

By: Representatives Gunn, Fleming

To: Judiciary B

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 ex parte 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 only
22 within thirty (30) days of the date of the sheriff's service of
23 the order of dismissal. If the trial court denies a timely motion
24 to set aside the dismissal, the clerk of the court shall give
25 notice of the order of denial and shall file a certificate of such
26 order.

27 (4) An appeal of an order of dismissal may be taken only
28 within sixty (60) days of the date of the sheriff's service of the

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

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

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

39 **SECTION 2.** This act shall take effect and be in force from
40 and after July 1, 2006.