

By: Representative Zuber

To: Judiciary B; County
Affairs

HOUSE BILL NO. 604

1 AN ACT TO AMEND SECTION 11-9-127, MISSISSIPPI CODE OF 1972,
2 TO PRESERVE THE DUE PROCESS RIGHTS OF DEFENDANTS WHILE
3 STREAMLINING CIVIL DOCKETS AND AVOIDING UNNECESSARY COSTS AND THE
4 BURDEN OF NEEDLESS HEARING PREPARATION FOR PLAINTIFFS; TO
5 FORMALIZE THE AVAILABILITY OF CERTAIN REMEDIES IN JUSTICE COURTS
6 AS RECOGNIZED BY A SERIES OF OPINIONS OF THE ATTORNEY GENERAL; TO
7 AMEND SECTION 11-53-81, MISSISSIPPI CODE OF 1972, TO CONFIRM THE
8 AVAILABILITY OF THE OPEN ACCOUNT REMEDY TO COLLECT MEDICAL AND
9 HOSPITAL BILLS; TO AMEND SECTION 25-7-13, MISSISSIPPI CODE OF
10 1972, TO ENCOURAGE COLLECTION OF MODEST FINES AND JUDGMENTS
11 OBTAINED IN MUNICIPAL COURTS; AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** Section 11-9-127, Mississippi Code of 1972, is
14 amended as follows:

15 11-9-127. Any defendant desiring a hearing before the
16 justice court must notify the clerk of the court that a hearing is
17 desired no later than the close of business two (2) working days
18 before the return day of the summons. On the return day of the
19 summons, unless continued, the justice court judge shall hear and
20 determine the cause if the defendant has requested a hearing and
21 both parties appear; give judgment by default if the defendant did
22 not request a hearing, or fails to appear and contest plaintiff's
23 demand after requesting a hearing, or judgment of nonsuit against
24 the plaintiff if the defendant has requested a hearing and the
25 plaintiff fails to appear and prosecute his claim; enter judgment
26 in favor of the defendant where, in case of setoff, it shall
27 appear that there is a balance due him, for the amount of such
28 balance, and, when requested, issue execution against the goods
29 and chattels, lands and tenements, of the party against whom
30 judgment is rendered, for the amount of the judgment and costs, or
31 costs alone, as the case may require, returnable to a day more

32 than twenty (20) days after the rendition of the judgment, and not
33 more than six (6) months after the issuance of the execution; and
34 the execution may be directed to the proper officer of any county
35 in this state.

36 **SECTION 2.** The statutory remedies of garnishment and
37 examination of judgment debtor, and all defenses thereto, shall be
38 available in justice court.

39 **SECTION 3.** Section 11-53-81, Mississippi Code of 1972, is
40 amended as follows:

41 11-53-81. When any person fails to pay a medical or hospital
42 bill or other open account within thirty (30) days after receipt
43 of written demand therefor correctly setting forth the amount owed
44 and an itemized statement of the account in support thereof, that
45 person shall be liable for reasonable attorney's fees to be set by
46 the judge for the prosecution and collection of such claim when
47 judgment on the claim is rendered in favor of the plaintiff.
48 Evidence of receipt of written demand by the spouse of the debtor
49 when they are living together as husband and wife on behalf of the
50 debtor may be introduced as evidence of written demand on the
51 debtor. If that person sued on the open account shall prevail in
52 the suit, he shall be entitled to reasonable attorney's fees to be
53 set by the judge.

54 If delivery of written demand on the debtor is attempted, but
55 not accomplished because circumstances made delivery of written
56 demand impossible, a notation, on the envelope containing the
57 written demand, made by the person attempting delivery stating the
58 date of the attempted delivery, the reasons why delivery could not
59 be accomplished along with the initials of the person attempting
60 delivery and making said notation may be introduced as evidence of
61 written demand on the debtor, and if the judge in his discretion
62 finds that sufficient evidence of due diligence in delivery of
63 written demand has been made, he may make a conclusion of written

64 demand for purposes of justice and find that there has been
65 written demand on the debtor.

66 **SECTION 4.** Section 25-7-13, Mississippi Code of 1972, is
67 amended as follows:

68 **[Until Laws, 2004, Chapter 505, Section 9, is effectuated**
69 **under Section 5 of the Voting Rights Act of 1965, this section**
70 **will read as follows:]**

71 25-7-13. (1) The clerks of the circuit court shall charge
72 the following fees:

73 (a) Docketing, filing, marking and registering each
74 complaint, petition and indictment..... \$75.00

75 The fee set forth in this paragraph shall be the total fee
76 for all services performed by the clerk up to and including entry
77 of judgment with respect to each complaint, petition or
78 indictment, including all answers, claims, orders, continuances
79 and other papers filed therein, issuing each writ, summons,
80 subpoena or other such instruments, swearing witnesses, taking and
81 recording bonds and pleas, and recording judgments, orders, fiats
82 and certificates; the fee shall be payable upon filing and shall
83 accrue to the clerk at the time of collection. The clerk or his
84 successor in office shall perform all duties set forth above
85 without additional compensation or fee.

86 (b) Docketing and filing each suggestion for a writ of
87 garnishment, suggestion for a writ of execution and judgment
88 debtor actions and issuing all process, filing and recording
89 orders or other papers and swearing witnesses..... 30.00

90 (2) Except as provided in subsection (1) of this section,
91 the clerks of the circuit court shall charge the following fees:

92 (a) Filing and marking each order or other paper and
93 recording and indexing same..... 2.00

94 (b) Issuing each writ, summons, subpoena, citation,
95 capias and other such instruments..... 1.00

96 (c) Administering an oath and taking bond..... 2.00

97 (d) Certifying copies of filed documents, for each
98 complete document..... 1.00

99 (e) Recording orders, fiats, licenses, certificates,
100 oaths and bonds:

101 First page..... 2.00

102 Each additional page..... 1.00

103 (f) Furnishing copies of any papers of record or on
104 file and entering marginal notations on documents of record:

105 If performed by the clerk or his employee, per page..... 1.00

106 If performed by any other person, per page..... .25

107 (g) Judgment roll entry..... 5.00

108 Notwithstanding any other law to the contrary, the circuit
109 clerk shall not collect any other fine, assessment or other item
110 of cost other than the fee authorized by this paragraph (g) when
111 enrolling a municipal court judgment.

112 (h) Taxing cost and certificate..... 1.00

113 (i) For taking and recording application for marriage
114 license, for filing and recording consent of parents when required
115 by law, for filing and recording medical certificate, filing and
116 recording proof of age, recording and issuing license, recording
117 and filing returns..... 20.00

118 The clerk shall deposit Fourteen Dollars (\$14.00) of each fee
119 collected for a marriage license in the Victims of Domestic
120 Violence Fund established in Section 93-21-117, on a monthly
121 basis.

122 (j) For certified copy of marriage license and search
123 of record, the same fee charged by the Bureau of Vital Statistics
124 of the State Board of Health.

125 (k) For public service not particularly provided for,
126 the circuit court may allow the clerk, per annum, to be paid by
127 the county on presentation of the circuit court's order, the
128 following amount..... 5,000.00

129 However, in the counties having two (2) judicial districts,
130 such above allowance shall be made for each judicial district.

131 (1) For drawing jurors and issuing venire, to be paid
132 by the county..... 5.00

133 (m) For each day's attendance upon the circuit court
134 term, for himself and necessary deputies allowed by the court,
135 each to be paid by the county..... 30.00

136 (n) Summons, each juror to be paid by the county upon
137 the allowance of the court..... 1.00

138 (o) For issuing each grand jury subpoena, to be paid by
139 the county on allowance by the court, not to exceed Twenty-five
140 Dollars (\$25.00) in any one (1) term of court..... 1.00

141 (3) On order of the court, clerks and deputies may be
142 allowed five (5) extra days for attendance upon the court to get
143 up records.

144 (4) The clerk's fees in state cases where the state fails in
145 the prosecution, or in cases of felony where the defendant is
146 convicted and the cost cannot be made out of his estate, in an
147 amount not to exceed Four Hundred Dollars (\$400.00) in one (1)
148 year, shall be paid out of the county treasury on approval of the
149 circuit court, and the allowance thereof by the board of
150 supervisors of the county. In counties having two (2) judicial
151 districts, such allowance shall be made in each judicial district;
152 however, the maximum thereof shall not exceed Eight Hundred
153 Dollars (\$800.00). Clerks in the circuit court, in cases where
154 appeals are taken in criminal cases and no appeal bond is filed,
155 shall be allowed by the board of supervisors of the county after
156 approval of their accounts by the circuit court, in addition to
157 the above fees, for making such transcript the rate of Two Dollars
158 (\$2.00) per page.

159 (5) The clerk of the circuit court may retain as his
160 commission on all money coming into his hands, by law or order of

161 the court, a sum to be fixed by the court not exceeding one-half
162 of one percent (1/2 of 1%) on all such sums.

163 (6) For making final records required by law, including, but
164 not limited to, circuit and county court minutes, and furnishing
165 transcripts of records, the circuit clerk shall charge Two Dollars
166 (\$2.00) per page. The same fees shall be allowed to all officers
167 for making and certifying copies of records or papers which they
168 are authorized to copy and certify.

169 (7) The circuit clerk shall prepare an itemized statement of
170 fees for services performed, cost incurred, or for furnishing
171 copies of any papers of record or on file, and shall submit the
172 statement to the parties or, if represented, to their attorneys
173 within sixty (60) days. A bill for same shall accompany the
174 statement.

175 **[From and after the date Laws, 2004, Chapter 505, Section 9,**
176 **is effectuated under Section 5 of the Voting Rights Act of 1965,**
177 **this section shall read as follows:]**

178 25-7-13. (1) The clerks of the circuit court shall charge
179 the following fees:

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185 indictment, including all answers, claims, orders, continuances
186 and other papers filed therein, issuing each writ, summons,
187 subpoena or other such instruments, swearing witnesses, taking and
188 recording bonds and pleas, and recording judgments, orders, fiats
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191 successor in office shall perform all duties set forth above
192 without additional compensation or fee.

193 (b) Docketing and filing each suggestion for a writ of
194 garnishment, suggestion for a writ of execution and judgment
195 debtor actions and issuing all process, filing and recording
196 orders or other papers and swearing witnesses..... \$30.00

197 (2) Except as provided in subsection (1) of this section,
198 the clerks of the circuit court shall charge the following fees:

199 (a) Filing and marking each order or other paper and
200 recording and indexing same..... \$ 2.00

201 (b) Issuing each writ, summons, subpoena, citation,
202 capias and other such instruments..... \$ 1.00

203 (c) Administering an oath and taking bond..... \$ 2.00

204 (d) Certifying copies of filed documents, for each
205 complete document..... \$ 1.00

206 (e) Recording orders, fiats, licenses, certificates,
207 oaths and bonds:

208 First page..... \$ 2.00

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211 file and entering marginal notations on documents of record:

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216 clerk shall not collect any other fine, assessment or other item
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218 enrolling a municipal court judgment.

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227 Violence Fund established in Section 93-21-117, on a monthly
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231 of the State Board of Health.

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242 each to be paid by the county..... \$50.00

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252 the prosecution, or in cases of felony where the defendant is
253 convicted and the cost cannot be made out of his estate, in an
254 amount not to exceed Four Hundred Dollars (\$400.00) in one (1)
255 year, shall be paid out of the county treasury on approval of the
256 circuit court, and the allowance thereof by the board of
257 supervisors of the county. In counties having two (2) judicial

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259 however, the maximum thereof shall not exceed Eight Hundred
260 Dollars (\$800.00). Clerks in the circuit court, in cases where
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268 the court, a sum to be fixed by the court not exceeding one-half
269 of one percent (1/2 of 1%) on all such sums.

270 (6) For making final records required by law, including, but
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276 (7) The circuit clerk shall prepare an itemized statement of
277 fees for services performed, cost incurred, or for furnishing
278 copies of any papers of record or on file, and shall submit the
279 statement to the parties or, if represented, to their attorneys
280 within sixty (60) days. A bill for same shall accompany the
281 statement.

282 **SECTION 5.** Section 2 of this act shall be codified in Title
283 11, Chapter 9, Mississippi Code of 1972.

284 **SECTION 6.** This act shall take effect and be in force from
285 and after July 1, 2005.