

By: Senator(s) Chaney

To: Elections

SENATE BILL NO. 2708

1 AN ACT TO ESTABLISH A PROCEDURE BY WHICH ELECTED JUDGES MAY
2 BE RECALLED IN ELECTIONS HELD FOR THAT PURPOSE; TO PROVIDE THAT A
3 RECALL ELECTION SHALL BE HELD AFTER A PETITION REQUESTING THE
4 ELECTION WHICH CONTAINS THE REQUISITE NUMBER OF SIGNATURES HAS
5 BEEN FILED; TO PROVIDE THAT IF A JUDGE IS RECALLED IN AN ELECTION,
6 A SPECIAL ELECTION SHALL BE CALLED TO FILL THE VACANCY CREATED BY
7 THE RECALL; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** This act shall be known and may be cited as the
10 "Judges Recall Act."

11 **SECTION 2.** As used in this act, the term:

12 (a) "Election superintendent" means:

13 (i) In the case of a justice of the Supreme Court,
14 judge of the Court of Appeals, circuit judge or chancellor, the
15 Secretary of State; and

16 (ii) In the case of a county court judge, family
17 court judge or justice court judge, the county board of election
18 commissioners.

19 (b) "Elector" means any person who possesses all of the
20 qualifications for voting prescribed now or after the effective
21 date of Senate Bill No. _____, 2002 Regular Session, by the laws
22 of this state, and who has registered in accordance with Article 3
23 of the Mississippi Election Code.

24 (c) "Electoral district" means the area in which the
25 electors reside who are qualified to vote for any of the
26 candidates running for judicial office.

27 (d) "Official sponsors" or "sponsors" means the
28 electors who file an application for a recall petition who are
29 registered and eligible to vote in the recall election and who



30 reside in the electoral district of the judge sought to be
31 recalled.

32 **SECTION 3.** (1) Every judge who holds an elected office,
33 either by election or by appointment, is subject to recall from
34 office by electors who are registered and qualified to vote in the
35 recall election and who reside in the electoral district from
36 which candidates are elected to that office.

37 (2) The number of electors necessary to petition the recall
38 of a judge shall be calculated as follows: Fifty Percent (50%)
39 plus one (1) of the number of votes cast in the most recent
40 election in which the judge was elected to the term the petition
41 seeks to vacate.

42 (3) A recall petition may not demand the recall of more than
43 one (1) public official.

44 **SECTION 4.** (1) An application for a recall petition may not
45 be filed during the first one hundred eighty (180) days or during
46 the last one hundred eighty (180) days of the term of office of
47 any judge subject to recall.

48 (2) The application shall include:

49 (a) The name and office of the person sought to be
50 recalled;

51 (b) The printed names and signatures of the official
52 sponsors, the date signed, residence addresses, and the name of
53 the county of residence; and

54 (c) The designation of one (1) of the sponsors as the
55 petition chairman who shall represent the sponsors on all matters
56 pertaining to the recall application and petition.

57 The official application forms shall be printed by the Office
58 of the Secretary of State in substantially the form prescribed in
59 this subsection, and distributed to election superintendents.

60 (3) The number of official sponsors necessary to file an
61 application for a recall petition must be equal in number to the
62 smaller of either one hundred (100) or more electors or at least



63 ten percent (10%) of the number of electors who voted at the last
64 preceding general election for any of the candidates running for
65 the office held by the judge sought to be recalled.

66 (4) Sponsors of a recall petition, before having the
67 petition circulated, shall submit the application for the petition
68 to the election superintendent and request official recall
69 petition forms.

70 (5) At any time before the date the election superintendent
71 receives the application for a recall petition, an elector who has
72 signed the application as an official sponsor may request
73 withdrawal of his signature from the application by executing and
74 filing an affidavit signed and sworn to before a notary public
75 which affirms the elector's intention to withdraw his signature
76 from the application. The official affidavit of signature
77 withdrawal shall be printed by the Office of Secretary of State
78 and distributed to election superintendents. The form of the
79 affidavit shall be substantially as prescribed in Section 7 of
80 Senate Bill No. _____, 2002 Regular Session.

81 (6) On receipt of the application, the election
82 superintendent shall determine the sufficiency of the application
83 and determine if the signers are qualified electors eligible to
84 sign the application. The election superintendent or his designee
85 is granted unrestricted authority to examine the registration
86 records maintained by the registrar of electors for the purpose of
87 making the determination. If the election superintendent finds
88 that any signer is not a qualified elector eligible to sign the
89 application, the signature shall not be counted in determining
90 whether the application contains a sufficient number of signatures
91 as required by law. The election superintendent shall certify the
92 sufficiency or insufficiency of the application for a recall
93 petition within five (5) days after receiving the application,
94 excluding Saturdays, Sundays and legal holidays.



95 (7) An application for a recall petition shall not be
96 amended, supplemented, or returned after it has been accepted by
97 the election superintendent for verification.

98 (8) Upon certifying the sufficiency of the application, the
99 election superintendent immediately shall officially file the
100 application, issue official recall petition forms, assign a number
101 to the recall petition, which number shall appear on the face of
102 each petition form, and issue that number to the sponsors. A
103 record of each application, including the date of its receipt and
104 the number assigned and issued to the sponsors, shall be
105 maintained by the election superintendent.

106 (9) The election superintendent shall notify immediately in
107 writing the judge named for recall in the application that a
108 recall petition has been officially issued for circulation.

109 (10) The official recall petition forms shall be printed by
110 the Office of Secretary of State and distributed to election
111 superintendents. The form of the petition shall be as provided in
112 Section 5 of this act.

113 **SECTION 5.** (1) The form of the recall petition shall be
114 substantially as follows:

115 "RECALL PETITION

116 _____

117 (Official Application No.)

118 _____

119 (County or city)

120 _____

121 To (Name of election superintendent) _____

122 (Address) _____

123 (City, state, zip code) _____

124 We, the electors registered and eligible to vote in the
125 recall election herein petitioned for, demand the recall of
126 _____ (Name and office).

127 Name (Signature) _____



128 Date of Signing _____
129 Residence Address (No., street or route) _____
130 County of Residence _____
131 Printed name of elector _____
132 City _____

133 (Twenty lines for signatures and printed names) "

134 (2) The following statement shall be written or printed on
135 each petition and each signer must read, or be read, the following
136 statement:

137 "If (insert appropriate number) electors sign this petition,
138 there will be an election at which sixty percent (60%) of the
139 electors voting in the election will determine whether the
140 above-named official will be removed from office."

141 **SECTION 6.** (1) All signers of a single recall petition
142 shall be electors who are registered and eligible to vote in the
143 recall election and who reside in the electoral district of the
144 judge sought to be recalled. When a petition for the recall of a
145 judge is circulated in more than one (1) county, each sheet of the
146 petition shall bear the name of the county in which it is
147 circulated, and only electors of the designated county may sign
148 the sheet.

149 (2) Every elector signing a recall petition shall do so in
150 the presence of the person circulating the petition, who is to
151 execute the affidavit of verification on the reverse side of the
152 petition form. At the time of signing, the elector shall sign his
153 name, and the elector or the person circulating the petition shall
154 print the name of the elector below the elector's signature and
155 shall print or write in the appropriate spaces following the
156 signature the elector's residence address, giving the number and
157 street or route and city, the name of the county, and the date on
158 which the elector signed the petition.

159 (3) If an elector is incapable of signing his own name, he
160 may specifically request the circulator of the petition to sign



161 and print his name and complete the information required on the
162 petition sheet to accompany the signature. However, the
163 circulator shall sign his name beside the printed name of the
164 elector.

165 (4) The person before whom the electors signed the recall
166 petition shall verify, in an affidavit subscribed and sworn to by
167 him before a notary public, that each of the names on the petition
168 form was signed in his presence on the date indicated and that in
169 his belief each signer was an elector of the electoral district of
170 the official sought to be recalled.

171 (5) The affidavit printed on the reverse side of each recall
172 petition form shall be in the following form:

173 "AFFIDAVIT OF CIRCULATOR

174 State of Mississippi

175 County of _____

176 Under the penalty of a misdemeanor, punishable by a fine not
177 to exceed One Thousand Dollars (\$1,000.00) or by imprisonment not
178 to exceed twelve (12) months, or both, I state that I am an
179 elector registered and eligible to vote in the recall election
180 herein petitioned for and that each petitioner signed or caused to
181 be signed the foregoing petition in my presence on the date
182 indicated; and I believe that each signer's name and residence
183 address are correctly stated, and that each signer is an elector
184 of the electoral district in which the recall election will be
185 conducted, and that each signer has read, or was read, the
186 required statement which is set out on each petition.

187 (Signature of affiant) _____

188 (Residence address) _____

189 (Number and street or route) _____

190 (City) _____

191 Subscribed and sworn to before me this the _____ day of

192 _____, 2_____.

193 Notary Public _____



194 _____, Mississippi
195 My commission expires on the _____ day of _____, 2____."

196 (6) An elector may change the way his signature and
197 residence address appear on a recall petition at any time before
198 the filing of the petition for verification by striking through
199 his name and initialing the strike-through and re-signing the
200 petition with his printed name corrected accordingly.

201 **SECTION 7.** (1) At any time before the date an application
202 for recall petition or a recall petition is filed for
203 verification, an elector who has signed the application or the
204 recall petition form may request withdrawal of his signature from
205 the application or recall petition by executing and filing an
206 affidavit, in the form prescribed by this section, with the
207 election superintendent. Any signature so withdrawn shall not be
208 counted in determining the sufficiency of the application or
209 recall petition. The affidavit shall:

- 210 (a) Be signed and sworn to before a notary public;
211 (b) State the elector's residence address, giving the
212 number and street or route and city, the name of the county of
213 residence, and, in the case of a recall petition, the number of
214 the petition which he signed; and
215 (c) Affirm the elector's intention to withdraw his
216 signature from the application or recall petition.

217 (2) The affidavit shall be substantially in the following
218 form:

219 "AFFIDAVIT OF SIGNATURE WITHDRAWAL

220 State of Mississippi

221 County of _____

222 I, _____, (Name as it appears on the application
223 or recall petition) first being duly sworn, state that I am an
224 elector of the _____ electoral district in which the recall
225 election will be conducted.



226 That my residence address is (number, street or route) _____
227 _____ (city) _____.

228 That I signed or caused to be signed the application or the
229 petition for the recall of _____ (name and office of person
230 sought to be recalled) and, in the case of an affidavit for
231 withdrawal of a signature on a recall petition, that the recall
232 petition has been assigned number _____.

233 That it is my intention by the signing and filing of this
234 affidavit to withdraw my signature therefrom.

235 Signature of elector _____

236 Subscribed and sworn to before me this the _____ day of
237 _____, 2____.

238 Notary Public _____

239 _____, Mississippi

240 My commission expires on the _____ day of _____, 2____."

241 **SECTION 8.** A registrar of electors or any other person
242 authorized by law to register electors and any person other than
243 an elector of the electoral district of the judge sought to be
244 recalled shall not circulate a recall petition. An employee of
245 the state shall not circulate a recall petition. All signatures
246 obtained by any unqualified person shall be void and shall not be
247 counted in determining the sufficiency of the petition.

248 **SECTION 9.** (1) The election superintendent shall be
249 responsible for determining the sufficiency of the recall petition
250 within thirty (30) days after it has been submitted to him. The
251 election superintendent or his designee is granted unrestricted
252 authority to examine the registration records maintained by the
253 registrar of electors for the purpose of determining if the
254 signers are qualified electors eligible to sign the recall
255 petition. If the election superintendent is not reasonably able
256 to ascertain that any signature is that of a qualified elector
257 eligible to sign the recall petition, the signature shall not be



258 counted in determining whether the petition contains a sufficient
259 number of signatures as required by law.

260 (2) A recall petition shall not be accepted as verification
261 for a judicial office if more than one hundred twenty (120) days
262 have elapsed since the date the official recall petition forms
263 were issued to the sponsors.

264 (3) No recall petition shall be amended, supplemented, or
265 returned after it has been accepted by the election superintendent
266 for verification.

267 (4) Within five (5) days, excluding Saturday, Sunday and
268 legal holidays, after the election superintendent has certified
269 the sufficiency of a petition, he shall notify the Governor or the
270 appropriate official, who shall call the recall election as
271 provided in Section 10 of Senate Bill No. _____, 2002 Regular
272 Session.

273 (5) Upon certifying the sufficiency or insufficiency of a
274 recall petition, the election superintendent shall notify
275 immediately the petition chairman and the officeholder in writing
276 of the results and officially file the petition.

277 **SECTION 10.** (1) Within ten (10) days after having received
278 certification of the sufficiency of the recall petition by the
279 election superintendent, a recall election shall be called as
280 provided in this section, and shall be conducted not less than
281 thirty (30) days nor more than forty-five (45) days after the
282 call. However, if a primary or general election is to be held not
283 less than thirty (30) days nor more than forty-five (45) days
284 after the call is issued, the recall election shall be conducted
285 on that date.

286 (2) A recall election shall be called:

287 (a) By the Governor, if for a justice of the Supreme
288 Court, judge of the Court of Appeals, circuit judge or chancellor;
289 or



290 (b) By the board of supervisors of the county, if for a
291 county court judge or a justice court judge.

292 (3) Notice of the election shall be published for two (2)
293 consecutive weeks in a newspaper of general circulation in the
294 electoral district.

295 (4) It shall be the duty of the appropriate official
296 authorized by law to conduct elections to hold and conduct the
297 recall election and to declare and certify the results. The
298 ballot for the recall election shall state the name and office of
299 the person whose recall has been petitioned, and the ballot shall
300 be in the form prescribed by law for state or county officials.
301 The ballot shall have written or printed thereon the following:

302 " () YES Shall (name of officeholder), (name of office)
303 () NO Be recalled and removed from public office?"

304 If more than one (1) public official is subject to a recall
305 election in the same precinct, a recall ballot may be prepared to
306 include on a single ballot separate recall questions for each of
307 the officials sought to be recalled.

308 (5) Those persons desiring to vote in favor of recall shall
309 vote "Yes," and those persons desiring to vote against recall
310 shall vote "No." If sixty percent (60%) of the votes cast on the
311 question are in favor of recall, the public office in question
312 shall become vacant immediately. Otherwise, the public official
313 named in the recall petition shall continue in office.

314 (6) A special election shall be called by the appropriate
315 state or local official to fill a vacancy created by a recall
316 election. The special election shall be called within ten (10)
317 days after the date of the recall election and shall be conducted
318 at least thirty (30) days but not more than forty-five (45) days
319 following the call. If no official is specifically designated by
320 law, the Governor shall issue the call for a special election to
321 fill the vacancy created by recall. Any person who has been



322 recalled from office under this act shall not be eligible to run
323 for election to fill the vacancy created by recall.

324 **SECTION 11.** After a recall petition and election, no further
325 recall petition may be filed against the same judge until at least
326 six (6) months have elapsed from the date of the previous recall
327 election. Any other recall petitions filed against that judge
328 which are outstanding on the date of the recall election shall be
329 void.

330 **SECTION 12.** The Secretary of State may promulgate any rules
331 and regulations which are necessary to carry out this act.

332 (1) If the election superintendent fails to comply with this
333 act, any elector may apply, within ten (10) days after the
334 refusal, to the circuit court for a writ of mandamus to compel him
335 to perform his official duties. If the court finds that the
336 election superintendent has not complied with this act, the court
337 shall issue an order for the election superintendent to comply.
338 If a circuit court judge is the subject of the recall petition,
339 then he or she shall not preside over the hearing for the writ of
340 mandamus.

341 (2) An action against an election superintendent shall be
342 filed in the circuit court of the county of the election
343 superintendent, except that an action against the Secretary of
344 State shall be filed in the Circuit Court of the First Judicial
345 District of Hinds County.

346 **SECTION 13.** This act is supplementary to any other methods
347 provided by law for removing a judge from office; and nothing in
348 this act shall be construed as abridging or repealing those laws.

349 **SECTION 14.** The Attorney General of the State of Mississippi
350 shall submit this act, immediately upon approval by the Governor,
351 or upon approval by the Legislature subsequent to a veto, to the
352 Attorney General of the United States or to the United States
353 District Court for the District of Columbia in accordance with the



354 provisions of the Voting Rights Act of 1965, as amended and
355 extended.

356 **SECTION 15.** This act shall take effect and be in force from
357 and after the date it is effectuated under Section 5 of the Voting
358 Rights Act of 1965, as amended and extended.

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