

By: Representatives Horne, Arinder

To: Judiciary A

HOUSE BILL NO. 722

1 AN ACT TO AMEND SECTIONS 13-5-23, 13-5-25, 13-5-28, 13-5-33,
2 13-5-34, 13-5-35, 25-7-61 AND 33-1-5, MISSISSIPPI CODE OF 1972,
3 AND SECTION 20, LAWS OF THE FIRST EXTRAORDINARY SESSION OF 2004;
4 TO DELAY IMPLEMENTATION OF THE JURY PATRIOT ACT; AND FOR RELATED
5 PURPOSES.

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

7 **SECTION 1.** Section 13-5-23, Mississippi Code of 1972, is
8 amended as follows:

9 **[Until January 1, 2008, this section shall read as follows:]**

10 13-5-23. All qualified persons shall be liable to serve as
11 jurors, unless excused by the court for one (1) of the following
12 causes:

13 (a) When the juror is ill, or when on account of
14 serious illness in the juror's family, the presence of the juror
15 is required at home,

16 (b) When the juror's attendance would cause a serious
17 financial loss to the juror or to the juror's business, or

18 (c) When the juror is under an emergency, fairly
19 equivalent to those mentioned in the foregoing paragraphs (a) and
20 (b).

21 An excuse of illness under paragraph (a) may be made to the
22 clerk of court outside of open court by providing the clerk with
23 either a certificate of a licensed physician or an affidavit of
24 the juror, stating that the juror is ill or that there is a
25 serious illness in the juror's family. The test of an excuse
26 under paragraph (b) shall be whether, if the juror were
27 incapacitated by illness or otherwise for a week, some other
28 persons would be available or could reasonably be procured to

29 carry on the business for the week, and the test of an excuse
30 under paragraph (c) shall be such as to be the fair equivalent,
31 under the circumstances of that prescribed under paragraph (b).
32 In cases under paragraphs (b) and (c) the excuse must be made by
33 the juror, in open court, under oath.

34 It shall be unlawful for any employer or other person to
35 persuade or attempt to persuade any juror to avoid jury service,
36 or to intimidate or to threaten any juror in that respect. So to
37 do shall be deemed an interference with the administration of
38 justice and a contempt of court and punishable as such.

39 But a tales juror, save when drawn and retained for the week,
40 shall not be compelled to serve two (2) days successively unless
41 the case in which the juror is impaneled continues longer than one
42 (1) day. Grand jurors shall serve until discharged by the court.

43 **[From and after January 1, 2008, this section shall read as**
44 **follows:]**

45 13-5-23. (1) All qualified persons shall be liable to serve
46 as jurors, unless excused by the court for one (1) of the
47 following causes:

48 (a) When the juror is ill and, on account of the
49 illness, is incapable of performing jury service; or

50 (b) When the juror's attendance would cause undue or
51 extreme physical or financial hardship to the prospective juror or
52 a person under his or her care or supervision.

53 (2) An excuse of illness under subsection (1)(a) of this
54 section may be made to the clerk of court outside of open court by
55 providing the clerk with a certificate of a licensed physician,
56 stating that the juror is ill and is unfit for jury service, in
57 which case the clerk may excuse the juror. If the excuse of
58 illness is not supported by a physician's certificate, a judge of
59 the court for which the individual was called to jury service
60 shall decide whether to excuse an individual under subsection
61 (1)(a) of this section.

62 (3) (a) The test of an excuse under subsection (1)(b) of
63 this section for undue or extreme physical or financial hardship
64 shall be whether the individual would either:

65 (i) Be required to abandon a person under his or
66 her personal care or supervision due to the impossibility of
67 obtaining an appropriate substitute caregiver during the period of
68 participation in the jury pool or on the jury; or

69 (ii) Incur costs that would have a substantial
70 adverse impact on the payment of the individual's necessary daily
71 living expenses or on those for whom he or she provides the
72 principal means of support; or

73 (iii) Suffer physical hardship that would result
74 in illness or disease.

75 (b) "Undue or extreme physical or financial hardship"
76 does not exist solely based on the fact that a prospective juror
77 will be required to be absent from his or her place of employment
78 or business.

79 (c) A judge of the court for which the individual was
80 called to jury service shall decide whether to excuse an
81 individual under subsection (1)(b) of this section.

82 (d) A person asking to be excused based on a finding of
83 undue or extreme physical or financial hardship must take all
84 actions necessary to have obtained a ruling on that request by no
85 later than the date on which the individual is scheduled to appear
86 for jury duty.

87 (e) A person asking a judge to grant an excuse under
88 subsection (1)(b) of this section shall be required to provide the
89 judge with documentation such as, but not limited to, federal and
90 state income tax returns, medical statements from licensed
91 physicians, proof of dependency or guardianship and similar
92 documents, which the judge finds to clearly support the request to
93 be excused. Failure to provide satisfactory documentation shall
94 result in a denial of the request to be excused.

95 (4) After two (2) years, a person excused from jury service
96 shall become eligible once again for qualification as a juror
97 unless the person was excused from service permanently. A person
98 is excused from jury service permanently only when the deciding
99 judge determines that the underlying grounds for being excused are
100 of a permanent nature.

101 (5) A tales juror shall not be compelled to serve two (2)
102 days successively unless the case in which the juror is impaneled
103 continues longer than one (1) day. Grand jurors shall serve until
104 discharged by the court.

105 **SECTION 2.** Section 13-5-25, Mississippi Code of 1972, is
106 amended as follows:

107 **[Until January 1, 2008, this section shall read as follows:]**

108 13-5-25. Every citizen over sixty-five (65) years of age,
109 and everyone who has served on the regular panel as a juror in the
110 actual trial of one or more litigated cases within two (2) years,
111 shall be exempt from service if he claims the privilege; but the
112 latter class shall serve as talesmen, and on special venire, and
113 on the regular panel, if there be a deficiency of jurors. No
114 qualified juror shall be excluded because of any such reasons, but
115 the same shall be a personal privilege to be claimed by any person
116 selected for jury duty. Any citizen over sixty-five (65) years of
117 age may claim this personal privilege outside of open court by
118 providing the clerk of court with information that allows the
119 clerk to determine the validity of the claim.

120 Provided, however, that no person who has served on the
121 regular panel as a juror in the actual trial of one or more
122 litigated cases in one (1) court may claim the exemption in any
123 other court where he may be called to serve.

124 **[From and after January 1, 2008, this section shall read as**
125 **follows:]**

126 13-5-25. Every citizen over sixty-five (65) years of age,
127 and everyone who has served on the regular panel as a juror in the

128 actual trial of one or more litigated cases within two (2) years,
129 shall be exempt from service if he claims the privilege. No
130 qualified juror shall be excluded because of any such reasons, but
131 the same shall be a personal privilege to be claimed by any person
132 selected for jury duty. Any citizen over sixty-five (65) years of
133 age may claim this personal privilege outside of open court by
134 providing the clerk of court with information that allows the
135 clerk to determine the validity of the claim.

136 Provided, however, that no person who has served on the
137 regular panel as a juror in the actual trial of one or more
138 litigated cases in one (1) court may claim the exemption in any
139 other court where he may be called to serve.

140 **SECTION 3.** Section 13-5-28, Mississippi Code of 1972, is
141 amended as follows:

142 **[Until January 1, 2008, this section shall read as follows:]**

143 13-5-28. If a grand, petit or other jury is ordered to be
144 drawn, the clerk thereafter shall cause each person drawn for jury
145 service to be served with a summons, either personally or by mail,
146 addressed to him at his usual residence, business or post office
147 address, requiring him to report for jury service at a specified
148 time and place.

149 **[From and after January 1, 2008, this section shall read as
150 follows:]**

151 13-5-28. If a grand, petit or other jury is ordered to be
152 drawn, the clerk thereafter shall cause each person drawn for jury
153 service to be served with a summons, either personally or by mail,
154 addressed to him at his usual residence, business or post office
155 address, requiring him to report for jury service at a specified
156 time and place. The summons shall include instructions to the
157 potential jurors that explain, in layman's terms, the provisions
158 of Section 13-5-23.

159 **SECTION 4.** Section 13-5-33, Mississippi Code of 1972, is
160 amended as follows:

161 **[Until January 1, 2008, this section shall read as follows:]**

162 13-5-33. Repealed by Laws, 1974, Chapter 378, Section 11,
163 effective from and after January 1, 1975.

164 **[From and after January 1, 2008, this section shall read as**
165 **follows:]**

166 13-5-33. (1) Notwithstanding any other provisions of this
167 chapter, individuals scheduled to appear for jury service have the
168 right to postpone the date of their initial appearance for jury
169 service one (1) time only. Postponements shall be granted upon
170 request, provided that:

171 (a) The juror has not been granted a postponement
172 within the past two (2) years;

173 (b) The prospective juror appears in person or contacts
174 the clerk of the court by telephone, electronic mail or in writing
175 to request a postponement; and

176 (c) Prior to the grant of a postponement with the
177 concurrence of the clerk of the court, the prospective juror fixes
178 a date certain to appear for jury service that is not more than
179 six (6) months or two (2) terms of court after the date on which
180 the prospective juror originally was called to serve and on which
181 date the court will be in session, whichever is the longer period.

182 (2) A subsequent request to postpone jury service may be
183 approved by a judicial officer only in the event of an extreme
184 emergency, such as a death in the family, sudden illness, or a
185 natural disaster or a national emergency in which the prospective
186 juror is personally involved, that could not have been anticipated
187 at the time the initial postponement was granted. Prior to the
188 grant of a second postponement, the prospective juror must fix a
189 date certain on which the individual will appear for jury service
190 within six (6) months or two (2) terms of court after the
191 postponement on a date when the court will be in session.

192 (3) The Administrative Office of Courts shall promulgate
193 rules for the implementation of this section.

194 **SECTION 5.** Section 13-5-34, Mississippi Code of 1972, is
195 amended as follows:

196 **[Until January 1, 2008, this section shall read as follows:]**

197 13-5-34. A person summoned for jury service who fails to
198 appear or to complete jury service as directed shall be ordered by
199 the court to appear forthwith and show cause for his failure to
200 comply with the summons. If he fails to show good cause for
201 noncompliance with the summons he is guilty of criminal contempt
202 and upon conviction may be fined not more than One Hundred Dollars
203 (\$100.00) or imprisoned not more than three (3) days, or both.

204 **[From and after January 1, 2008, this section shall read as**
205 **follows:]**

206 13-5-34. (1) A person summoned for jury service who fails
207 to appear or to complete jury service as directed, and who has
208 failed to obtain a postponement in compliance with the provisions
209 for requesting a postponement, or who fails to appear on the date
210 set pursuant to Section 13-5-33, shall be ordered by the court to
211 appear forthwith and show cause for his failure to comply with the
212 summons. If he fails to show good cause for noncompliance with
213 the summons he is in civil contempt of court and may be fined not
214 more than Five Hundred Dollars (\$500.00) or imprisoned not more
215 than three (3) days, or both. The prospective juror may be
216 excused from paying sanctions for good cause shown or in the
217 interest of justice.

218 (2) In addition to, or in lieu of, the fine or imprisonment
219 provided in subsection (1) of this section, the court may order
220 that the prospective juror complete a period of community service
221 for a period no less than if the prospective juror would have
222 completed jury service, and provide proof of completion of this
223 community service to the court.

224 **SECTION 6.** Section 13-5-35, Mississippi Code of 1972, is
225 amended as follows:

226 **[Until January 1, 2008, this section shall read as follows:]**

227 13-5-35. Repealed by Laws, 1974, Chapter 378, Section 11,
228 effective from and after January 1, 1975.

229 **[From and after January 1, 2008, this section shall read as**
230 **follows:]**

231 13-5-35. (1) It shall be unlawful for any employer or any
232 other person to persuade or attempt to persuade any juror to avoid
233 jury service; to intimidate or to threaten any juror in that
234 respect; or to remove or otherwise subject an employee to adverse
235 employment action as a result of jury service if the employee
236 notifies his or her employer that he or she has been summoned to
237 serve as a juror within a reasonable period of time after receipt
238 of a summons.

239 (2) It shall be unlawful for an employer to require or
240 request an employee to use annual, vacation or sick leave for time
241 spent responding to a summons for jury duty, time spent
242 participating in the jury selection process, or time spent
243 actually serving on a jury. Nothing in this provision shall be
244 construed to require an employer to provide annual, vacation or
245 sick leave to employees under the provisions of this statute who
246 otherwise are not entitled to such benefits under company
247 policies.

248 (3) Any violation of subsection (1) or (2) of this section
249 shall be deemed an interference with the administration of justice
250 and a contempt of court and punishable as such.

251 (4) A court shall automatically postpone and reschedule the
252 service of a summoned juror employed by an employer with five (5)
253 or fewer full-time employees, or their equivalent, if another
254 employee of that employer has previously been summoned to appear
255 during the same period. Such postponement will not constitute the
256 excused individual's right to one (1) automatic postponement under
257 Section 13-5-24.

258 **SECTION 7.** Section 25-7-61, Mississippi Code of 1972, is
259 amended as follows:

260 **[Effective until January 1, 2008, this section shall read as**
261 **follows:]**

262 25-7-61. (1) Fees of jurors shall be payable as follows:

263 (a) Grand jurors and petit jurors in the chancery,
264 county, circuit and special eminent domain courts shall be paid an
265 amount to be set by the board of supervisors, not to be less than
266 Twenty-five Dollars (\$25.00) per day and not to be greater than
267 Forty Dollars (\$40.00) per day, plus mileage authorized in Section
268 25-3-41. In the trial of all cases where jurors are in charge of
269 bailiffs and are not permitted to separate, the sheriff with the
270 approval of the trial judge may pay for room and board of jurors
271 on panel for actual time of trial.

272 No grand juror shall receive any compensation except mileage
273 unless he shall have been sworn as provided by Section 13-5-45;
274 and no petit juror except those jurors called on special venires
275 shall receive any compensation authorized under this subsection
276 except mileage unless he shall have been sworn as provided by
277 Section 13-5-71.

278 (b) Jurors making inquisitions of idiocy, lunacy or of
279 unsound mind and jurors on coroner's inquest shall be paid Five
280 Dollars (\$5.00) per day plus mileage authorized in Section 25-3-41
281 by the county treasurer on order of the board of supervisors on
282 certificate of the clerk of the chancery court in which such
283 inquisition is held.

284 (c) Jurors in the justice courts shall be paid an
285 amount of not less than Ten Dollars (\$10.00) per day and not more
286 than Fifteen Dollars (\$15.00) per day, to be established by the
287 board of supervisors. In all criminal cases in the justice court
288 wherein the prosecution fails, the fees of jurors shall be paid by
289 the county treasurer on order of the board of supervisors on
290 certificate of the county attorney in all counties that have
291 county attorneys, otherwise by the justice court judge.

292 (2) Any juror may return the fees provided as compensation
293 for service as a juror to the county which paid for such person's
294 service as a juror. The fees returned to the county may be
295 earmarked for a particular purpose to be selected by the juror,
296 including:

297 (a) The local public library;

298 (b) Local law enforcement;

299 (c) The Mississippi Fire Fighters Memorial Burn Center
300 fund created in Section 7-9-70, Mississippi Code of 1972; or

301 (d) Any other governmental agency.

302 **[Effective from and after January 1, 2008, this section shall**
303 **read as follows:]**

304 25-7-61. (1) Fees of jurors shall be payable as follows:

305 (a) Grand jurors and petit jurors in the chancery,
306 county, circuit and special eminent domain courts shall be paid an
307 amount to be set by the board of supervisors, not to be less than
308 Twenty-five Dollars (\$25.00) per day and not to be greater than
309 Forty Dollars (\$40.00) per day, plus mileage authorized in Section
310 25-3-41. In the trial of all cases where jurors are in charge of
311 bailiffs and are not permitted to separate, the sheriff with the
312 approval of the trial judge may pay for room and board of jurors
313 on panel for actual time of trial.

314 No grand juror shall receive any compensation except mileage
315 unless he shall have been sworn as provided by Section 13-5-45;
316 and no petit juror except those jurors called on special venires
317 shall receive any compensation authorized under this subsection
318 except mileage unless he shall have been sworn as provided by
319 Section 13-5-71.

320 (b) Jurors making inquisitions of idiocy, lunacy or of
321 unsound mind and jurors on coroner's inquest shall be paid Five
322 Dollars (\$5.00) per day plus mileage authorized in Section 25-3-41
323 by the county treasurer on order of the board of supervisors on

324 certificate of the clerk of the chancery court in which such
325 inquisition is held.

326 (c) Jurors in the justice courts shall be paid an
327 amount of not less than Ten Dollars (\$10.00) per day and not more
328 than Fifteen Dollars (\$15.00) per day, to be established by the
329 board of supervisors. In all criminal cases in the justice court
330 wherein the prosecution fails, the fees of jurors shall be paid by
331 the county treasurer on order of the board of supervisors on
332 certificate of the county attorney in all counties that have
333 county attorneys, otherwise by the justice court judge.

334 (2) Any juror may return the fees provided as compensation
335 for service as a juror to the county which paid for such person's
336 service as a juror. The fees returned to the county may be
337 earmarked for a particular purpose to be selected by the juror,
338 including:

339 (a) The local public library;

340 (b) Local law enforcement;

341 (c) The Mississippi Fire Fighters Memorial Burn Center
342 Fund created in Section 7-9-70, Mississippi Code of 1972; or

343 (d) Any other governmental agency.

344 (3) The Administrative Office of Courts shall promulgate
345 rules to establish a Lengthy Trial Fund to be used to provide full
346 or partial wage replacement or wage supplementation to jurors who
347 serve as petit jurors in civil cases for more than ten (10) days.

348 (a) The court rules shall provide for the following:

349 (i) The selection and appointment of an
350 administrator for the fund.

351 (ii) Procedures for the administration of the
352 fund, including payments of salaries of the administrator and
353 other necessary personnel.

354 (iii) Procedures for the accounting, auditing and
355 investment of money in the Lengthy Trial Fund.

356 (iv) A report by the Administrative Office of
357 Courts on the administration of the Lengthy Trial Fund in its
358 annual report on the judicial branch, setting forth the money
359 collected for and disbursed from the fund.

360 (b) The administrator shall use any monies deposited in
361 the Lengthy Trial Fund to pay full or partial wage replacement or
362 supplementation to jurors whose employers pay less than full
363 regular wages when the period of jury service lasts more than ten
364 (10) days.

365 (c) To the extent funds are available in the Lengthy
366 Trial Fund, and in accordance with any rules or regulations
367 promulgated by the Administrative Office of Courts, the court may
368 pay replacement or supplemental wages out of the Lengthy Trial
369 Fund not to exceed Three Hundred Dollars (\$300.00) per day per
370 juror beginning on the eleventh day of jury service. In addition,
371 for any jurors who qualify for payment by virtue of having served
372 on a jury for more than ten (10) days, the court, upon finding
373 that such service posed a significant financial hardship to a
374 juror, even in light of payments made with respect to jury service
375 after the tenth day, may award replacement or supplemental wages
376 out of the Lengthy Trial Fund not to exceed One Hundred Dollars
377 (\$100.00) per day from the fourth to the tenth day of jury
378 service.

379 (d) Any juror who is serving or has served on a jury
380 that qualifies for payment from the Lengthy Trial Fund, provided
381 the service commenced on or after January 1, 2007, may submit a
382 request for payment from the Lengthy Trial Fund on a form that the
383 administrator provides. Payment shall be limited to the
384 difference between the jury fee specified in subsection (1) of
385 this section and the actual amount of wages a juror earns, up to
386 the maximum level payable, minus any amount the juror actually
387 receives from the employer during the same time period.

388 (i) The form shall disclose the juror's regular
389 wages, the amount the employer will pay during the term of jury
390 service starting on the eleventh day and thereafter, the amount of
391 replacement or supplemental wages requested, and any other
392 information the administrator deems necessary for proper payment.

393 (ii) The juror also shall be required to submit
394 verification from the employer as to the wage information provided
395 to the administrator, for example, the employee's most recent
396 earnings statement or similar document, prior to initiation of
397 payment from the fund.

398 (iii) If an individual is self-employed or
399 receives compensation other than wages, the individual may provide
400 a sworn affidavit attesting to his or her approximate gross weekly
401 income, together with such other information as the administrator
402 may require, in order to verify weekly income.

403 (4) Nothing in this section shall be construed to impose an
404 obligation on any county to place monies in the Lengthy Trial Fund
405 or to pay replacement or supplemental wages to any juror from
406 county funds.

407 **SECTION 8.** Section 33-1-5, Mississippi Code of 1972, is
408 amended as follows:

409 **[Effective until January 1, 2008, this section shall read as**
410 **follows:]**

411 33-1-5. Any member of the Mississippi National Guard shall
412 be exempt from jury duty upon presenting a current written
413 statement from his superior officer that such jury service will be
414 likely to interfere with his military duties.

415 **[Effective from and after January 1, 2008, this section shall**
416 **read as follows:]**

417 33-1-5. Any member of the Mississippi National Guard on
418 active duty shall be exempt from jury duty upon presenting a
419 current written statement from his superior officer that such jury
420 service will be likely to interfere with his military duties.

421 **SECTION 9.** Section 20, Laws of the First Extraordinary
422 Session of 2004, is amended as follows:

423 Section 20. Sections 8 through 15 of this act shall take
424 effect and be in force from and after January 1, 2008; the
425 remainder of this act shall take effect and be in force from and
426 after September 1, 2004, and Sections 1 through 7 of this act
427 shall apply to all causes of action filed on or after September 1,
428 2004.

429 **SECTION 10.** This act shall take effect and be in force from
430 and after July 1, 2006.