

By: Harden

To: Judiciary

SENATE BILL NO. 2744

1 AN ACT TO AMEND SECTION 23-15-813, MISSISSIPPI CODE OF 1972,
2 TO REMOVE THE PROVISION IN THE CAMPAIGN FINANCE DISCLOSURE LAWS
3 WHICH PROHIBITS THE FAILURE OF A CANDIDATE OR POLITICAL COMMITTEE
4 TO RECEIVE NOTICE OF THE FAILURE TO TIMELY FILE A CAMPAIGN FINANCE
5 DISCLOSURE REPORT TO BE CONSIDERED AS A MITIGATING CIRCUMSTANCE IN
6 THE ASSESSMENT OF ANY CIVIL PENALTY; AND FOR RELATED PURPOSES.

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

8 SECTION 1. Section 23-15-813, Mississippi Code of 1972, is
9 amended as follows:[WAN1]

10 23-15-813. (a) In addition to any other penalty permitted
11 by law, the Secretary of State shall require any candidate or
12 political committee, as identified in Section 23-15-805(a), and
13 any other political committee registered with the Secretary of
14 State, who fails to file a campaign finance disclosure report as
15 required under Sections 23-15-801 through 23-15-813, or Sections
16 23-17-47 through 23-17-53, or who shall file a report which fails
17 to substantially comply with the requirements of Sections
18 23-15-801 through 23-15-813, or Sections 23-17-47 through
19 23-17-53, to be assessed a civil penalty as follows:

20 (i) Within five (5) calendar days after any deadline
21 for filing a report pursuant to Sections 23-15-801 through
22 23-15-813, or Sections 23-17-47 through 23-17-53, the Secretary of
23 State shall compile a list of those candidates and political
24 committees who have failed to file a report. The Secretary of
25 State shall provide each candidate or political committee, who has
26 failed to file a report, notice of the failure by first class
27 mail.

28 (ii) Beginning with the tenth calendar day after which

29 any report shall be due, the Secretary of State shall assess the
30 delinquent candidate and political committee a civil penalty of
31 Fifty Dollars (\$50.00) for each day or part of any day until a
32 valid report is delivered to the Secretary of State, up to a
33 maximum of ten (10) days. However, in the discretion of the
34 Secretary of State, the assessing of the fine may be waived in
35 whole or in part if the Secretary of State determines that
36 unforeseeable mitigating circumstances, such as the health of the
37 candidate, interfered with timely filing of a report. * * *

38 (iii) Filing of the required report and payment of the
39 fine within ten (10) calendar days of notice by the Secretary of
40 State that a required statement has not been filed, constitutes
41 compliance with Sections 23-15-801 through 23-15-813, or Sections
42 23-17-47 through 23-17-53.

43 (iv) Payment of the fine without filing the required
44 report does not in any way excuse or exempt any person required to
45 file from the filing requirements of Sections 23-15-801 through
46 23-15-813, and Sections 23-17-47 through 23-17-53.

47 (v) If any candidate or political committee is assessed
48 a civil penalty, and the penalty is not subsequently waived by the
49 Secretary of State, the candidate or political committee shall pay
50 the fine to the Secretary of State within ninety (90) days of the
51 date of the assessment of the fine. If, after one hundred twenty
52 (120) days of the assessment of the fine the payment for the
53 entire amount of the assessed fine has not been received by the
54 Secretary of State, the Secretary of State shall notify the
55 Attorney General of the delinquency, and the Attorney General
56 shall file, where necessary, a suit to compel payment of the civil
57 penalty.

58 (b) (i) Upon the sworn application, made within sixty (60)
59 calendar days of the date upon which the required report is due,
60 of a candidate or political committee against whom a civil penalty
61 has been assessed pursuant to paragraph (a), the Secretary of

62 State shall forward the application to the State Board of Election
63 Commissioners. The State Board of Election Commissioners shall
64 appoint one or more hearing officers who shall be former
65 chancellors, circuit court judges, judges of the Court of Appeals
66 or justices of the Supreme Court, and who shall conduct hearings
67 held pursuant to this article. The hearing officer shall fix a
68 time and place for a hearing and shall cause a written notice
69 specifying the civil penalties that have been assessed against the
70 candidate or political committee and notice of the time and place
71 of the hearing to be served upon the candidate or political
72 committee at least twenty (20) calendar days before the hearing
73 date. The notice may be served by mailing a copy thereof by
74 certified mail, postage prepaid, to the last known business
75 address of the candidate or political committee.

76 (ii) The hearing officer may issue subpoenas for the
77 attendance of witnesses and the production of books and papers at
78 the hearing. Process issued by the hearing officer shall extend
79 to all parts of the state and shall be served by any person
80 designated by the hearing officer for the service.

81 (iii) The candidate or political committee has the
82 right to appear either personally, by counsel or both, to produce
83 witnesses or evidence in his behalf, to cross-examine witnesses
84 and to have subpoenas issued by the hearing officer.

85 (iv) At the hearing, the hearing officer shall
86 administer oaths as may be necessary for the proper conduct of the
87 hearing. All hearings shall be conducted by the hearing officer,
88 who shall not be bound by strict rules of procedure or by the laws
89 of evidence in the conduct of the proceedings, but the
90 determination shall be based upon sufficient evidence to sustain
91 it. The scope of review at the hearing shall be limited to making
92 a determination of whether failure to file a required report was
93 due to an unforeseeable mitigating circumstance.

94 (v) Where, in any proceeding before the hearing

95 officer, any witness fails or refuses to attend upon a subpoena
96 issued by the commission, refuses to testify, or refuses to
97 produce any books and papers the production of which is called for
98 by a subpoena, the attendance of the witness, the giving of his
99 testimony or the production of the books and papers shall be
100 enforced by any court of competent jurisdiction of this state in
101 the manner provided for the enforcement of attendance and
102 testimony of witnesses in civil cases in the courts of this state.

103 (vi) Within fifteen (15) calendar days after conclusion
104 of the hearing, the hearing officer shall reduce his or her
105 decision to writing and forward an attested true copy of the
106 decision to the last known business address of the candidate or
107 political committee by way of United States first class, certified
108 mail, postage prepaid.

109 (c) (i) The right to appeal from the decision of the
110 hearing officer in an administrative hearing concerning the
111 assessment of civil penalties authorized pursuant to this section
112 is granted. The appeal shall be to the Circuit Court of Hinds
113 County and shall include a verbatim transcript of the testimony at
114 the hearing. The appeal shall be taken within thirty (30)
115 calendar days after notice of the decision of the commission
116 following an administrative hearing. The appeal shall be
117 perfected upon filing notice of the appeal and by the prepayment
118 of all costs, including the cost of the preparation of the record
119 of the proceedings by the hearing officer, and the filing of a
120 bond in the sum of Two Hundred Dollars (\$200.00), conditioned that
121 if the decision of the hearing officer be affirmed by the court,
122 the candidate or political committee will pay the costs of the
123 appeal and the action in court. If the decision is reversed by
124 the court, the Secretary of State will pay the costs of the appeal
125 and the action in court.

126 (ii) If there is an appeal, the appeal shall act as a
127 supersedeas. The court shall dispose of the appeal and enter its

128 decision promptly. The hearing on the appeal may be tried in
129 vacation, in the court's discretion. The scope of review of the
130 court shall be limited to a review of the record made before the
131 hearing officer to determine if the action of the hearing officer
132 is unlawful for the reason that it was 1. not supported by
133 substantial evidence, 2. arbitrary or capricious, 3. beyond the
134 power of the hearing officer to make, or 4. in violation of some
135 statutory or constitutional right of the appellant. The decision
136 of the court may be appealed to the Supreme Court in the manner
137 provided by law.

138 (d) If, after forty-five (45) calendar days of the date of
139 the administrative hearing procedure set forth in paragraph (b),
140 the candidate or political committee identified in paragraph (a)
141 of this section fails to pay the monetary civil penalty imposed by
142 the hearing officer, the Secretary of State shall notify the
143 Attorney General of the delinquency. The Attorney General shall
144 investigate the offense in accordance with the provisions of this
145 chapter, and where necessary, file suit to compel payment of the
146 unpaid civil penalty.

147 (e) If, after twenty (20) calendar days of the date upon
148 which a campaign finance disclosure report is due, a candidate or
149 political committee identified in paragraph (a) of this section
150 shall not have filed a valid report with the Secretary of State,
151 the Secretary of State shall notify the Attorney General of those
152 candidates and political committees who have not filed a valid
153 report, and the Attorney General shall thereupon prosecute the
154 delinquent candidates and political committees.

155 SECTION 2. The Attorney General of the State of Mississippi
156 shall submit this act, immediately upon approval by the Governor,
157 or upon approval by the Legislature subsequent to a veto, to the
158 Attorney General of the United States or to the United States
159 District Court for the District of Columbia in accordance with the
160 provisions of the Voting Rights Act of 1965, as amended and

161 extended.

162 SECTION 3. This act shall take effect and be in force from
163 and after the date it is effectuated under Section 5 of the Voting
164 Rights Act of 1965, as amended and extended.