

By: Representative Brown

To: Judiciary A

HOUSE BILL NO. 1245

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 (\$10,000.00) 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 (\$10,000.00), 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, 2018.

