HOUSE BILL NO. 1270

AN ACT TO AMEND SECTION 23-15-801, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF INDEPENDENT EXPENDITURE; TO AMEND SECTION 23-15-807, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE SECRETARY OF STATE TO AUDIT BOOKS AND RECORDS OF POLITICAL COMMITTEES TO DETERMINE IF VIOLATIONS HAVE OCCURRED; TO AMEND SECTION 23-15-813, MISSISSIPPI CODE OF 1972, TO REVISE PENALTIES; AND FOR RELATED PURPOSES.

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 aggregating in excess of Two Hundred Dollars ($200.00) or has made expenditures aggregating in excess of Two Hundred Dollars ($200.00) or 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 aggregating in excess of Two Hundred Dollars ($200.00) during a calendar year, or has made such expenditures...
aggregating in excess of Two Hundred Dollars ($200.00) 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 aggregating in excess of Two Hundred Dollars ($200.00) during a calendar year or which makes expenditures aggregating in excess of Two Hundred Dollars ($200.00) 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 or an expenditure made by a person for the purpose of supporting or opposing a candidate for judicial office including the publication, advertisement or release of information, or payment therefor, containing favorable or unfavorable information about a judicial 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 23-15-807, 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

...
expenditures during the calendar year. Such reports shall be cumulative during the calendar year to which they relate;

(ii) The identification of:

1. Each person or political committee who makes a contribution to the reporting candidate or political committee during the reporting period, whose contribution or contributions within the calendar year have an aggregate amount or value in excess of Two Hundred Dollars ($200.00) 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 when the expenditure, payment or other transfer to such person, organization, candidate or political committee within the calendar year have an aggregate value or amount in excess of Two Hundred Dollars ($200.00) together with the date and amount of such expenditure.

(iii) 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 and whose contribution or contributions to a political party within the calendar year have an aggregate amount or value in excess of Two Hundred Dollars ($200.00), 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 when the expenditure or
expenditures to the person or organization within the calendar
year have an aggregate value or amount in excess of Two Hundred
Dollars ($200.00), 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 of more than Two Hundred
Dollars ($200.00) 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.

(g) The Secretary of State is authorized, upon reasonable notice and probable cause that a violation of this section has occurred, to audit the books and records of a political committee and to subpoena the appropriate records to determine if a violation of this section has occurred.

SECTION 3. 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 up to Ten Thousand Dollars ($10,000.00) for each day or part of any day until a valid report is delivered to the Secretary of State, up to a maximum of ten (10) days. 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 Two Hundred Dollars ($200.00), 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
SECTION 4. The Attorney General of the State of Mississippi is hereby directed to 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 5. 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.