

By: Senator(s) Doty

To: Judiciary, Division A;
Accountability, Efficiency,
Transparency

SENATE BILL NO. 2873

1 AN ACT TO AMEND SECTION 11-53-81, MISSISSIPPI CODE OF 1972,
2 TO DEFINE THE TERM "OPEN ACCOUNT" AS USED IN THE MISSISSIPPI OPEN
3 ACCOUNT STATUTE; TO REQUIRE THE ACCOUNT CREDITOR TO SEND THE
4 DEMAND TO A CURRENT ADDRESS OF THE ACCOUNT DEBTOR BY USING CERTAIN
5 DELIVERY METHODS; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 11-53-81, Mississippi Code of 1972, is
8 amended as follows:

9 11-53-81. (1) For the purpose of this chapter, the term
10 "open account" shall mean any commercial transaction, whether a
11 single transaction or a series of transactions, involving the sale
12 of goods and provision of services, between individuals or
13 entities, based upon an oral promise or agreement for the account
14 debtor to pay the account creditor for the goods and services
15 after the account debtor's receipt of the goods and services and
16 an invoice or invoices for them. For the purpose of this chapter,
17 an "open account" may include a sale and provision of goods and
18 services on written terms if those terms issued by the account
19 creditor are not agreed to in writing by the account debtor.



(2) When * * * the account debtor of goods and services
fails to pay an open account within thirty (30) days after * * *
the account creditor has sent written demand therefor in the
manner provided in this chapter correctly setting forth the amount
owed and an itemized statement of the account in support thereof,
that person shall be liable for reasonable attorney's fees,
expenses and costs be set by the * * * court for the prosecution
and collection of such claim when judgment on the claim is
rendered in favor of the * * * account creditor. The account
creditor shall send the demand to a current address of the account
debtor: (a) by registered or certified mail; or (b) through
priority mail or priority mail express of the United States Postal
Service or through a commercial firm that is regularly engaged in
the business of document delivery or document and package delivery
in which the sender has directed that delivery be not later than
two (2) business days following the day on which the document is
received for delivery by the United States Postal Service or the
commercial firm; or (c) by electronic mail if the sender has
chosen the option of a delivery receipt; or (d) by hand delivery
as shown by affidavit. If the account debtor is an entity on file
with any state's Secretary of State's office, sending a copy of
the open account claim to the entity's address or the registered
agent's address on file with one (1) of the state's Secretary of
State shall satisfy the requirement of a current address.
Evidence of receipt of written demand by the spouse of the * * *



45 account debtor when they are living together as husband and wife
46 on behalf of the account debtor may be introduced as evidence of
47 written demand on the account debtor. If that person sued on the
48 open account shall prevail in the suit, he shall be entitled to
49 reasonable attorney's fees, expenses and costs to be set by
50 the * * * court.

51 If delivery of written demand on the account debtor is
52 attempted, but not accomplished because circumstances made
53 delivery of written demand impossible or impractical, a notation,
54 on the envelope containing the written demand, made by the person
55 attempting delivery stating the date of the attempted delivery,
56 the reasons why delivery could not be accomplished along with the
57 initials of the person attempting delivery and making said
58 notation may be introduced as evidence of written demand on the
59 account debtor, and if the * * * court in * * * its discretion
60 finds that sufficient evidence of due diligence in delivery of
61 written demand has been made, * * * the court may make a
62 conclusion of written demand for purposes of justice and find that
63 there has been written demand on the account debtor.

64 **SECTION 2.** This act shall take effect and be in force from
65 and after July 1, 2020.

