MISSISSIPPI LEGISLATURE

By: Representative Horne

To: Apportionment and Elections

HOUSE BILL NO. 848


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

SECTION 1. Section 23-15-801, Mississippi Code of 1972, is amended as follows:

23-15-801. (a) "Election" shall mean a general, special, primary or runoff election.

(b) "Candidate" shall mean an individual who seeks nomination for election, or election, to any elective office other than a federal elective office and for purposes of this article, an individual shall be deemed to seek nomination for election, or election:

(i) If such individual has received contributions or has made expenditures for a candidate for the Legislature or any statewide or state district office, by the qualifying deadlines specified in Sections 23-15-299 and 23-15-977, whichever occurs first; or

(ii) If such individual has given his or her consent to another person to receive contributions or make expenditures on behalf of such individual and if such person has received such contributions or has made such expenditures during a calendar year, or has made such expenditures during a calendar year.
(c) "Political committee" shall mean any committee, party, club, association, political action committee, campaign committee or other groups of persons or affiliated organizations which receives contributions * * * during a calendar year or which makes expenditures * * * during a calendar year for the purpose of influencing or attempting to influence the action of voters for or against the nomination for election, or election, of one or more candidates, or balloted measures and shall, in addition, include each political party registered with the Secretary of State.

(d) "Affiliated organization" shall mean any organization which is not a political committee, but which directly or indirectly establishes, administers or financially supports a political committee.

(e) (i) "Contribution" shall include any gift, subscription, loan, advance or deposit of money or anything of value made by any person or political committee for the purpose of influencing any election for elective office or balloted measure;

(ii) "Contribution" shall not include the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee; or the cost of any food or beverage for use in any candidate's campaign or for use by or on behalf of any political committee of a political party;

(iii) "Contribution to a political party" includes any gift, subscription, loan, advance or deposit of money or anything of value made by any person, political committee, or other organization to a political party and to any committee, subcommittee, campaign committee, political committee and other groups of persons and affiliated organizations of the political party;

(iv) "Contribution to a political party" shall not include the value of services provided without compensation by any
individual who volunteers on behalf of a political party or a candidate of a political party.

(f) (i) "Expenditure" shall include any purchase, payment, distribution, loan, advance, deposit, gift of money or anything of value, made by any person or political committee for the purpose of influencing any balloted measure or election for elective office; and a written contract, promise, or agreement to make an expenditure;

(ii) "Expenditure" shall not include any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate; or nonpartisan activity designed to encourage individuals to vote or to register to vote;

(iii) "Expenditure by a political party" includes 1. any purchase, payment, distribution, loan, advance, deposit, gift of money or anything of value, made by any political party and by any contractor, subcontractor, agent, and consultant to the political party; and 2. a written contract, promise, or agreement to make such an expenditure.

(g) The term "identification" shall mean:

(i) In the case of any individual, the name, the mailing address, and the occupation of such individual, as well as the name of his or her employer; and

(ii) In the case of any other person, the full name and address of such person.

(h) The term "political party" shall mean an association, committee or organization which nominates a candidate for election to any elective office whose name appears on the election ballot as the candidate of such association, committee or organization.

(i) The term "person" shall mean any individual, family, firm, corporation, partnership, association or other legal entity.
(j) The term "independent expenditure" shall mean an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate or any authorized committee or agent of such candidate, and which is not made in concert with or at the request or suggestion of any candidate or any authorized committee or agent of such candidate.

(k) The term "clearly identified" shall mean that:

(i) The name of the candidate involved appears; or

(ii) A photograph or drawing of the candidate appears; or

(iii) The identity of the candidate is apparent by unambiguous reference.

SECTION 2. Section 23-15-803, Mississippi Code of 1972, is amended as follows:

23-15-803. (a) Statements of organization. Each political committee shall file a statement of organization no later than ten days after receipt of contributions or no later than ten (10) days after having made expenditures.

(b) Contents of statements. The statement of organization of a political committee shall include:

(i) The name and address of the committee and all officers;

(ii) Designation of a director of the committee and a custodian of books and accounts of the committee, who shall be designated treasurer; and

(iii) If the committee is authorized by a candidate, the name, address, office sought, and party affiliation of the candidate.

(c) Change of information in statements. Any change in information previously submitted in a statement of organization shall be reported and noted on the next regularly scheduled report.
SECTION 3. Section 23-15-807, Mississippi Code of 1972, is amended as follows:

23-15-807. (a) Each candidate or political committee shall file reports of contributions and disbursements in accordance with the provisions of this section. All candidates or political committees required to report may terminate its obligation to report only upon submitting a final report that it will no longer receive any contributions or make any disbursement and that such candidate or committee has no outstanding debts or obligations. The candidate, treasurer or chief executive officer shall sign each such report.

(b) Candidates who are seeking election, or nomination for election, and political committees that make expenditures for the purpose of influencing or attempting to influence the action of voters for or against the nomination for election, or election, of one or more candidates or balloted measures at such election, shall file the following reports:

   (i) In any calendar year during which there is a regularly scheduled election, a pre-election report, which shall be filed no later than the seventh day before any election in which such candidate or political committee has accepted contributions or made expenditures and which shall be complete as of the tenth day before such election;

   (ii) In 1987 and every fourth year thereafter, periodic reports, which shall be filed no later than the tenth day after April 30, May 31, June 30, September 30 and December 31, and which shall be complete as of the last day of each period; and

   (iii) In any calendar years except 1987 and except every fourth year thereafter, a report covering the calendar year which shall be filed no later than January 31 of the following calendar year.

(c) All candidates for judicial office as defined in Section 23-15-975, or their political committees, shall file in the year
in which they are to be elected, periodic reports which shall be
filed no later than the tenth day after April 30, May 31, June 30,
September 30 and December 31.
(d) Contents of reports. Each report under this article
shall disclose:
(1) For the reporting period and the calendar year, the
total amount of all contributions and the total amount of all
expenditures of the candidate or reporting committee which shall
include those required to be identified pursuant to item (ii) of
this paragraph as well as the total of all other contributions and
expenditures during the calendar year. Such reports shall be
cumulative during the calendar year to which they relate;
(2) The identification of:
1. Each person or political committee who makes a
contribution to the reporting candidate or political committee
during the reporting period together with the date and
amount of any such contribution;
2. Each person or organization, candidate or
political committee who receives an expenditure, payment or other
transfer from the reporting candidate, political committee or its
agent, employee, designee, contractor, consultant or other person
or persons acting in its behalf during the reporting period together with the date and amount of such expenditure;
3. The total amount of cash on hand of each
reporting candidate and reporting political committee;
(iv) In addition to the contents of reports specified
in items (i), (ii) and (iii) of this paragraph, each political
party shall disclose:
1. Each person or political committee who makes a
contribution to a political party during the reporting period
 together with the date and amount of the contribution;
2. Each person or organization who receives an
expenditure by a political party or expenditures by a political
party during the reporting period • • • together with the date and
amount of the expenditure.

(e) The appropriate office specified in Section 23-15-805
must be in actual receipt of the reports specified in this article
by 5:00 p.m. on the dates specified in paragraph (b) of this
section. If the date specified in paragraph (b) of this section
shall fall on a weekend or legal holiday then the report shall be
due in the appropriate office at 5:00 p.m. on the first working
day before the date specified in paragraph (b) of this section.
The reporting candidate or reporting political committee shall
ensure that the reports are delivered to the appropriate office by
the filing deadline. The Secretary of State may approve specific
means of electronic transmission of completed campaign finance
disclosure reports, which may include, but not be limited to,
transmission by electronic facsimile (FAX) devices.

(f) (i) If any contribution • • • is received by a
candidate or candidate's political committee after the tenth day,
but more than forty-eight (48) hours before 12:01 a.m. of the day
of the election, the candidate or political committee shall notify
the appropriate office designated in Section 23-15-805, within
forty-eight (48) hours of receipt of the contribution. The
notification shall include:

1. The name of the receiving candidate;
2. The name of the receiving candidate's political
committee, if any;
3. The office sought by the candidate;
4. The identification of the contributor;
5. The date of receipt;
6. The amount of the contribution;
7. If the contribution is in-kind, a description
of the in-kind contribution; and
8. The signature of the candidate or the treasurer
or director of the candidate's political committee.
(ii) The notification shall be in writing, and may be transmitted by overnight mail, courier service, or other reliable means, including electronic facsimile (FAX), but the candidate or candidate's committee shall ensure that the notification shall in fact be received in the appropriate office designated in Section 23-15-805 within forty-eight (48) hours of the contribution.

SECTION 4. Section 23-15-809, Mississippi Code of 1972, is amended as follows:

23-15-809. (a) Every person who makes independent expenditures during a calendar year shall file a statement containing the information required under Section 23-15-807. Such statement shall be filed with the appropriate offices as provided for in Section 23-15-805, and such person shall be considered a political committee for the purpose of determining place of filing.

(b) Statements required to be filed by this subsection shall include:

(i) Information indicating whether the independent expenditure is in support of, or in opposition to, the candidate involved;

(ii) Under penalty of perjury, a certification of whether or not such independent expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate; and

(iii) The identification of each person who made a contribution to the person filing such statement which was made for the purpose of furthering an independent expenditure.

SECTION 5. Section 23-15-811, Mississippi Code of 1972, is amended as follows:

23-15-811. (a) Any candidate or any other person who shall wilfully and deliberately and substantially violate the provisions and prohibitions of this article shall be guilty of a misdemeanor...
and upon conviction thereof shall be punished by a fine in a sum not to exceed **Five Thousand Dollars ($5,000.00)** or imprisoned for not longer than one (1) year or by both fine and imprisonment.

(b) In addition to the penalties provided in paragraph (a) of this section, any candidate or political committee which is required to file a statement or report which fails to file such statement or report on the date in which it is due shall be compelled to file such statement or report by an action in the nature of a mandamus.

(c) No candidate shall be certified as nominated for election or as elected to office unless and until he files all reports required by this article due as of the date of certification.

(d) No candidate who is elected to office shall receive any salary or other remuneration for the office unless and until he files all reports required by this article due as of the date such salary or remuneration is payable.

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SECTION 6. Section 23-15-813, Mississippi Code of 1972, is amended as follows:

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

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

(ii) Beginning with the tenth calendar day after which any report shall be due, the Secretary of State shall assess the delinquent candidate and political committee a civil penalty of Fifty Dollars ($50.00) for each day or part of any day until a valid report is delivered to the Secretary of State.

However, in the discretion of the Secretary of State, the assessing of the fine may be waived in whole or in part if the Secretary of State determines that unforeseeable mitigating circumstances, such as the health of the candidate, interfered with timely filing of a report. Failure of a candidate or political committee to receive notice of failure to file a report from the Secretary of State is not an unforeseeable mitigating circumstance, and failure to receive the notice shall not result in removal or reduction of any assessed civil penalty.

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

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

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

(b) (i) Upon the sworn application, made within sixty (60)
calendar days of the date upon which the required report is due,
of a candidate or political committee against whom a civil penalty
has been assessed pursuant to paragraph (a), the Secretary of
State shall forward the application to the State Board of Election
Commissioners. The State Board of Election Commissioners shall
appoint one or more hearing officers who shall be former
chancellors, circuit court judges, judges of the Court of Appeals
or justices of the Supreme Court, and who shall conduct hearings
held pursuant to this article. The hearing officer shall fix a
time and place for a hearing and shall cause a written notice
specifying the civil penalties that have been assessed against the
candidate or political committee and notice of the time and place
of the hearing to be served upon the candidate or political
committee at least twenty (20) calendar days before the hearing
date. The notice may be served by mailing a copy thereof by
certified mail, postage prepaid, to the last known business
address of the candidate or political committee.

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

(iii) The candidate or political committee has the
right to appear either personally, by counsel or both, to produce
witnesses or evidence in his behalf, to cross-examine witnesses
and to have subpoenas issued by the hearing officer.
(iv) At the hearing, the hearing officer shall administer oaths as may be necessary for the proper conduct of the hearing. All hearings shall be conducted by the hearing officer, who shall not be bound by strict rules of procedure or by the laws of evidence in the conduct of the proceedings, but the determination shall be based upon sufficient evidence to sustain it. The scope of review at the hearing shall be limited to making a determination of whether failure to file a required report was due to an unforeseeable mitigating circumstance.

(v) Where, in any proceeding before the hearing officer, any witness fails or refuses to attend upon a subpoena issued by the commission, refuses to testify, or refuses to produce any books and papers the production of which is called for by a subpoena, the attendance of the witness, the giving of his testimony or the production of the books and papers shall be enforced by any court of competent jurisdiction of this state in the manner provided for the enforcement of attendance and testimony of witnesses in civil cases in the courts of this state.

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

(c) (i) The right to appeal from the decision of the hearing officer in an administrative hearing concerning the assessment of civil penalties authorized pursuant to this section is granted. The appeal shall be to the Circuit Court of Hinds County and shall include a verbatim transcript of the testimony at the hearing. The appeal shall be taken within thirty (30) calendar days after notice of the decision of the commission following an administrative hearing. The appeal shall be perfected upon filing notice of the appeal and by the prepayment
of all costs, including the cost of the preparation of the record
of the proceedings by the hearing officer, and the filing of a
bond in the sum of Five Hundred Dollars ($500.00), conditioned
that if the decision of the hearing officer be affirmed by the
court, the candidate or political committee will pay the costs of
the appeal and the action in court. If the decision is reversed
by the court, the Secretary of State will pay the costs of the
appeal and the action in court.

(ii) If there is an appeal, the appeal shall act as a
supersedeas. The court shall dispose of the appeal and enter its
decision promptly. The hearing on the appeal may be tried in
vacation, in the court's discretion. The scope of review of the
court shall be limited to a review of the record made before the
hearing officer to determine if the action of the hearing officer
is unlawful for the reason that it was 1. not supported by
substantial evidence, 2. arbitrary or capricious, 3. beyond the
power of the hearing officer to make, or 4. in violation of some
statutory or constitutional right of the appellant. The decision
of the court may be appealed to the Supreme Court in the manner
provided by law.

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

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

SECTION 7. The Attorney General of the State of Mississippi shall submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

SECTION 8. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.