

By: Representatives Brown, Boyd, Criswell,  
Hopkins

To: Judiciary A

HOUSE BILL NO. 1263

1 AN ACT TO AUTHORIZE A PRESIDING JUDGE TO ASSESS COSTS BETWEEN  
 2 ALL LITIGANTS AND APPORTION COSTS AS THE JUDGE DEEMS NECESSARY; TO  
 3 REQUIRE THE COURT TO AWARD THE PARTY OR PARTIES AGAINST WHOM THE  
 4 DISMISSED CLAIMS WERE PENDING AT THE TIME THE SUCCESSFUL MOTION TO  
 5 DISMISS WAS GRANTED THE COSTS AND REASONABLE AND NECESSARY  
 6 ATTORNEY'S FEES INCURRED IN THE PROCEEDINGS AS A CONSEQUENCE OF  
 7 THE DISMISSED CLAIMS BY THAT PARTY OR PARTIES; TO REQUIRE THE  
 8 AWARDED COSTS AND FEES TO BE PAID BY THE PARTY OR PARTIES WHOSE  
 9 CLAIM OR CLAIMS WERE DISMISSED AS A RESULT OF THE GRANTED MOTION  
 10 TO DISMISS; TO AMEND SECTIONS 11-55-5 AND 11-55-7, MISSISSIPPI  
 11 CODE OF 1972, TO CONFORM TO THE PRECEDING SECTION; AND FOR RELATED  
 12 PURPOSES.

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

14 **SECTION 1.** (1) In all civil cases, whether tried by a jury  
 15 or before the court without a jury, the presiding judge shall have  
 16 a right to adjudge the cost.

17 (2) In doing so, the presiding judge shall be authorized, in  
 18 the presiding judge's discretion, to apportion the cost between  
 19 the litigants, as in the presiding judge's opinion the equities of  
 20 the case demand.

21 (3) (a) Notwithstanding subsection (1) or (2), in a civil  
 22 proceeding, where a trial court grants a motion to dismiss  
 23 pursuant to the Mississippi Rules of Civil Procedure for failure



24 to state a claim upon which relief may be granted, the court shall  
25 award the party or parties against whom the dismissed claims were  
26 pending at the time the successful motion to dismiss was granted  
27 the costs and reasonable and necessary attorney's fees incurred in  
28 the proceedings as a consequence of the dismissed claims by that  
29 party or parties.

30 The awarded costs and fees shall be paid by the party or  
31 parties whose claim or claims were dismissed as a result of the  
32 granted motion to dismiss.

33 (b) Costs shall include all reasonable and necessary  
34 litigation costs actually incurred due to the proceedings that  
35 resulted from the filing of the dismissed claims, including, but  
36 not limited to:

- 37 (i) Court costs;
- 38 (ii) Attorney's fees;
- 39 (iii) Court reporter fees;
- 40 (iv) Interpreter fees; and
- 41 (v) Guardian ad litem fees.

42 (c) An award of costs pursuant to this subsection (c)  
43 shall be made only after all appeals of the issue of the granting  
44 of the motion to dismiss have been exhausted and if the final  
45 outcome is the granting of the motion to dismiss. The award of  
46 costs and attorney's fees pursuant to this section shall be stayed  
47 until a final decision which is not subject to appeal is rendered.



48           (d) Notwithstanding any other provision of this act,  
49 the court shall not require a party to pay costs under this  
50 section in excess of a combined total of ten thousand dollars  
51 (\$10,000) in any single lawsuit. Where multiple parties are  
52 entitled to recover their costs from a single party under this  
53 section and those parties' combined actual costs under this  
54 section exceed ten thousand dollars (\$10,000), then the court  
55 shall apportion the awarded costs to the moving parties in  
56 proportion to the amount of each moving party's incurred costs  
57 unless agreed otherwise by the moving parties. Nothing in this  
58 section shall be construed to limit the award of costs as provided  
59 for in other sections of the code or at common law.

60           (e) This subsection (3) shall not apply to:

61                   (i) Actions by or against the state, other  
62 governmental entities, or public officials acting in their  
63 official capacity or under color of law;

64                   (ii) Any claim that is dismissed by the granting  
65 of a motion to dismiss that was filed more than sixty (60) days  
66 after the moving party received service of the latest complaint,  
67 counter-complaint or cross-complaint in which that dismissed claim  
68 was made;

69                   (iii) Any claim that the party against whom the  
70 motion to dismiss was filed withdrew, or in good faith amended to  
71 state a claim upon which relief may be granted; however, this  
72 subparagraph (3)(e)(iii) shall not apply unless a pleading



73 providing notice of the withdrawal or amendment was filed with the  
74 court and delivered to the opposing party or parties at least  
75 three (3) days before the date set for the hearing of the motion  
76 to dismiss or by the deadline for the filing of a response to the  
77 motion to dismiss, whichever is earlier. Nothing in this section  
78 shall be construed to prevent a party from striking its own motion  
79 to dismiss;

80 (iv) Actions by pro se litigants, except where the  
81 court also finds that the pro se party acted unreasonably in  
82 bringing, or refusing to voluntarily withdraw, the dismissed  
83 claim;

84 (v) Any claim which is a good faith, nonfrivolous  
85 claim filed for the express purpose of extending, modifying, or  
86 reversing existing precedent, law or regulation, or for the  
87 express purpose of establishing the meaning, lawfulness or  
88 constitutionality of a law, regulation or United States or  
89 Mississippi constitutional right where the meaning, lawfulness or  
90 constitutionality is a matter of first impression that has not  
91 been established by precedent in a published opinion by the  
92 Mississippi Supreme Court, court of appeals, court of criminal  
93 appeals, a United States district court in Mississippi, or by the  
94 United States Supreme Court. This subparagraph (3)(e)(v) shall  
95 not apply unless at the time the successful motion to dismiss was  
96 filed by the party that made the dismissed claim had specially  
97 pleaded in its latest complaint, counter-complaint or



98 cross-complaint that the dismissed claim was made for one (1) of  
99 the express purposes listed above and cited the contrary precedent  
100 or interpretation the party seeks to distinguish or overcome, or  
101 whether the issue to be decided is a matter of first impression as  
102 described in this subparagraph (3) (e) (v); or

103 (vi) Any claim for which relief could be granted  
104 under a law, a court precedent published by a court described in  
105 subparagraph (3) (e) (v), or a regulation, that was in effect and  
106 applicable to the claim at the time the motion to dismiss was  
107 filed; where that law, precedent or regulation was cited in the  
108 pleading in which the dismissed claim was made or in the response  
109 to the motion to dismiss; and where the motion to dismiss the  
110 claim was granted due to the subsequent repeal, amendment,  
111 overruling or distinguishing of that law, regulation or published  
112 court precedent.

113 (f) This section shall not be construed to limit the  
114 ability of any court to dismiss a claim or assess costs against a  
115 party whose claim has been dismissed, where permitted or required  
116 by other law, court rule or at common law.

117 **SECTION 2.** Section 11-55-5, Mississippi Code of 1972, is  
118 amended as follows:

119 11-55-5. (1) Except as otherwise provided in this chapter,  
120 in any civil action commenced or appealed in any court of record  
121 in this state, the court shall award, as part of its judgment and  
122 in addition to any other costs otherwise assessed, reasonable



123 attorney's fees and costs against any party or attorney if the  
124 court, upon the motion of any party or on its own motion, finds  
125 that an attorney or party brought an action, or asserted any claim  
126 or defense, that is without substantial justification, or that the  
127 action, or any claim or defense asserted, was interposed for delay  
128 or harassment, or if it finds that an attorney or party  
129 unnecessarily expanded the proceedings by other improper conduct  
130 including, but not limited to, abuse of discovery procedures  
131 available under the Mississippi Rules of Civil Procedure; or if  
132 the claim was dismissed as provided in Section 1 of this act.

133 (2) No attorney's fees or costs shall be assessed if a  
134 voluntary dismissal is filed as to any action, claim or defense  
135 within a reasonable time after the attorney or party filing the  
136 action, claim or defense knows or reasonably should have known  
137 that it would not prevail on the action, claim or defense.

138 (3) When a court determines reasonable attorney's fees or  
139 costs should be assessed, it shall assess the payment against the  
140 offending attorneys or parties, or both, and in its discretion may  
141 allocate the payment among them, as it determines most just, and  
142 may assess the full amount or any portion to any offending  
143 attorney or party.

144 (4) No party, except an attorney licensed to practice law in  
145 this state, who is appearing without an attorney shall be assessed  
146 attorney's fees unless the court finds that the party clearly knew



147 or reasonably should have known that such party's action, claim or  
148 defense or any part of it was without substantial justification.

149 **SECTION 3.** Section 11-55-7, Mississippi Code of 1972, is  
150 amended as follows:

151 11-55-7. In determining the amount of an award of costs or  
152 attorney's fees, the court shall exercise its sound discretion.  
153 When granting an award of costs and attorney's fees, the court  
154 shall specifically set forth the reasons for such award and shall  
155 consider the following factors, among others, in determining  
156 whether to assess attorney's fees and costs and the amount to be  
157 assessed:

158 (a) The extent to which any effort was made to  
159 determine the validity of any action, claim or defense before it  
160 was asserted, and the time remaining within which the claim or  
161 defense could be filed;

162 (b) The extent of any effort made after the  
163 commencement of an action to reduce the number of claims being  
164 asserted or to dismiss claims that have been found not to be  
165 valid;

166 (c) The availability of facts to assist in determining  
167 the validity of an action, claim or defense;

168 (d) Whether or not the action was prosecuted or  
169 defended, in whole or in part, in bad faith or for improper  
170 purpose;



171 (e) Whether or not issues of fact, determinative of the  
172 validity of a party's claim or defense, were reasonably in  
173 conflict;

174 (f) The extent to which the party prevailed with  
175 respect to the amount of and number of claims or defenses in  
176 controversy;

177 (g) The extent to which any action, claim or defense  
178 was asserted by an attorney or party in a good faith attempt to  
179 establish a new theory of law in the state, which purpose was made  
180 known to the court at the time of filing;

181 (h) The amount or conditions of any offer of judgment  
182 or settlement in relation to the amount or conditions of the  
183 ultimate relief granted by the court;

184 (i) The extent to which a reasonable effort was made to  
185 determine prior to the time of filing of an action or claim that  
186 all parties sued or joined were proper parties owing a legally  
187 defined duty to any party or parties asserting the claim or  
188 action;

189 (j) The extent of any effort made after the  
190 commencement of an action to reduce the number of parties in the  
191 action; \* \* \*

192 (k) The period of time available to the attorney for  
193 the party asserting any defense before such defense was  
194 interposed \* \* \*; and





195                   (1) Whether the case was dismissed as provided in  
196 Section 1 of this act.

197                   **SECTION 4.** This act shall take effect and be in force from  
198 and after July 1, 2017.

