

By: Representative Chism

To: Judiciary A

HOUSE BILL NO. 173

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, 2006, and shall apply to all causes of action  
132 filed on or after that date.