

By: Senator(s) Burton

To: Elections

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2307

1 AN ACT TO AMEND SECTION 23-15-805, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT FROM AND AFTER JANUARY 1, 2007, CANDIDATES FOR
3 STATE AND STATE DISTRICT OFFICE AND THEIR AUTHORIZED COMMITTEES OR
4 AGENTS THAT RECEIVE CONTRIBUTIONS OR MAKE EXPENDITURES IN EXCESS
5 OF \$500,000.00 IN ANY CALENDAR YEAR, SHALL FILE CAMPAIGN FINANCE
6 REPORTS BY ELECTRONIC FORMAT; TO PROVIDE THAT CERTAIN INFORMATION
7 COPIED FROM CAMPAIGN FINANCE REPORTS MAY NOT BE SOLD OR USED FOR
8 COMMERCIAL PURPOSES; TO AMEND SECTION 23-15-811, MISSISSIPPI CODE
9 OF 1972, TO PROVIDE THAT IF A CANDIDATE IS CHARGED WITH A CRIMINAL
10 VIOLATION OF THE CAMPAIGN FINANCE LAW, THE VIOLATION SHALL BE
11 DEEMED TO HAVE BEEN COMMITTED IN THE COUNTY IN WHICH THE
12 CANDIDATE'S CAMPAIGN FINANCE REPORT WAS PREPARED OR THE COUNTY OF
13 RESIDENCE OF THE DEFENDANT AND VENUE FOR ANY CRIMINAL ACTION BASED
14 ON SUCH VIOLATION SHALL BE ONLY IN THAT COUNTY; TO AMEND SECTION
15 23-15-813, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT HEARINGS HELD
16 BY HEARING OFFICERS REGARDING IMPOSITION OF CIVIL FINES UPON
17 CANDIDATES UNDER THE CAMPAIGN FINANCE LAW SHALL BE HELD IN THE
18 COUNTY OF RESIDENCE OF THE CANDIDATE; TO PROVIDE THAT AN APPEAL
19 FROM THE DECISION OF THE HEARING OFFICER BY A CANDIDATE SHALL BE
20 TO THE CIRCUIT COURT OF THE COUNTY OF RESIDENCE OF THE CANDIDATE;
21 TO AMEND SECTION 97-13-15, MISSISSIPPI CODE OF 1972, TO INCREASE
22 TO \$2,000.00 THE AMOUNT THAT CORPORATIONS, INCORPORATED COMPANIES
23 OR INCORPORATED ASSOCIATIONS MAY ANNUALLY DONATE FOR THE PURPOSE
24 OF AIDING ANY POLITICAL PARTY OR ANY CANDIDATE FOR ANY PUBLIC
25 OFFICE, OR ANY CANDIDATE FOR ANY NOMINATION FOR ANY PUBLIC OFFICE
26 OF ANY POLITICAL PARTY TO INCLUDE LABOR UNIONS WITHIN SUCH
27 CONTRIBUTION LIMIT; TO AMEND SECTION 83-15-805, MISSISSIPPI CODE
28 OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

30 **SECTION 1.** Section 23-15-805, Mississippi Code of 1972, is
31 amended as follows:

32 23-15-805. (1) Candidates for state, state district, and
33 legislative district offices, and every political committee, which
34 makes reportable contributions to or expenditures in support of or
35 in opposition to a candidate for any such office or makes
36 reportable contributions to or expenditures in support of or in
37 opposition to a statewide ballot measure, shall file all reports
38 required under this article with the Office of the Secretary of
39 State.

40 (2) From and after January 1, 2006, when aggregate
41 contributions or aggregate disbursements for a calendar year reach
42 in excess of Five Hundred Thousand Dollars (\$500,000.00), a
43 candidate for state or state district office or his or her
44 authorized committee or agent shall file all subsequent reports
45 required by this article by an electronic format that provides the
46 information required under this article in an accessible manner.

47 (3) Candidates for county or county district office, and
48 every political committee which makes reportable contributions to
49 or expenditures in support of or in opposition to a candidate for
50 such office or makes reportable contributions to or expenditures
51 in support of or in opposition to a countywide ballot measure or a
52 ballot measure affecting part of a county, excepting a municipal
53 ballot measure, shall file all reports required by this section in
54 the office of the circuit clerk of the county in which the
55 election occurs. The circuit clerk shall forward copies of all
56 reports to the Office of the Secretary of State.

57 (4) Candidates for municipal office, and every political
58 committee which makes reportable contributions to or expenditures
59 in support of or in opposition to a candidate for such office, or
60 makes reportable contributions to or expenditures in support of or
61 in opposition to a municipal ballot measure shall file all reports
62 required by this article in the office of the municipal clerk of
63 the municipality in which the election occurs. The municipal
64 clerk shall forward copies of all reports to the Office of the
65 Secretary of State.

66 (5) (a) The Secretary of State, the circuit clerks and the
67 municipal clerks shall make all reports received under this
68 subsection available for public inspection and copying and shall
69 preserve such reports for a period of five (5) years.

70 (b) No information copied from reports required to be
71 filed under this article shall be sold or used by any person for
72 the purpose of soliciting contributions or for commercial purposes

73 other than using the name and address of any political committee
74 to solicit contributions from the political committee. A
75 political committee may submit five (5) pseudonyms on each report
76 filed in order to protect against the illegal use of names and
77 addresses of contributors provided the committee attaches a list
78 of the pseudonyms to the appropriate report. The Secretary of
79 State shall exclude those lists from the public record.

80 * * *

81 **SECTION 2.** Section 23-15-811, Mississippi Code of 1972, is
82 amended as follows:

83 23-15-811. (1) Any candidate or any other person who shall
84 willfully and deliberately and substantially violate the
85 provisions and prohibitions of this article shall be guilty of a
86 misdemeanor and upon conviction thereof shall be punished by a
87 fine in a sum not to exceed Three Thousand Dollars (\$3,000.00) or
88 imprisoned for not longer than six (6) months, or by both fine and
89 imprisonment.

90 (2) In addition to the penalties provided in subsection (1)
91 of this section, any candidate or political committee which is
92 required to file a statement or report which fails to file such
93 statement or report on the date in which it is due may be
94 compelled to file such statement or report by an action in the
95 nature of a mandamus.

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

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

104 (5) In the event that a candidate fails to timely file any
105 report required pursuant to this article but subsequently files a

106 report or reports containing all of the information required to be
107 reported by him as of the date on which the sanctions of
108 subsections (3) and (4) of this section would be applied to him,
109 such candidate shall not be subject to the sanctions of * * *
110 subsections (3) and (4).

111 (6) If a candidate is charged with a violation of this
112 section, the violation shall be deemed to have been committed in
113 the county of residence of the candidate, and venue for any
114 criminal action brought under this section shall be only in that
115 county.

116 **SECTION 3.** Section 23-15-813, Mississippi Code of 1972, is
117 amended as follows:

118 23-15-813. (1) In addition to any other penalty permitted
119 by law, the Secretary of State shall require any candidate or
120 political committee, as identified in Section 23-15-805(1), and
121 any other political committee registered with the Secretary of
122 State, who fails to file a campaign finance disclosure report as
123 required under Sections 23-15-801 through 23-15-813, or Sections
124 23-17-47 through 23-17-53, or who shall file a report which fails
125 to substantially comply with the requirements of Sections
126 23-15-801 through 23-15-813, or Sections 23-17-47 through
127 23-17-53, to be assessed a civil penalty as follows:

128 (a) Within five (5) calendar days after any deadline
129 for filing a report pursuant to Sections 23-15-801 through
130 23-15-813, or Sections 23-17-47 through 23-17-53, the Secretary of
131 State shall compile a list of those candidates and political
132 committees who have failed to file a report. The Secretary of
133 State shall provide each candidate or political committee, who has
134 failed to file a report, notice of the failure by first-class
135 mail.

136 (b) Beginning with the tenth calendar day after which
137 any report shall be due, the Secretary of State shall assess the
138 delinquent candidate and political committee a civil penalty of

139 Fifty Dollars (\$50.00) for each day or part of any day until a
140 valid report is delivered to the Secretary of State, up to a
141 maximum of ten (10) days. However, in the discretion of the
142 Secretary of State, the assessing of the fine may be waived in
143 whole or in part if the Secretary of State determines that
144 unforeseeable mitigating circumstances, such as the health of the
145 candidate, interfered with timely filing of a report. Failure of
146 a candidate or political committee to receive notice of failure to
147 file a report from the Secretary of State is not an unforeseeable
148 mitigating circumstance, and failure to receive the notice shall
149 not result in removal or reduction of any assessed civil penalty.

150 (c) Filing of the required report and payment of the
151 fine within ten (10) calendar days of notice by the Secretary of
152 State that a required statement has not been filed, constitutes
153 compliance with Sections 23-15-801 through 23-15-813, or Sections
154 23-17-47 through 23-17-53.

155 (d) Payment of the fine without filing the required
156 report does not in any way excuse or exempt any person required to
157 file from the filing requirements of Sections 23-15-801 through
158 23-15-813, and Sections 23-17-47 through 23-17-53.

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

170 (2) (a) Upon the sworn application, made within sixty (60)
171 calendar days of the date upon which the required report is due,

172 of a candidate or political committee against whom a civil penalty
173 has been assessed pursuant to subsection (1) of this section, the
174 Secretary of State shall forward the application to the State
175 Board of Election Commissioners. The State Board of Election
176 Commissioners shall appoint one or more hearing officers who shall
177 be former chancellors, circuit court judges, judges of the Court
178 of Appeals or justices of the Supreme Court, and who shall conduct
179 hearings held pursuant to this article. The hearing officer shall
180 fix a time and place for a hearing and shall cause a written
181 notice specifying the civil penalties that have been assessed
182 against the candidate or political committee and notice of the
183 time and place of the hearing to be served upon the candidate or
184 political committee at least twenty (20) calendar days before the
185 hearing date. If the application is made by a candidate, the
186 place of the hearing shall be located in the county of residence
187 of the candidate. The notice may be served by mailing a copy
188 thereof by certified mail, postage prepaid, to the last known
189 business address of the candidate or political committee.

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

195 (c) The candidate or political committee has the right
196 to appear either personally, by counsel or both, to produce
197 witnesses or evidence in his behalf, to cross-examine witnesses
198 and to have subpoenas issued by the hearing officer.

199 (d) At the hearing, the hearing officer shall
200 administer oaths as may be necessary for the proper conduct of the
201 hearing. All hearings shall be conducted by the hearing officer,
202 who shall not be bound by strict rules of procedure or by the laws
203 of evidence in the conduct of the proceedings, but the
204 determination shall be based upon sufficient evidence to sustain

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

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

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

223 (3) (a) The right to appeal from the decision of the
224 hearing officer in an administrative hearing concerning the
225 assessment of civil penalties authorized pursuant to this section
226 is granted. The appeal shall be to the Circuit Court of Hinds
227 County and shall include a verbatim transcript of the testimony at
228 the hearing; however, if the appeal is being made by a candidate,
229 the appeal shall be to the circuit court of the county of
230 residence of the candidate. The appeal shall be taken within
231 thirty (30) calendar days after notice of the decision of
232 the * * * hearing officer. The appeal shall be perfected upon
233 filing notice of the appeal and by the prepayment of all costs,
234 including the cost of the preparation of the record of the
235 proceedings by the hearing officer, and the filing of a bond in
236 the sum of Two Hundred Dollars (\$200.00), conditioned that if the
237 decision of the hearing officer be affirmed by the court, the

238 candidate or political committee shall pay the costs of the appeal
239 and the action in court. If the decision is reversed by the
240 court, the Secretary of State shall pay the costs of the appeal
241 and the action in court.

242 **(b)** If there is an appeal, the appeal shall act as a
243 supersedeas. The court shall dispose of the appeal and enter its
244 decision promptly. The hearing on the appeal may be tried in
245 vacation, in the court's discretion. The scope of review of the
246 court shall be limited to a review of the record made before the
247 hearing officer to determine if the action of the hearing officer
248 is unlawful for the reason that it was:

249 **(i)** Not supported by substantial evidence;

250 **(ii)** Arbitrary or capricious;

251 **(iii)** Beyond the power of the hearing officer to
252 make; or

253 **(iv)** In violation of some statutory or
254 constitutional right of the appellant.

255 The decision of the court may be appealed to the Supreme
256 Court in the manner provided by law.

257 **(4)** If, after forty-five (45) calendar days of the date of
258 the administrative hearing procedure set forth in subsection (2)
259 of this section, the candidate or political committee identified
260 in subsection (1) of this section fails to pay the monetary civil
261 penalty imposed by the hearing officer, the Secretary of State
262 shall notify the Attorney General of the delinquency. The
263 Attorney General shall investigate the offense in accordance with
264 the provisions of this chapter, and where necessary, file suit to
265 compel payment of the unpaid civil penalty.

266 **(5)** If, after twenty (20) calendar days of the date upon
267 which a campaign finance disclosure report is due, a candidate or
268 political committee identified in subsection (1) of this section
269 shall not have filed a valid report with the Secretary of State,
270 the Secretary of State shall notify the Attorney General of those

271 candidates and political committees who have not filed a valid
272 report, and the Attorney General shall thereupon prosecute the
273 delinquent candidates and political committees.

274 **SECTION 4.** Section 97-13-15, Mississippi Code of 1972, is
275 amended as follows:

276 97-13-15. It shall be unlawful for any corporation,
277 incorporated company, incorporated association or labor union, by
278 whatever name it may be known, incorporated or organized under the
279 laws of this state, or doing business in this state, or for any
280 servant, agent, employee or officer thereof, to give, donate,
281 appropriate or furnish directly or indirectly, any money,
282 security, funds or property of such a corporation, incorporated
283 company, incorporated association or labor union in excess of Two
284 Thousand Dollars (\$2,000.00) per calendar year for the purpose of
285 aiding any political party or any candidate for any public office,
286 or any candidate for any nomination for any public office of any
287 political party, or to give, donate, appropriate or furnish,
288 directly or indirectly, any money, security, funds or property of
289 such a corporation, incorporated company, incorporated association
290 or labor union in excess of Two Thousand Dollars (\$2,000.00) to
291 any committee or person as a contribution to the expense of any
292 political party or any candidate, representative or committee of
293 any political party or candidate for nomination by any political
294 party, or any committee or other person acting in behalf of such
295 candidate. The limit of Two Thousand Dollars (\$2,000.00) for
296 contributions to political parties, candidates and committees or
297 other persons acting in behalf of such candidates shall be an
298 annual limitation applicable to each calendar year and shall not
299 apply to contributions made by political committees.

300 **SECTION 5.** Section 23-15-817, Mississippi Code of 1972, is
301 amended as follows:

302 23-15-817. The Secretary of State shall compile a list of
303 all candidates for the Legislature or any statewide office who

304 fail to file a campaign disclosure report by the dates specified
305 in Section 23-15-807(2); the list shall be disseminated to the
306 members of the Mississippi Press Association within two (2)
307 working days after such reports are due and made available to the
308 public.

309 **SECTION 6.** The Attorney General of the State of Mississippi
310 shall submit this act, immediately upon approval by the Governor,
311 or upon approval by the Legislature subsequent to a veto, to the
312 Attorney General of the United States or to the United States
313 District Court for the District of Columbia in accordance with the
314 provisions of the Voting Rights Act of 1965, as amended and
315 extended.

316 **SECTION 7.** This act shall take effect and be in force from
317 and after the date it is effectuated under Section 5 of the Voting
318 Rights Act of 1965, as amended and extended.