

By: Representative Blackmon

To: Judiciary A;  
Appropriations

## HOUSE BILL NO. 775

1 AN ACT TO CREATE THE MISSISSIPPI OFFICE OF INDIGENT APPEALS;  
2 TO PROVIDE A DIRECTOR AND STAFF; TO PROVIDE COMPENSATION; TO  
3 PROVIDE THE DUTIES OF THE OFFICE; TO CREATE THE MISSISSIPPI OFFICE  
4 OF INDIGENT APPEALS OFFICE FUND AND PROVIDE FOR ITS  
5 ADMINISTRATION; TO AMEND SECTION 99-19-73, MISSISSIPPI CODE OF  
6 1972, TO PROVIDE ASSESSMENTS FOR THE FUND; AND FOR RELATED  
7 PURPOSES.

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

9 **SECTION 1.** (1) There is created the Mississippi Office of  
10 Indigent Appeals. This office shall consist of six (6) attorneys,  
11 two (2) secretaries/paralegals and one (1) financial assistant.  
12 One (1) of the attorneys shall serve as director of the office.  
13 The director shall be appointed by the Governor and shall serve  
14 for a term of four (4) years. The remaining attorneys and other  
15 staff shall be appointed by the director and shall serve at the  
16 will and pleasure of the director. The director and all other  
17 attorneys in the office shall either be active members of The  
18 Mississippi Bar, or, if a member in good standing of the bar of  
19 another jurisdiction, must apply to and secure admission to The  
20 Mississippi Bar within twelve (12) months of the commencement of  
21 the person's employment by the office. The attorneys in the  
22 office shall practice law exclusively for the office and shall not  
23 engage in any other practice. The office shall not engage in any  
24 litigation other than that related to the office. The salary for  
25 the director shall be equivalent to the salary of district  
26 attorneys and the salary of the other attorneys in the office  
27 shall be equivalent to the salary of assistant district attorney.  
28 (2) The office shall provide representation on appeal for  
29 indigent persons convicted of felonies but not under sentences of

30 death. Representation shall be provided by staff attorneys, or,  
31 in the case of conflict or excessive workload, by attorneys  
32 selected, employed and compensated by the office on a contract  
33 basis. All fees charged by contract counsel and expenses incurred  
34 by attorneys in the office and contract counsel must be approved  
35 by the court. The office shall provide advice, education and  
36 support to attorneys representing persons under felony charges in  
37 the trial courts.

38 (3) There is created in the State Treasury a special fund to  
39 be known as the Mississippi Office of Indigent Appeals Fund. The  
40 purpose of the fund shall be to provide funding for the  
41 Mississippi Office of Indigent Appeals. Monies from the funds  
42 derived from assessments under Section 99-19-73 shall be  
43 distributed by the State Treasurer upon warrants issued by the  
44 Mississippi Office of Indigent Appeals. The fund shall be a  
45 continuing fund, not subject to fiscal-year limitations and shall  
46 consist of:

47 (a) Monies appropriated by the Legislature for the  
48 purposes of funding the Mississippi Office of Indigent Appeals;

49 (b) The interest accruing to the fund;

50 (c) Monies received under the provisions of Section  
51 99-19-73;

52 (d) Monies received from the federal government; and

53 (e) Monies received from such other sources as may be  
54 provided by law.

55 **SECTION 2.** Section 99-19-73, Mississippi Code of 1972, is  
56 amended as follows:

57 99-19-73. (1) **Traffic Violations.** In addition to any  
58 monetary penalties and any other penalties imposed by law, there  
59 shall be imposed and collected the following state assessment from  
60 each person upon whom a court imposes a fine or other penalty for  
61 any violation in Title 63, Mississippi Code of 1972, except  
62 offenses relating to the Mississippi Implied Consent Law (Section

63 63-11-1 et seq.) and offenses relating to vehicular parking or  
 64 registration:

65 FUND	AMOUNT
66 State Court Education Fund.....	\$ 1.50
67 State Prosecutor Education Fund.....	1.00
68 Driver Training Penalty Assessment Fund.....	7.00
69 Law Enforcement Officers Training Fund.....	5.00
70 Spinal Cord and Head Injury Trust Fund	
71 (for all moving violations).....	4.00
72 Emergency Medical Services Operating Fund.....	10.00
73 Mississippi Leadership Council on Aging Fund.....	1.00
74 Law Enforcement Officers and Fire Fighters Death	
75 Benefits Trust Fund.....	.50
76 State Prosecutor Compensation Fund for the purpose	
77 of providing additional compensation for legal	
78 assistants to district attorneys.....	1.00
79 Crisis Intervention Mental Health Fund.....	10.00
80 Drug Court Fund.....	10.00
81 <u>Mississippi Office of Indigent Appeals Fund.....</u>	<u>1.00</u>
82 TOTAL STATE ASSESSMENT.....	\$ <u>52.00</u>

83 (2) **Implied Consent Law Violations.** In addition to any  
 84 monetary penalties and any other penalties imposed by law, there  
 85 shall be imposed and collected the following state assessment from  
 86 each person upon whom a court imposes a fine or any other penalty  
 87 for any violation of the Mississippi Implied Consent Law (Section  
 88 63-11-1 et seq.):

89 FUND	AMOUNT
90 Crime Victims' Compensation Fund.....	\$ 10.00
91 State Court Education Fund.....	1.50
92 State Prosecutor Education Fund.....	1.00
93 Driver Training Penalty Assessment Fund.....	22.00
94 Law Enforcement Officers Training Fund.....	11.00
95 Emergency Medical Services Operating Fund.....	10.00

96	Mississippi Alcohol Safety Education Program Fund....	5.00
97	Federal-State Alcohol Program Fund.....	10.00
98	Mississippi Crime Laboratory	
99	Implied Consent Law Fund.....	25.00
100	Spinal Cord and Head Injury Trust Fund.....	25.00
101	Capital Defense Counsel Special Fund.....	1.00
102	State General Fund.....	35.00
103	Law Enforcement Officers and Fire Fighters Death	
104	Benefits Trust Fund.....	.50
105	State Prosecutor Compensation Fund for the purpose	
106	of providing additional compensation for legal	
107	assistants to district attorneys.....	1.00
108	Crisis Intervention Mental Health Fund.....	10.00
109	Drug Court Fund.....	10.00
110	<u>Mississippi Office of Indigent Appeals Fund.....</u>	<u>1.00</u>
111	TOTAL STATE ASSESSMENT.....	<u>\$179.00</u>

112       (3) **Game and Fish Law Violations.** In addition to any  
113 monetary penalties and any other penalties imposed by law, there  
114 shall be imposed and collected the following state assessment from  
115 each person upon whom a court imposes a fine or other penalty for  
116 any violation of the game and fish statutes or regulations of this  
117 state:

118	FUND	AMOUNT
119	State Court Education Fund.....	\$ 1.50
120	State Prosecutor Education Fund.....	1.00
121	Law Enforcement Officers Training Fund.....	5.00
122	Hunter Education and Training Program Fund.....	5.00
123	State General Fund.....	30.00
124	Law Enforcement Officers and Fire Fighters Death	
125	Benefits Trust Fund.....	.50
126	State Prosecutor Compensation Fund for the purpose	
127	of providing additional compensation for legal	
128	assistants to district attorneys.....	1.00

129	Crisis Intervention Mental Health Fund.....	10.00
130	Drug Court Fund.....	10.00
131	TOTAL STATE ASSESSMENT.....	\$ 64.00

132 (4) **Litter Law Violations.** In addition to any monetary  
133 penalties and any other penalties imposed by law, there shall be  
134 imposed and collected the following state assessment from each  
135 person upon whom a court imposes a fine or other penalty for any  
136 violation of Section 97-15-29 or 97-15-30:

137	FUND	AMOUNT
138	Statewide Litter Prevention Fund.....	\$ 25.00
139	State Prosecutor Compensation Fund for the purpose	
140	of providing additional compensation for legal	
141	assistants to district attorneys.....	1.00
142	Crisis Intervention Mental Health Fund.....	10.00
143	Drug Court Fund.....	10.00
144	<u>Mississippi Office of Indigent Appeals Fund.....</u>	<u>1.00</u>
145	TOTAL STATE ASSESSMENT.....	\$ <u>47.00</u>

146 (5) **Other Misdemeanors.** In addition to any monetary  
147 penalties and any other penalties imposed by law, there shall be  
148 imposed and collected the following state assessment from each  
149 person upon whom a court imposes a fine or other penalty for any  
150 misdemeanor violation not specified in subsection (1), (2) or (3)  
151 of this section, except offenses relating to vehicular parking or  
152 registration:

153	FUND	AMOUNT
154	Crime Victims' Compensation Fund.....	\$ 10.00
155	State Court Education Fund.....	1.50
156	State Prosecutor Education Fund.....	1.00
157	Law Enforcement Officers Training Fund.....	5.00
158	Capital Defense Counsel Special Fund.....	1.00
159	State General Fund.....	30.00
160	State Crime Stoppers Fund.....	1.50
161	Law Enforcement Officers and Fire Fighters Death	

162	Benefits Trust Fund.....	.50
163	State Prosecutor Compensation Fund for the purpose	
164	of providing additional compensation for legal	
165	assistants to district attorneys.....	1.00
166	Crisis Intervention Mental Health Fund.....	10.00
167	Drug Court Fund.....	8.00
168	Judicial Performance Fund.....	2.00
169	<u>Mississippi Office of Indigent Appeals Fund.....</u>	<u>\$1.00</u>
170	TOTAL STATE ASSESSMENT.....	\$ <u>72.50</u>

171 (6) **Other Felonies.** In addition to any monetary penalties  
172 and any other penalties imposed by law, there shall be imposed and  
173 collected the following state assessment from each person upon  
174 whom a court imposes a fine or other penalty for any felony  
175 violation not specified in subsection (1), (2) or (3) of this  
176 section:

177	FUND	AMOUNT
178	Crime Victims' Compensation Fund.....	\$ 10.00
179	State Court Education Fund.....	1.50
180	State Prosecutor Education Fund.....	1.00
181	Law Enforcement Officers Training Fund.....	5.00
182	Capital Defense Counsel Special Fund.....	1.00
183	State General Fund.....	60.00
184	Criminal Justice Fund.....	50.00
185	Law Enforcement Officers and Fire Fighters Death	
186	Benefits Trust Fund.....	.50
187	State Prosecutor Compensation Fund for the purpose	
188	of providing additional compensation for legal	
189	assistants to district attorneys.....	1.00
190	Crisis Intervention Mental Health Fund.....	10.00
191	Drug Court Fund.....	10.00
192	<u>Mississippi Office of Indigent Appeals Fund.....</u>	<u>1.00</u>
193	TOTAL STATE ASSESSMENT.....	\$ <u>151.00</u>

194           (7) If a fine or other penalty imposed is suspended, in  
195 whole or in part, such suspension shall not affect the state  
196 assessment under this section. No state assessment imposed under  
197 the provisions of this section may be suspended or reduced by the  
198 court.

199           (8) After a determination by the court of the amount due, it  
200 shall be the duty of the clerk of the court to promptly collect  
201 all state assessments imposed under the provisions of this  
202 section. The state assessments imposed under the provisions of  
203 this section may not be paid by personal check. It shall be the  
204 duty of the chancery clerk of each county to deposit all such  
205 state assessments collected in the circuit, county and justice  
206 courts in such county on a monthly basis with the State Treasurer  
207 pursuant to appropriate procedures established by the State  
208 Auditor. The chancery clerk shall make a monthly lump-sum deposit  
209 of the total state assessments collected in the circuit, county  
210 and justice courts in such county under this section, and shall  
211 report to the Department of Finance and Administration the total  
212 number of violations under each subsection for which state  
213 assessments were collected in the circuit, county and justice  
214 courts in such county during such month. It shall be the duty of  
215 the municipal clerk of each municipality to deposit all such state  
216 assessments collected in the municipal court in such municipality  
217 on a monthly basis with the State Treasurer pursuant to  
218 appropriate procedures established by the State Auditor. The  
219 municipal clerk shall make a monthly lump-sum deposit of the total  
220 state assessments collected in the municipal court in such  
221 municipality under this section, and shall report to the  
222 Department of Finance and Administration the total number of  
223 violations under each subsection for which state assessments were  
224 collected in the municipal court in such municipality during such  
225 month.

226           (9) It shall be the duty of the Department of Finance and  
227 Administration to deposit on a monthly basis all such state  
228 assessments into the proper special fund in the State Treasury.  
229 The monthly deposit shall be based upon the number of violations  
230 reported under each subsection and the pro rata amount of such  
231 assessment due to the appropriate special fund. The Department of  
232 Finance and Administration shall issue regulations providing for  
233 the proper allocation of these special funds.

234           (10) The State Auditor shall establish by regulation  
235 procedures for refunds of state assessments, including refunds  
236 associated with assessments imposed before July 1, 1990, and  
237 refunds after appeals in which the defendant's conviction is  
238 reversed. The Auditor shall provide in such regulations for  
239 certification of eligibility for refunds and may require the  
240 defendant seeking a refund to submit a verified copy of a court  
241 order or abstract by which such defendant is entitled to a refund.  
242 All refunds of state assessments shall be made in accordance with  
243 the procedures established by the Auditor.

244           **SECTION 3.** This act shall take effect and be in force from  
245 and after July 1, 2005.