Victims of Domestic

115 Violence Fund established in Section 93-21-117, on a monthly

116 basis.

117 (j) For certified copy of marriage license and search

118 of record, the same fee charged by the Bureau of Vital Statistics

119 of the State Board of Health.

120 (k) For public service not particularly provided for,

121 the circuit court may allow the clerk, per annum, to be paid by

122 the county on presentation of the circuit court's order, the

123 following amount..... 5,000.00

124 However, in the counties having two (2) judicial districts,

125 such above allowance shall be made for each judicial district.

126 (l) For drawing jurors and issuing venire, to be paid

127 by the county..... 5.00

128 (m) For each day's attendance upon the circuit court
129 term, for himself and necessary deputies allowed by the court,
130 each to be paid by the county..... 30.00

131 (n) Summons, each juror to be paid by the county upon
132 the allowance of the court..... 1.00

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

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

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

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

158 (6) For making final records required by law, including, but
159 not limited to, circuit and county court minutes, and furnishing
160 transcripts of records, the circuit clerk shall charge Two Dollars

161 (\$2.00) per page. The same fees shall be allowed to all officers
162 for making and certifying copies of records or papers which they
163 are authorized to copy and certify.

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

170 **SECTION 5.** Section 2 of this act shall be codified in Title
171 11, Chapter 9, Mississippi Code of 1972.

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