

By: Representative Dedeaux

To: Apportionment and
Elections

HOUSE BILL NO. 709

1 AN ACT TO AMEND SECTION 23-15-807, MISSISSIPPI CODE OF 1972,
2 TO REQUIRE A REPORTING CANDIDATE TO LIST THE TOTAL AMOUNT OF
3 OUTSTANDING LOANS IN A CAMPAIGN FINANCE REPORT; TO AMEND SECTION
4 23-15-813, MISSISSIPPI CODE OF 1972, TO IMPOSE A PENALTY FOR
5 CLEARLY IDENTIFIED OMISSIONS; TO AMEND SECTION 23-15-801,
6 MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING SECTIONS;
7 AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** Section 23-15-807, Mississippi Code of 1972, is
10 amended as follows:

11 23-15-807. (a) Each candidate or political committee shall
12 file reports of contributions and disbursements in accordance with
13 the provisions of this section. All candidates or political
14 committees required to report may terminate its obligation to
15 report only upon submitting a final report that it will no longer
16 receive any contributions or make any disbursement and that such
17 candidate or committee has no outstanding debts or obligations.
18 The candidate, treasurer or chief executive officer shall sign
19 each such report.

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

26 (i) In any calendar year during which there is a
27 regularly scheduled election, a preelection report, which shall be
28 filed no later than the seventh day before any election in which
29 such candidate or political committee has accepted contributions

30 or made expenditures and which shall be complete as of the tenth
31 day before such election;

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

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

40 (c) All candidates for judicial office as defined in Section
41 23-15-975, or their political committees, shall file in the year
42 in which they are to be elected, periodic reports which shall be
43 filed no later than the tenth day after April 30, May 31, June 30,
44 September 30 and December 31.

45 (d) Contents of reports. Each report under this article
46 shall disclose:

47 (i) For the reporting period and the calendar year, the
48 total amount of all contributions and the total amount of all
49 expenditures of the candidate or reporting committee which shall
50 include those required to be identified pursuant to item (ii) of
51 this paragraph as well as the total of all other contributions and
52 expenditures during the calendar year. Such reports shall be
53 cumulative during the calendar year to which they relate;

54 (ii) The identification of:

55 1. Each person or political committee who makes a
56 contribution to the reporting candidate or political committee
57 during the reporting period, whose contribution or contributions
58 within the calendar year have an aggregate amount or value in
59 excess of Two Hundred Dollars (\$200.00) together with the date and
60 amount of any such contribution;

61 2. Each person or organization, candidate or
62 political committee who receives an expenditure, payment or other

63 transfer from the reporting candidate, political committee or its
64 agent, employee, designee, contractor, consultant or other person
65 or persons acting in its behalf during the reporting period when
66 the expenditure, payment or other transfer to such person,
67 organization, candidate or political committee within the calendar
68 year have an aggregate value or amount in excess of Two Hundred
69 Dollars (\$200.00) together with the date and amount of such
70 expenditure;

71 (iii) The total amount of cash on hand of each
72 reporting candidate and reporting political committee and the
73 total amount of outstanding loans for each reporting candidate;

74 (iv) In addition to the contents of reports specified
75 in items (i), (ii) and (iii) of this paragraph, each political
76 party shall disclose:

77 1. Each person or political committee who makes a
78 contribution to a political party during the reporting period and
79 whose contribution or contributions to a political party within
80 the calendar year have an aggregate amount or value in excess of
81 Two Hundred Dollars (\$200.00), together with the date and amount
82 of the contribution;

83 2. Each person or organization who receives an
84 expenditure by a political party or expenditures by a political
85 party during the reporting period when the expenditure or
86 expenditures to the person or organization within the calendar
87 year have an aggregate value or amount in excess of Two Hundred
88 Dollars (\$200.00), together with the date and amount of the
89 expenditure.

90 (e) The appropriate office specified in Section 23-15-805
91 must be in actual receipt of the reports specified in this article
92 by 5:00 p.m. on the dates specified in paragraph (b) of this
93 section. If the date specified in paragraph (b) of this section
94 shall fall on a weekend or legal holiday then the report shall be
95 due in the appropriate office at 5:00 p.m. on the first working

96 day before the date specified in paragraph (b) of this section.
97 The reporting candidate or reporting political committee shall
98 ensure that the reports are delivered to the appropriate office by
99 the filing deadline. The Secretary of State may approve specific
100 means of electronic transmission of completed campaign finance
101 disclosure reports, which may include, but not be limited to,
102 transmission by electronic facsimile (FAX) devices.

103 (f) (i) If any contribution of more than Two Hundred
104 Dollars (\$200.00) is received by a candidate or candidate's
105 political committee after the tenth day, but more than forty-eight
106 (48) hours before 12:01 a.m. of the day of the election, the
107 candidate or political committee shall notify the appropriate
108 office designated in Section 23-15-805, within forty-eight (48)
109 hours of receipt of the contribution. The notification shall
110 include:

- 111 1. The name of the receiving candidate;
- 112 2. The name of the receiving candidate's political
113 committee, if any;
- 114 3. The office sought by the candidate;
- 115 4. The identification of the contributor;
- 116 5. The date of receipt;
- 117 6. The amount of the contribution;
- 118 7. If the contribution is in-kind, a description
119 of the in-kind contribution; and
- 120 8. The signature of the candidate or the treasurer
121 or director of the candidate's political committee;

122 (ii) The notification shall be in writing, and may be
123 transmitted by overnight mail, courier service, or other reliable
124 means, including electronic facsimile (FAX), but the candidate or
125 candidate's committee shall ensure that the notification shall in
126 fact be received in the appropriate office designated in Section
127 23-15-805 within forty-eight (48) hours of the contribution.

128 **SECTION 2.** Section 23-15-813, Mississippi Code of 1972, is
129 amended as follows:

130 23-15-813. (a) In addition to any other penalty permitted
131 by law, the Secretary of State shall require any candidate or
132 political committee, as identified in Section 23-15-805(a), and
133 any other political committee registered with the Secretary of
134 State, who files a campaign finance disclosure report as required
135 under Sections 23-15-801 through 23-15-813 with clearly identified
136 omissions, who fails to file a campaign finance disclosure report
137 as required under Sections 23-15-801 through 23-15-813, or
138 Sections 23-17-47 through 23-17-53, or who shall file a report
139 which fails to substantially comply with the requirements of
140 Sections 23-15-801 through 23-15-813, or Sections 23-17-47 through
141 23-17-53, to be assessed a civil penalty as follows:

142 (i) Within five (5) calendar days after any deadline
143 for filing a report pursuant to Sections 23-15-801 through
144 23-15-813, or Sections 23-17-47 through 23-17-53, the Secretary of
145 State shall compile a list of those candidates and political
146 committees who have failed to file a report. The Secretary of
147 State shall provide each candidate or political committee, who has
148 failed to file a report, notice of the failure by first-class
149 mail.

150 (ii) Beginning with the tenth calendar day after which
151 any report shall be due, the Secretary of State shall assess the
152 delinquent candidate and political committee a civil penalty of
153 Fifty Dollars (\$50.00) for each day or part of any day until a
154 valid report is delivered to the Secretary of State, up to a
155 maximum of ten (10) days. However, in the discretion of the
156 Secretary of State, the assessing of the fine may be waived in
157 whole or in part if the Secretary of State determines that
158 unforeseeable mitigating circumstances, such as the health of the
159 candidate, interfered with timely filing of a report. Failure of
160 a candidate or political committee to receive notice of failure to

161 file a report from the Secretary of State is not an unforeseeable
162 mitigating circumstance, and failure to receive the notice shall
163 not result in removal or reduction of any assessed civil penalty.

164 (iii) Filing of the required report and payment of the
165 fine within ten (10) calendar days of notice by the Secretary of
166 State that a required statement has not been filed, constitutes
167 compliance with Sections 23-15-801 through 23-15-813, or Sections
168 23-17-47 through 23-17-53.

169 (iv) Payment of the fine without filing the required
170 report does not in any way excuse or exempt any person required to
171 file from the filing requirements of Sections 23-15-801 through
172 23-15-813, and Sections 23-17-47 through 23-17-53.

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

184 (vi) Upon finding a clearly identified omission in a
185 report required by Sections 23-15-801 through 23-15-813, the
186 Secretary of State shall require the candidate to refile the
187 report within forty-eight(48)hours. Beginning with the first
188 calendar day after which the report shall have been refiled, the
189 Secretary of State shall assess the delinquent candidate a civil
190 penalty of Fifty Dollars (\$50.00) for each day or part of any day
191 until a valid report is delivered to the Secretary of State, up to
192 a maximum of ten (10) days.

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

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

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

220 (iv) At the hearing, the hearing officer shall
221 administer oaths as may be necessary for the proper conduct of the
222 hearing. All hearings shall be conducted by the hearing officer,
223 who shall not be bound by strict rules of procedure or by the laws
224 of evidence in the conduct of the proceedings, but the
225 determination shall be based upon sufficient evidence to sustain

226 it. The scope of review at the hearing shall be limited to making
227 a determination of whether failure to file a required report was
228 due to an unforeseeable mitigating circumstance.

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

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

244 (c) (i) The right to appeal from the decision of the
245 hearing officer in an administrative hearing concerning the
246 assessment of civil penalties authorized pursuant to this section
247 is granted. The appeal shall be to the Circuit Court of Hinds
248 County and shall include a verbatim transcript of the testimony at
249 the hearing. The appeal shall be taken within thirty (30)
250 calendar days after notice of the decision of the commission
251 following an administrative hearing. The appeal shall be
252 perfected upon filing notice of the appeal and by the prepayment
253 of all costs, including the cost of the preparation of the record
254 of the proceedings by the hearing officer, and the filing of a
255 bond in the sum of Two Hundred Dollars (\$200.00), conditioned that
256 if the decision of the hearing officer be affirmed by the court,
257 the candidate or political committee will pay the costs of the
258 appeal and the action in court. If the decision is reversed by

259 the court, the Secretary of State will pay the costs of the appeal
260 and the action in court.

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

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

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

290 **SECTION 3.** Section 23-15-801, Mississippi Code of 1972, is
291 amended as follows:

292 23-15-801. (a) "Election" shall mean a general, special,
293 primary or runoff election.

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

299 (i) If such individual has received contributions
300 aggregating in excess of Two Hundred Dollars (\$200.00) or has made
301 expenditures aggregating in excess of Two Hundred Dollars
302 (\$200.00) or for a candidate for the Legislature or any statewide
303 or state district office, by the qualifying deadlines specified in
304 Sections 23-15-299 and 23-15-977, whichever occurs first; or

305 (ii) If such individual has given his or her consent to
306 another person to receive contributions or make expenditures on
307 behalf of such individual and if such person has received such
308 contributions aggregating in excess of Two Hundred Dollars
309 (\$200.00) during a calendar year, or has made such expenditures
310 aggregating in excess of Two Hundred Dollars (\$200.00) during a
311 calendar year.

312 (c) "Political committee" shall mean any committee, party,
313 club, association, political action committee, campaign committee
314 or other groups of persons or affiliated organizations which
315 receives contributions aggregating in excess of Two Hundred
316 Dollars (\$200.00) during a calendar year or which makes
317 expenditures aggregating in excess of Two Hundred Dollars
318 (\$200.00) during a calendar year for the purpose of influencing or
319 attempting to influence the action of voters for or against the
320 nomination for election, or election, of one or more candidates,
321 or balloted measures and shall, in addition, include each
322 political party registered with the Secretary of State.

323 (d) "Affiliated organization" shall mean any organization
324 which is not a political committee, but which directly or

325 indirectly establishes, administers or financially supports a
326 political committee.

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

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

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

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

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

354 (ii) "Expenditure" shall not include any news story,
355 commentary or editorial distributed through the facilities of any
356 broadcasting station, newspaper, magazine, or other periodical
357 publication, unless such facilities are owned or controlled by any

358 political party, political committee, or candidate; or nonpartisan
359 activity designed to encourage individuals to vote or to register
360 to vote;

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

367 (g) The term "identification" shall mean:

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

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

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

377 (i) The term "person" shall mean any individual, family,
378 firm, corporation, partnership, association or other legal entity.

379 (j) The term "independent expenditure" shall mean an
380 expenditure by a person expressly advocating the election or
381 defeat of a clearly identified candidate which is made without
382 cooperation or consultation with any candidate or any authorized
383 committee or agent of such candidate, and which is not made in
384 concert with or at the request or suggestion of any candidate or
385 any authorized committee or agent of such candidate.

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

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

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

389 or

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

392 (1) The term "clearly identified omission" means that a line
393 on the campaign finance report does not have information on the
394 line.

395 **SECTION 4.** The Attorney General of the State of Mississippi
396 shall submit this act, immediately upon approval by the Governor,
397 or upon approval by the Legislature subsequent to a veto, to the
398 Attorney General of the United States or to the United States
399 District Court for the District of Columbia in accordance with the
400 provisions of the Voting Rights Act of 1965, as amended and
401 extended.

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