

By: Senator(s) Burton

To: Judiciary, Division A

SENATE BILL NO. 2046

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..... \$50.00

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, 2005.