

By: Frierson

To: Fees and Salaries of
Public Officers;
County Affairs

HOUSE BILL NO. 1101

1 AN ACT TO REQUIRE CLERKS OF THE JUSTICE COURTS TO BE
 2 COMPENSATED ON A FEE BASIS; TO AMEND SECTION 25-7-25, MISSISSIPPI
 3 CODE OF 1972, TO PROVIDE THAT THE FEES ESTABLISHED FOR SERVICES IN
 4 THE JUSTICE COURTS SHALL BE PAYABLE TO THE CLERKS OF SUCH COURTS;
 5 TO AMEND SECTION 9-11-18, MISSISSIPPI CODE OF 1972, TO ESTABLISH A
 6 CAP ON THE ANNUAL COMPENSATION FROM FEES FOR CLERKS OF THE JUSTICE
 7 COURT, TO SPECIFY WHICH FEES ARE SUBJECT TO THE CAP AND TO REQUIRE
 8 THE JUSTICE COURT CLERK TO MAINTAIN A CASH JOURNAL FOR SMALL FEE
 9 TRANSACTIONS; TO AMEND SECTION 9-11-27, MISSISSIPPI CODE OF 1972,
 10 TO REQUIRE BOARDS OF SUPERVISORS TO PAY A SALARY TO THE CLERK OF
 11 THE JUSTICE COURT WHEN INSUFFICIENT FEES ARE COLLECTED BY THE
 12 CLERK; TO AMEND SECTIONS 9-11-19, 9-11-20, 9-11-23 AND 25-3-36,
 13 MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE PROVISIONS OF THIS
 14 ACT; TO BRING FORWARD SECTIONS 9-11-21 AND 9-11-27, MISSISSIPPI
 15 CODE OF 1972, WHICH PRESCRIBE THE DUTIES OF THE CLERK OF THE
 16 JUSTICE COURT RELATING TO ITEMIZED RECEIPTS AND TRAINING
 17 REQUIREMENTS; AND FOR RELATED PURPOSES.

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

19 SECTION 1. Section 25-7-25, Mississippi Code of 1972, is
20 amended as follows:[HS1]

21 25-7-25. (1) * * * The justice court clerks shall charge
 22 the following costs and fees, which shall be paid in advance to
 23 the clerk of the justice court in accordance with * * * Section
 24 9-11-10:

25 (a) A uniform total fee in all civil cases, whether
 26 contested or uncontested, which shall include all services in
 27 connection therewith, except as hereinafter stated, each....\$25.00

28 (b) For more than one (1) defendant, for service of
 29 process on each defendant.....5.00

30 (c) After final judgment has been enrolled, further
 31 proceedings involving levy of execution on judgments, and
 32 attachment and garnishment proceedings.....15.00

33 (d) For all services in connection with the issuance of

- 34 a peace bond.....25.00
- 35 (e) For celebrating a marriage, and certificate
- 36 thereof.....10.00
- 37 (f) Commission to take depositions.....5.00
- 38 (g) Appeal with proceedings and bond.....5.00
- 39 (h) A * * * fee to be collected in all criminal cases
- 40 in which the defendant is convicted, as follows:
- 41 (i) For all violations in Title 63 other than
- 42 driving under the influence of intoxicating liquor or reckless
- 43 driving.....5.00
- 44 (ii) All other criminal cases.....25.00

45 (2) In addition to the salary provided for in subsection (1)

46 of Section 25-3-36, each justice court judge may receive a fee of

47 not more than Twenty-five Dollars (\$25.00) for each marriage

48 ceremony he performs in the courtroom or offices of the justice

49 court at any time the courtroom or offices are open to the public.

50 This fee shall be paid by the parties to the marriage. Each

51 justice court judge may receive money or gratuities for marriage

52 ceremonies performed outside of and away from the courtroom and

53 the offices of the justice court, that the parties to the marriage

54 request to have performed at any time the courtroom or offices of

55 the justice court are closed. These monies or gratuities, in an

56 amount agreed upon by the parties to the marriage, are not

57 considered fees for the justice court and are not subject to the

58 requirements set forth in * * * Section 9-11-10.

59 SECTION 2. Section 9-11-18, Mississippi Code of 1972, is

60 amended as follows:[HS2]

61 9-11-18. (1) After making deductions for employee salaries

62 and related salary expenses, and expenses allowed as deductions by

63 Schedule C of the Internal Revenue Code, no clerk of the justice

64 court system of any county in the state shall receive fees as

65 compensation for the justice court clerk's services in excess of

66 Eighty-three Thousand One Hundred Sixty Dollars (\$83,160.00)

67 annually. All such fees received during a calendar year by the
68 justice court clerk which are in excess of the salary limitation
69 shall be deposited by such clerk into the county general fund
70 before April 15 of the next succeeding calendar year. If the
71 justice court clerk serves less than one (1) year, then he shall
72 not receive as compensation any fees in excess of that portion of
73 the salary limitation that can be attributed to his time in office
74 on a pro rata basis. There shall be exempted from this subsection
75 any monies or commissions from private or governmental sources
76 which: (a) are to be held by the justice court clerk in a trust
77 or custodial capacity as prescribed in subsection (4); or (b) are
78 received as compensation for services performed upon order of a
79 court or board of supervisors which are not required of the
80 justice court clerk by statute.

81 (2) It shall be unlawful for any justice court clerk to use
82 fees in excess of Eighty-three Thousand One Hundred Sixty Dollars
83 (\$83,160.00) annually to pay the salaries or actual or necessary
84 expenses of employees who are related to such clerk by blood or
85 marriage within the first degree of kinship according to the civil
86 law method of computing kinship as provided in Sections 1-3-71 and
87 1-3-73. However, the prohibition of this subsection shall not
88 apply to any individual who was an employee of the clerk's office
89 before the date his or her relative was employed as justice court
90 clerk. The spouse or children, or both, of the justice court
91 clerk employed in the office of the justice court clerk may be
92 paid a salary; however, the combined annual salaries of the clerk,
93 spouse and any child of the clerk may not exceed an amount equal
94 to the salary limitation.

95 (3) The justice court clerk shall be liable on his official
96 bond for the proper deposit and accounting of all monies received
97 by his office. The State Auditor shall promulgate uniform
98 accounting methods for the accounting of all sources of income by
99 the offices of the justice court clerk.

100 (4) There is * * * created in the county depository of each
101 county a clearing account to be designated as the "Justice Court
102 Clerk Clearing Account," into which shall be deposited: (a) all
103 such monies as the clerk of the justice court shall receive from
104 any person complying with any writ of garnishment, attachment,
105 execution or other like process authorized by law for the
106 enforcement of a judgment; (b) all such monies as are received in
107 criminal cases in the justice court pursuant to any order
108 requiring payment as restitution to the victims of criminal
109 offenses; (c) all cash bonds as shall be deposited with the court;
110 (d) any portion of any fees required by law to be collected in
111 civil cases which are to pay for the service of process or writs
112 in another county as provided by Section 9-11-20; and (e) any
113 other money as shall be deposited with the court, except fees paid
114 for the services of a constable, which by its nature is not at the
115 time of its deposit public monies, but which is to be held by the
116 court in a trust or custodial capacity in a case or proceeding
117 before the court. The clerk of the justice court shall account
118 for all monies deposited in and disbursed from such account and
119 shall be authorized and empowered to draw and issue checks on such
120 account at such times, in such amounts and to such persons as
121 shall be proper and in accordance with law; * * * however, such
122 monies as are forfeited in criminal cases shall be paid by the
123 clerk of the justice court to the clerk of the board of
124 supervisors for deposit in the general fund of the county in the
125 same manner as provided in Section 9-11-19 for * * * fines and
126 penalties charged and collected in the justice court.

127 The following monies paid to the justice court clerk shall be
128 subject to the salary limitation prescribed under subsection (1):
129 (a) all fees required by law to be collected for the filing,
130 recording or abstracting of any bill, petition, pleading or decree
131 in any civil case in the justice court; (b) all fees collected for
132 bonds, certification of decrees and copies of any documents; and

133 (c) any other monies or commissions from private or governmental
134 sources for statutory functions which are not to be held by the
135 court in a trust capacity. Such fees that exceed the salary
136 limitations shall be maintained in a bank account in the county
137 depository and accounted for separately from those monies paid
138 into the Justice Court Clerk Clearing Account.

139 (5) Any monies deposited with the court in civil cases which
140 are fees paid for the services of a constable shall be reported by
141 the clerk of the court in the same manner as provided by Section
142 9-11-19 and shall be considered as being fees within the meaning
143 of such section. It shall be the duty of the clerk of the board
144 of supervisors to disburse such fees monthly, upon approval of the
145 board of supervisors, to the constables entitled thereto.

146 (6) The justice court clearing account may bear interest and
147 the clerk of the justice court shall account for all interest
148 earned on such account and pay such interest to the clerk of the
149 board of supervisors for deposit in the general fund of the county
150 in the same manner as provided in Section 9-11-19 for * * * fines
151 and penalties charged and collected in the justice court.

152 (7) The justice court clerk shall establish and maintain a
153 cash journal for recording cash receipts from private or
154 government sources for furnishing copies of any papers of record
155 or on file, or for rendering services as a notary public, or other
156 fees wherein the total fee for the transaction is Ten Dollars
157 (\$10.00) or less. The cash journal entry shall include the date,
158 amount and type of transaction, and the clerk shall not be
159 required to issue a receipt to the person receiving such services.
160 The State Auditor shall not take exception to the furnishing of
161 copies or the rendering of services as a notary by any clerk free
162 of charge.

163 (8) Any clerk who knowingly shall fail to deposit funds or
164 otherwise violate this section shall be guilty of a misdemeanor
165 and, upon conviction thereof, shall be fined in an amount not to

166 exceed double the amount that he failed to deposit, or imprisoned
167 for not to exceed six (6) months in the county jail, or be
168 punished by both such fine and imprisonment.

169 SECTION 3. Section 9-11-27, Mississippi Code of 1972, is
170 amended as follows:[HS3]

171 9-11-27. (1) The board of supervisors of each county
172 shall * * * appoint one (1) person to serve as clerk of the
173 justice court system of the county. The clerk of the justice
174 court may appoint such other employees for the justice court of
175 the county as he deems necessary, including a person or persons to
176 serve as deputy clerk or deputy clerks. The board of supervisors
177 of each county with two (2) judicial districts may * * * appoint a
178 person to serve as a deputy clerk of the justice court system of
179 the county in the judicial district not served by the clerk. The
180 clerk may appoint such other employees for the justice court
181 system of the county as he deems necessary * * * . The clerk and
182 deputy clerks shall be empowered to file and record actions and
183 pleadings, to receive and receipt for monies, to acknowledge
184 affidavits, to issue warrants in criminal cases upon direction by
185 a justice court judge in the county, to approve the sufficiency of
186 bonds in civil and criminal cases, to certify and issue copies of
187 all records, documents and pleadings filed in the justice court
188 and to issue all process necessary for the operation of the
189 justice court. The clerk or deputy clerks may refuse to accept a
190 personal check in payment of any fine or cost or to satisfy any
191 other payment required to be made to the justice court clerk. All
192 orders from the justice court judge to the clerk of the justice
193 court shall be written. All cases, civil and criminal, shall be
194 assigned by the clerk to the justice court judges of the county in
195 the manner provided in Section 11-9-105 and Section 99-33-2.

196 (2) The clerk of the justice court shall be entitled to
197 those fees and costs required to be paid to the clerk by law,
198 subject to the limitation prescribed in Section 9-11-18. However,

199 any clerk who does not receive Twenty-five Thousand Dollars
200 (\$25,000.00) or more in fees and costs after making deductions for
201 employee salaries and related salary expenses, and expenses
202 allowed as deductions by Schedule C of the Internal Revenue Code,
203 during a calendar year shall be paid by the board of supervisors
204 of the county such amount that, when added to the fees and costs
205 collected by the clerk, equals no less than Twenty-five Thousand
206 Dollars (\$25,000.00). The clerk shall certify this amount to the
207 board of supervisors before February 1 of the next succeeding
208 calendar year, which shall pay to the clerk the amount certified
209 as being due before March 1.

210 (3) For each employee and deputy clerk of the justice court
211 employed by the board of supervisors of the county, the board of
212 supervisors shall pay to the clerk of the justice court an amount
213 equal to the salary of the employee or deputy clerk. All other
214 employees and deputy clerks of the justice courts shall be paid
215 from the fees and costs collected by the clerk of the justice
216 court.

217 SECTION 4. Section 9-11-19, Mississippi Code of 1972, is
218 amended as follows:[HS4]

219 9-11-19. (1) It shall be the duty of every clerk of the
220 justice court to receive and account for all * * * fines and
221 penalties charged and collected in the justice court, and,
222 monthly, to report in writing under oath, to the clerk of the
223 board of supervisors, who shall upon receipt submit such report to
224 the board of supervisors of all such * * * fines and penalties
225 received, including cash bonds and other monies which have been
226 forfeited in criminal cases and, at least semiannually, any
227 delinquent fines and penalties. The clerk shall give the date,
228 amount and names of persons from whom such monies were received
229 and shall pay so much thereof as shall have been received to the
230 clerk of the board of supervisors for deposit into the general
231 fund of the county. Any clerk of the justice court who * * *

232 fails to make such report or to pay the money so received shall,
233 in addition to any other fine or punishment provided by law for
234 such conduct, not be entitled to any compensation to which the
235 clerk may be entitled from the county for the period of time
236 during which such report or money is outstanding.

237 (2) The provisions of this section shall not, except as to
238 cash bonds and other monies which have been forfeited in criminal
239 cases, apply to monies required to be deposited in the Justice
240 Court Clerk Clearing Account as provided in Section 9-11-18.

241 SECTION 5. Section 9-11-20, Mississippi Code of 1972, is
242 amended as follows:[HS5]

243 9-11-20. In any civil case in the justice court in which any
244 process or writ is to be served outside of the county where
245 issued, the clerk of the justice court is * * * directed to
246 forward, by United States mail, to the clerk of the justice court
247 of the county where such writ or process is to be served, that
248 portion of any fees required by law to be collected for the
249 service of such process or writ along with the process or writ to
250 be served. The clerk of the justice court of the county where the
251 process or writ is to be served shall, upon receipt thereof,
252 deliver such process or writ to a constable of the county for the
253 service thereof and shall report and pay over such fees to
254 the * * * clerk of the board of supervisors at the time and in the
255 manner provided in subsection (1) of Section 9-11-19 for the
256 report and payment of * * * fines and penalties charged and
257 collected in the justice court.

258 SECTION 6. Section 9-11-23, Mississippi Code of 1972, is
259 amended as follows:[HS6]

260 9-11-23. When any clerk of the justice court shall have
261 collected in his official capacity any money, fines or penalties
262 required by law to be paid over to another person or official, and
263 the clerk fails to pay or account for the same to the person or
264 official entitled to receive the same, he shall be liable to be

265 proceeded against on his official bond in a summary way by motion
266 in any court having jurisdiction of the amount collected and
267 withheld, of which motion five (5) days' notice shall be served on
268 the clerk of the justice court and the sureties on his bond, or
269 such of them as may be found; and judgment for the amount
270 illegally withheld by the clerk of the justice court and ten
271 percent (10%) thereon, and all costs, shall be rendered against
272 the clerk of the justice court and his sureties, or such of them
273 as have been served with notice.

274 SECTION 7. Section 25-3-36, Mississippi Code of 1972, is
275 amended as follows:[HS7]

276 25-3-36. (1) From and after October 1, 1998, every justice
277 court judge shall receive as full compensation for his or her
278 services and in lieu of any and all other fees, costs or
279 compensation heretofore authorized for such justice court judge,
280 an annual salary based upon the population of his or her county
281 according to the 1990 federal decennial census; however, no
282 justice court judge shall be paid less than the salary authorized
283 under this section to be paid the justice court judge based upon
284 the population of the county according to the 1980 federal
285 decennial census. The amount of the salary shall be * * * as
286 follows:

287 (a) In counties with a population of more than two
288 hundred thousand (200,000), a salary of Forty-six Thousand Two
289 Hundred Ninety-nine Dollars (\$46,299.00).

290 (b) In counties with a population of more than one
291 hundred fifty thousand (150,000) but not more than two hundred
292 thousand (200,000), a salary of Forty-two Thousand Five Hundred
293 Four Dollars (\$42,504.00).

294 (c) In counties with a population of more than
295 seventy-five thousand (75,000) but not more than one hundred fifty
296 thousand (150,000), a salary of Thirty-eight Thousand Seven
297 Hundred Nine Dollars (\$38,709.00).

298 (d) In counties with a population of more than
299 forty-nine thousand (49,000) but not more than seventy-five
300 thousand (75,000), a salary of Thirty-three Thousand Three Hundred
301 Ninety-six Dollars (\$33,396.00).

302 (e) In counties with a population of more than
303 thirty-four thousand (34,000) but not more than forty-nine
304 thousand (49,000), a salary of Twenty-eight Thousand Eight Hundred
305 Forty-two Dollars (\$28,842.00).

306 (f) In counties with a population of more than
307 twenty-four thousand five hundred (24,500) but not more than
308 thirty-four thousand (34,000), a salary of Twenty-seven Thousand
309 Three Hundred Twenty-four Dollars (\$27,324.00).

310 (g) In counties with a population of more than
311 twenty-one thousand (21,000) but not more than twenty-four
312 thousand five hundred (24,500), a salary of Twenty-four Thousand
313 Two Hundred Eighty-eight Dollars (\$24,288.00).

314 (h) In counties with a population of more than sixteen
315 thousand five hundred (16,500) but not more than twenty-one
316 thousand (21,000), a salary of Twenty-one Thousand Two Hundred
317 Fifty-two Dollars (\$21,252.00).

318 (i) In counties with a population of more than twelve
319 thousand (12,000) but not more than sixteen thousand five hundred
320 (16,500), a salary of Eighteen Thousand Two Hundred Sixteen
321 Dollars (\$18,216.00).

322 (j) In counties with a population of more than eight
323 thousand (8,000) but not more than twelve thousand (12,000), a
324 salary of Fifteen Thousand Dollars (\$15,000.00).

325 (k) In counties with a population of eight thousand
326 (8,000) or less, a salary of Twelve Thousand Dollars (\$12,000.00).

327 The board of supervisors of any county having two (2)
328 judicial districts and two (2) justice court judges for the county
329 shall pay each justice court judge an amount equal to that * * *
330 provided in this subsection for judges in the next higher

331 population category per year, if the justice court judge maintains
332 regular office hours and is personally present in the office he
333 maintains for at least thirty (30) hours per week. In any county
334 having a population greater than eight thousand (8,000) but less
335 than eight thousand five hundred (8,500) according to the 1990
336 federal decennial census and in which U.S. Highway 61 and
337 Mississippi Highway 4 intersect, the board of supervisors * * *,
338 in its discretion, may pay such justice court judges an additional
339 amount not to exceed the sum of Eleven Thousand Five Hundred Fifty
340 Dollars (\$11,550.00) per year, payable beginning April 1, 1997.
341 In any county having a population greater than ten thousand
342 (10,000) but less than ten thousand five hundred (10,500)
343 according to the 1990 federal decennial census and in which
344 Mississippi Highway 3 and Mississippi Highway 6 intersect, the
345 board of supervisors * * *, in its discretion, may pay such
346 justice court judges an additional amount not to exceed One
347 Thousand Four Hundred Fifty Dollars (\$1,450.00) per year, payable
348 beginning April 1, 1997. In any county having a population
349 greater than twenty-four thousand seven hundred (24,700) and less
350 than twenty-four thousand nine hundred (24,900), according to the
351 1990 federal census, wherein Mississippi Highways 15 and 16
352 intersect, the board of supervisors shall pay such justice court
353 judge an additional amount equal to Two Thousand Five Hundred
354 Dollars (\$2,500.00) per year.

355 (2) Notwithstanding the provisions of subsection (1) of this
356 section, in the event that the number of justice court judges
357 authorized pursuant to Section 9-11-2(1) is exceeded pursuant to
358 the provisions of Section 9-11-2(4), the aggregate of the salaries
359 paid to the justice court judges of such a county shall not exceed
360 the amount sufficient to pay the number of justice court judges
361 authorized pursuant to Section 9-11-2(1), and such amount shall be
362 equally divided among those justice court judges continuing to
363 hold office under the provisions of Section 9-11-2(4).

364 (3) From and after the effective date of House Bill No.
365 , 2000 Regular Session, all fees, costs, fines and penalties
366 charged and collected in the justice court shall be paid to the
367 clerk of the justice court. * * * The clerk of the justice court
368 shall deposit all monies required to be deposited in the Justice
369 Court Clerk Clearing Account into such account, as provided in
370 Section 9-11-18.

371 (4) The salaries provided for in subsection (1) of this
372 section shall be payable monthly by warrant drawn by the clerk of
373 the board of supervisors on the general fund of the county;
374 however, the board of supervisors, by resolution duly adopted and
375 entered on its minutes, may provide that such salaries shall be
376 paid semimonthly on the first and fifteenth day of each month. If
377 a pay date falls on a weekend or legal holiday, salary payments
378 shall be made on the workday immediately preceding the weekend or
379 legal holiday.

380 (5) * * * The salary of a justice court judge shall not be
381 reduced during his term of office as a result of a population
382 change following a federal decennial census.

383 (6) Any justice court judge who is unable to attend and hold
384 court by reason of being under suspension by the Commission on
385 Judicial Performance or the Mississippi Supreme Court shall not
386 receive a salary while under such suspension.

387 SECTION 8. Section 9-11-21, Mississippi Code of 1972, is
388 brought forward as follows:[HS8]

389 9-11-21. The clerk of the justice court is required in all
390 cases to give to any person paying him any fees, costs or other
391 money a uniform receipt, the form of which is to be prepared by
392 the Attorney General. Such receipt shall contain the particulars
393 of such fees, costs or other money, the amount of such fees, costs
394 or other money and such other information as the Attorney General
395 shall deem necessary. The county shall have printed such receipts
396 at county expense and distribute them to the clerk of the justice

397 court of the county. Provided, however, that where the party
398 filing the complaint is an entity of government, the clerk shall
399 not be required to receive a prepayment of costs nor issue a
400 receipt, but the clerk shall enter a notation on the docket
401 wherein said complaint is recorded indicating that the party is
402 exempt from payment of costs.

403 SECTION 9. Section 9-11-29, Mississippi Code of 1972, is
404 brought forward as follows:[HS9]

405 9-11-29. (1) Within ninety (90) days after appointment,
406 every person appointed as clerk of the justice court under the
407 provisions of subsection (2) of Section 9-11-27, shall file
408 annually in the office of the circuit clerk a certificate of
409 completion of a course of training and education conducted by the
410 Mississippi Judicial College of the University of Mississippi Law
411 Center.

412 (2) Every person appointed as clerk and deputy clerk of the
413 justice court shall, before entering into the duties of the
414 position, give bond, with sufficient surety, to be payable,
415 conditioned and approved as provided by law and in the same manner
416 as other county officers, in a penalty equal to Fifty Thousand
417 Dollars (\$50,000.00); and any party interested may proceed on such
418 bond in a summary way, by motion in any court having jurisdiction
419 of the same, against the principal and sureties, upon giving five
420 (5) days' previous notice. The cost of such bond shall be paid by
421 the county.

422 (3) Upon the failure of any person appointed as clerk of the
423 justice court to file the certificates of completion as provided
424 in subsection (1) of this section, such person shall not be
425 allowed to carry out any of the duties of the office of clerk of
426 the justice court, and shall not be entitled to compensation for
427 the period of time during which such certificates remain unfiled.

428 SECTION 10. This act shall take effect and be in force from
429 and after October 1, 2000.