

By: Representatives Gunn, Fleming

To: Judiciary B

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 413

1 AN ACT TO PROVIDE FOR THE ABANDONMENT OF ACTIONS IN TRIAL AND  
2 APPELLATE COURTS; TO PROVIDE FOR A MOTION TO SET ASIDE A  
3 DISMISSAL; TO PROVIDE FOR AN APPEAL OF AN ORDER OF DISMISSAL; AND  
4 FOR RELATED PURPOSES.

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

6 **SECTION 1.** (1) An action is abandoned when the parties fail  
7 to take any step in its prosecution or defense in the trial court  
8 for a period of three (3) years, unless it is a succession  
9 proceeding:

10 (a) Which has been opened;

11 (b) In which an administrator or executor has been  
12 appointed; or

13 (c) In which a testament has been probated.

14 (2) This provision shall be operative without formal order,  
15 but, on motion of any party or other interested person by  
16 affidavit which provides that no step has been taken for a period  
17 of three (3) years in the prosecution or defense of the action,  
18 the trial court shall enter a formal order of dismissal as of the  
19 date of its abandonment. The sheriff shall serve the order and  
20 shall execute a return.

21 (3) A motion to set aside a dismissal may be made in  
22 accordance with the Mississippi Rules of Civil Procedure. If the  
23 trial court denies a timely motion to set aside the dismissal, the  
24 clerk of the court shall give notice of the order of denial and  
25 shall file a certificate of such order.

26 (4) An appeal of an order of dismissal may be taken in  
27 accordance with the Mississippi Rules of Appellate Procedure. An

28 appeal of an order of denial may be taken only within sixty (60)  
29 days of the date of the clerk's mailing of the order of denial.

30 (5) Any formal discovery served on all parties whether or  
31 not filed of record, including the taking of a deposition with or  
32 without formal notice, shall be deemed to be a step in the  
33 prosecution or defense of an action.

34 (6) An appeal is abandoned when the parties fail to take any  
35 step in its prosecution or disposition for the period provided in  
36 the rules of the appellate court.

37 **SECTION 2.** This act shall take effect and be in force from  
38 and after July 1, 2006, and shall apply only to causes of action  
39 accruing on or after that date.