

By: Representative Chism

To: Judiciary A

HOUSE BILL NO. 359

1 AN ACT TO PROVIDE FOR THE PAYMENT OF COSTS AND EXPENSES
2 INCURRED BY A PREVAILING DEFENDANT IN A CIVIL ACTION; TO AUTHORIZE
3 THE FILING OF A SUIT TO RECOVER SUCH COSTS AND EXPENSES; TO AMEND
4 SECTION 11-53-31, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE
5 PROVISIONS OF THIS ACT; TO AMEND SECTIONS 11-55-5 AND 11-55-7,
6 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A PARTY AND HIS ATTORNEY
7 SHALL BE JOINTLY LIABLE FOR COSTS AND DAMAGES IN A FRIVOLOUS SUIT;
8 AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** In civil actions which are filed by an individual
11 or group of individuals against another individual or group of
12 individuals, the individual defendant or defendants named may file
13 as part of the response to the plaintiff's pleading a statement
14 that such defendant will provide an itemized list of expenses
15 which may include time spent in preparation of defense and other
16 legitimate expenses to the court for approval of payment from the
17 plaintiff and the plaintiff's attorney to the defendant in the
18 event that the decision is in favor of the defendant. If the
19 plaintiff's attorney has a payment arrangement of a set fee or an
20 hourly fee as his remuneration from the plaintiff, then the
21 attorney will have no obligation to the defendant. If the
22 plaintiff's attorney has a contingency fee arrangement with the
23 plaintiff, then the plaintiff's attorney shall not be liable for
24 more than the maximum contingency percentage of the award that the
25 plaintiff's attorney would have received if the plaintiff had been
26 the successful party in the lawsuit. If the plaintiff and the
27 plaintiff's attorney do not pay the submitted list of expenses
28 within ninety (90) days to the defendant, then the defendant may
29 file suit in the same court for payment of the list of expenses
30 plus reasonable expenses for that suit. All laws of joint and

31 several liability shall apply to any suit filed under the
32 provisions of this section.

33 **SECTION 2.** Section 11-53-31, Mississippi Code of 1972, is
34 amended as follows:

35 11-53-31. Except as otherwise provided in Section 1 of this
36 act, all costs accrued at the instance of the successful defendant
37 in a suit, which cannot be collected out of the other party, may
38 be collected from such defendant; and after return of "no
39 property" on execution against a plaintiff or complainant against
40 whom costs were adjudged, execution may be issued against the
41 successful defendant for all costs accrued at his instance and not
42 paid or collected from the other party. A successful plaintiff or
43 complainant shall be liable for all the costs of the case accrued
44 at his instance which cannot be collected from the defendants; and
45 after return of "no property" on execution against the defendant
46 against whom costs were adjudged, execution may be issued against
47 the successful plaintiff or complainant for all the costs of the
48 case accrued at his instance not paid or collected from the
49 defendant. An unsuccessful plaintiff or complainant shall be
50 liable for all the costs of the case.

51 **SECTION 3.** Section 11-55-5, Mississippi Code of 1972, is
52 amended as follows:

53 11-55-5. (1) Except as otherwise provided in this chapter,
54 in any civil action commenced or appealed in any court of record
55 in this state, the court shall award, as part of its judgment and
56 in addition to any other costs otherwise assessed, reasonable
57 attorney's fees, costs and the amount of damages sought in the
58 complaint against any party and attorney if the court, upon the
59 motion of any party or on its own motion, finds that an attorney
60 or party brought an action, or asserted any claim or defense, that
61 is without substantial justification, or that the action, or any
62 claim or defense asserted, was interposed for delay or harassment,
63 or if it finds that an attorney or party unnecessarily expanded

64 the proceedings by other improper conduct including, but not
65 limited to, abuse of discovery procedures available under the
66 Mississippi Rules of Civil Procedure. Such award shall be
67 assessed jointly upon such party and the attorney representing
68 such party.

69 (2) No attorney's fees or costs shall be assessed if a
70 voluntary dismissal is filed as to any action, claim or defense
71 within a reasonable time after the attorney or party filing the
72 action, claim or defense knows or reasonably should have known
73 that it would not prevail on the action, claim or defense.

74 (3) When a court determines reasonable attorney's fees or
75 costs should be assessed, it shall assess the payment against the
76 offending attorneys and parties, or both, * * * allocate the
77 payment among them, and the offending attorney and party shall be
78 jointly liable for such fees or costs.

79 (4) No party, except an attorney licensed to practice law in
80 this state, who is appearing without an attorney shall be assessed
81 attorney's fees unless the court finds that the party clearly knew
82 or reasonably should have known that such party's action, claim or
83 defense or any part of it was without substantial justification.

84 **SECTION 4.** Section 11-55-7, Mississippi Code of 1972, is
85 amended as follows:

86 11-55-7. In determining the amount of an award of costs,
87 damages or attorney's fees, the court shall exercise its sound
88 discretion. When granting an award of costs and attorney's fees,
89 the court shall specifically set forth the reasons for such award
90 and shall consider the following factors, among others, in
91 determining whether to assess attorney's fees and costs and the
92 amount to be assessed:

93 (a) The extent to which any effort was made to
94 determine the validity of any action, claim or defense before it
95 was asserted, and the time remaining within which the claim or
96 defense could be filed;

97 (b) The extent of any effort made after the
98 commencement of an action to reduce the number of claims being
99 asserted or to dismiss claims that have been found not to be
100 valid;

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

103 (d) Whether or not the action was prosecuted or
104 defended, in whole or in part, in bad faith or for improper
105 purpose;

106 (e) Whether or not issues of fact, determinative of the
107 validity of a party's claim or defense, were reasonably in
108 conflict;

109 (f) The extent to which the party prevailed with
110 respect to the amount of and number of claims or defenses in
111 controversy;

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

116 (h) The amount or conditions of any offer of judgment
117 or settlement in relation to the amount or conditions of the
118 ultimate relief granted by the court;

119 (i) The extent to which a reasonable effort was made to
120 determine prior to the time of filing of an action or claim that
121 all parties sued or joined were proper parties owing a legally
122 defined duty to any party or parties asserting the claim or
123 action;

124 (j) The extent of any effort made after the
125 commencement of an action to reduce the number of parties in the
126 action; and

127 (k) The period of time available to the attorney for
128 the party asserting any defense before such defense was
129 interposed.

130 **SECTION 5.** This act shall take effect and be in force from
131 and after July 1, 2005, and shall apply to all causes of action
132 filed on or after that date.