

By: Senator(s) Ross

To: Judiciary, Division A

SENATE BILL NO. 2488

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, TO
 3 REVISE THE JURY PATRIOT ACT, WHICH PROVIDES THAT POTENTIAL JURORS
 4 CAN ONLY BE EXCUSED FROM SERVICE FOR ILLNESS OR UNDUE HARDSHIP,
 5 LIMITS THE FREQUENCY OF JURY SERVICE, REQUIRES NOTICE OF JURY
 6 SERVICE EXEMPTION ENTITLEMENT TO BE INCLUDED IN JUROR SUMMONSES,
 7 ALLOW JUROR POSTPONEMENT FOR ONE TIME ONLY, PROVIDES EMPLOYMENT
 8 PROTECTIONS FOR JURORS, REVISES THE PUNISHMENT FOR FAILURE TO
 9 APPEAR FOR JURY SERVICE, CREATES A LENGTHY TRIAL FUND AND
 10 ELIMINATES CERTAIN JUROR EXEMPTIONS, TO DELAY THE EFFECTIVE DATE
 11 FOR ONE YEAR UNTIL JANUARY 1, 2008; AND FOR RELATED PURPOSES.

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

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

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

16 13-5-23. All qualified persons shall be liable to serve as
 17 jurors, unless excused by the court for one (1) of the following
 18 causes:

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

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

24 (c) When the juror is under an emergency, fairly
 25 equivalent to those mentioned in the foregoing paragraphs (a) and
 26 (b).

27 An excuse of illness under paragraph (a) may be made to the
 28 clerk of court outside of open court by providing the clerk with
 29 either a certificate of a licensed physician or an affidavit of
 30 the juror, stating that the juror is ill or that there is a
 31 serious illness in the juror's family. The test of an excuse

32 under paragraph (b) shall be whether, if the juror were
33 incapacitated by illness or otherwise for a week, some other
34 persons would be available or could reasonably be procured to
35 carry on the business for the week, and the test of an excuse
36 under paragraph (c) shall be such as to be the fair equivalent,
37 under the circumstances of that prescribed under paragraph (b).
38 In cases under paragraphs (b) and (c) the excuse must be made by
39 the juror, in open court, under oath.

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

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

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

51 13-5-23. (1) All qualified persons shall be liable to serve
52 as jurors, unless excused by the court for one (1) of the
53 following causes:

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

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

59 (2) An excuse of illness under subsection (1)(a) of this
60 section may be made to the clerk of court outside of open court by
61 providing the clerk with a certificate of a licensed physician,
62 stating that the juror is ill and is unfit for jury service, in
63 which case the clerk may excuse the juror. If the excuse of
64 illness is not supported by a physician's certificate, a judge of

65 the court for which the individual was called to jury service
66 shall decide whether to excuse an individual under subsection
67 (1)(a) of this section.

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

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

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

79 (iii) Suffer physical hardship that would result
80 in illness or disease.

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

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

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

93 (e) A person asking a judge to grant an excuse under
94 subsection (1)(b) of this section shall be required to provide the
95 judge with documentation such as, but not limited to, federal and
96 state income tax returns, medical statements from licensed
97 physicians, proof of dependency or guardianship and similar

98 documents, which the judge finds to clearly support the request to
99 be excused. Failure to provide satisfactory documentation shall
100 result in a denial of the request to be excused.

101 (4) After two (2) years, a person excused from jury service
102 shall become eligible once again for qualification as a juror
103 unless the person was excused from service permanently. A person
104 is excused from jury service permanently only when the deciding
105 judge determines that the underlying grounds for being excused are
106 of a permanent nature.

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

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

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

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

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

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

132 13-5-25. Every citizen over sixty-five (65) years of age,
133 and everyone who has served on the regular panel as a juror in the
134 actual trial of one or more litigated cases within two (2) years,
135 shall be exempt from service if he claims the privilege. No
136 qualified juror shall be excluded because of any such reasons, but
137 the same shall be a personal privilege to be claimed by any person
138 selected for jury duty. Any citizen over sixty-five (65) years of
139 age may claim this personal privilege outside of open court by
140 providing the clerk of court with information that allows the
141 clerk to determine the validity of the claim.

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

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

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

149 13-5-28. If a grand, petit or other jury is ordered to be
150 drawn, the clerk thereafter shall cause each person drawn for jury
151 service to be served with a summons, either personally or by mail,
152 addressed to him at his usual residence, business or post office
153 address, requiring him to report for jury service at a specified
154 time and place.

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

157 13-5-28. If a grand, petit or other jury is ordered to be
158 drawn, the clerk thereafter shall cause each person drawn for jury
159 service to be served with a summons, either personally or by mail,
160 addressed to him at his usual residence, business or post office
161 address, requiring him to report for jury service at a specified
162 time and place. The summons shall include instructions to the

163 potential jurors that explain, in layman's terms, the provisions
164 of Section 13-5-23.

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

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

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

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

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

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

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

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

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

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

200 13-5-34. A person summoned for jury service who fails to
201 appear or to complete jury service as directed shall be ordered by
202 the court to appear forthwith and show cause for his failure to
203 comply with the summons. If he fails to show good cause for
204 noncompliance with the summons he is guilty of criminal contempt
205 and upon conviction may be fined not more than One Hundred Dollars
206 (\$100.00) or imprisoned not more than three (3) days, or both.

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

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

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

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

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 * * * Burn Care Fund created in
300 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 * * * Burn Care Fund created in
342 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, 2008, 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.** This act shall take effect and be in force from
422 and after its passage.