

By: Senator(s) Burton

To: Elections

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 AMEND SECTION 23-15-811,
 7 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IF A CANDIDATE IS
 8 CHARGED WITH A CRIMINAL VIOLATION OF THE CAMPAIGN FINANCE LAW, THE
 9 VIOLATION SHALL BE DEEMED TO HAVE BEEN COMMITTED IN THE COUNTY IN
 10 WHICH THE CANDIDATE'S CAMPAIGN FINANCE REPORT WAS PREPARED OR THE
 11 COUNTY OF RESIDENCE OF THE DEFENDANT AND VENUE FOR ANY CRIMINAL
 12 ACTION BASED ON SUCH VIOLATION SHALL BE ONLY IN THAT COUNTY; TO
 13 AMEND SECTION 23-15-813, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
 14 HEARINGS HELD BY HEARING OFFICERS REGARDING IMPOSITION OF CIVIL
 15 FINES UPON CANDIDATES UNDER THE CAMPAIGN FINANCE LAW SHALL BE HELD
 16 IN THE COUNTY OF RESIDENCE OF THE CANDIDATE; TO PROVIDE THAT AN
 17 APPEAL FROM THE DECISION OF THE HEARING OFFICER BY A CANDIDATE
 18 SHALL BE TO THE CIRCUIT COURT OF THE COUNTY OF RESIDENCE OF THE
 19 CANDIDATE; TO AMEND SECTION 97-13-15, MISSISSIPPI CODE OF 1972, TO
 20 INCREASE TO \$2,000.00 THE AMOUNT THAT CORPORATIONS, INCORPORATED
 21 COMPANIES OR INCORPORATED ASSOCIATIONS MAY ANNUALLY DONATE FOR THE
 22 PURPOSE OF AIDING ANY POLITICAL PARTY OR ANY CANDIDATE FOR ANY
 23 PUBLIC OFFICE, OR ANY CANDIDATE FOR ANY NOMINATION FOR ANY PUBLIC
 24 OFFICE OF ANY POLITICAL PARTY TO INCLUDE LABOR UNIONS WITHIN SUCH
 25 CONTRIBUTION LIMIT; TO AMEND SECTION 83-15-805, MISSISSIPPI CODE
 26 OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

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

30 23-15-805. (1) Candidates for state, state district, and
 31 legislative district offices, and every political committee, which
 32 makes reportable contributions to or expenditures in support of or
 33 in opposition to a candidate for any such office or makes
 34 reportable contributions to or expenditures in support of or in
 35 opposition to a statewide ballot measure, shall file all reports
 36 required under this article with the Office of the Secretary of
 37 State.

38 (2) (a) From and after January 1, 2006, when aggregate
 39 contributions or aggregate disbursements for a calendar year reach

40 in excess of Five Hundred Thousand Dollars (\$500,000.00), a
41 candidate for state or state district office or his or her
42 authorized committee or agent shall file all subsequent reports
43 required by this article by electronic format.

44 (b) The Office of the Secretary of State shall adopt
45 rules and regulations designating the format and software to be
46 used in filing reports by electronic format under this subsection.
47 All candidates and committees required to file reports by
48 electronic format under this subsection shall follow the format
49 and use the software prescribed by the Office of the Secretary of
50 State.

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

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

70 (5) The Secretary of State, the circuit clerks and the
71 municipal clerks shall make all reports received under this

72 subsection available for public inspection and copying and shall
73 preserve such reports for a period of five (5) years.

74 * * *

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

77 23-15-811. (1) Any candidate or any other person who shall
78 willfully and deliberately and substantially violate the
79 provisions and prohibitions of this article shall be guilty of a
80 misdemeanor and upon conviction thereof shall be punished by a
81 fine in a sum not to exceed Three Thousand Dollars (\$3,000.00) or
82 imprisoned for not longer than six (6) months, or by both fine and
83 imprisonment.

84 (2) In addition to the penalties provided in subsection (1)
85 of this section, any candidate or political committee which is
86 required to file a statement or report which fails to file such
87 statement or report on the date in which it is due may be
88 compelled to file such statement or report by an action in the
89 nature of a mandamus.

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

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

98 (5) In the event that a candidate fails to timely file any
99 report required pursuant to this article but subsequently files a
100 report or reports containing all of the information required to be
101 reported by him as of the date on which the sanctions of
102 subsections (3) and (4) of this section would be applied to him,
103 such candidate shall not be subject to the sanctions of * * *
104 subsections (3) and (4).

105 (6) If a candidate is charged with a violation of this
106 section, the violation shall be deemed to have been committed in
107 the county of residence of the candidate, and venue for any
108 criminal action brought under this section shall be only in that
109 county.

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

112 23-15-813. (1) In addition to any other penalty permitted
113 by law, the Secretary of State shall require any candidate or
114 political committee, as identified in Section 23-15-805(1), and
115 any other political committee registered with the Secretary of
116 State, who fails to file a campaign finance disclosure report as
117 required under Sections 23-15-801 through 23-15-813, or Sections
118 23-17-47 through 23-17-53, or who shall file a report which fails
119 to substantially comply with the requirements of Sections
120 23-15-801 through 23-15-813, or Sections 23-17-47 through
121 23-17-53, to be assessed a civil penalty as follows:

122 (a) Within five (5) calendar days after any deadline
123 for filing a report pursuant to Sections 23-15-801 through
124 23-15-813, or Sections 23-17-47 through 23-17-53, the Secretary of
125 State shall compile a list of those candidates and political
126 committees who have failed to file a report. The Secretary of
127 State shall provide each candidate or political committee, who has
128 failed to file a report, notice of the failure by first-class
129 mail.

130 (b) Beginning with the tenth calendar day after which
131 any report shall be due, the Secretary of State shall assess the
132 delinquent candidate and political committee a civil penalty of
133 Fifty Dollars (\$50.00) for each day or part of any day until a
134 valid report is delivered to the Secretary of State, up to a
135 maximum of ten (10) days. However, in the discretion of the
136 Secretary of State, the assessing of the fine may be waived in
137 whole or in part if the Secretary of State determines that

138 unforeseeable mitigating circumstances, such as the health of the
139 candidate, interfered with timely filing of a report. Failure of
140 a candidate or political committee to receive notice of failure to
141 file a report from the Secretary of State is not an unforeseeable
142 mitigating circumstance, and failure to receive the notice shall
143 not result in removal or reduction of any assessed civil penalty.

144 (c) Filing of the required report and payment of the
145 fine within ten (10) calendar days of notice by the Secretary of
146 State that a required statement has not been filed, constitutes
147 compliance with Sections 23-15-801 through 23-15-813, or Sections
148 23-17-47 through 23-17-53.

149 (d) Payment of the fine without filing the required
150 report does not in any way excuse or exempt any person required to
151 file from the filing requirements of Sections 23-15-801 through
152 23-15-813, and Sections 23-17-47 through 23-17-53.

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

164 (2) (a) Upon the sworn application, made within sixty (60)
165 calendar days of the date upon which the required report is due,
166 of a candidate or political committee against whom a civil penalty
167 has been assessed pursuant to subsection (1) of this section, the
168 Secretary of State shall forward the application to the State
169 Board of Election Commissioners. The State Board of Election
170 Commissioners shall appoint one or more hearing officers who shall

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

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

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

193 (d) At the hearing, the hearing officer shall
194 administer oaths as may be necessary for the proper conduct of the
195 hearing. All hearings shall be conducted by the hearing officer,
196 who shall not be bound by strict rules of procedure or by the laws
197 of evidence in the conduct of the proceedings, but the
198 determination shall be based upon sufficient evidence to sustain
199 it. The scope of review at the hearing shall be limited to making
200 a determination of whether failure to file a required report was
201 due to an unforeseeable mitigating circumstance.

202 (e) Where, in any proceeding before the hearing
203 officer, any witness fails or refuses to attend upon a subpoena

204 issued by the commission, refuses to testify, or refuses to
205 produce any books and papers the production of which is called for
206 by a subpoena, the attendance of the witness, the giving of his
207 testimony or the production of the books and papers shall be
208 enforced by any court of competent jurisdiction of this state in
209 the manner provided for the enforcement of attendance and
210 testimony of witnesses in civil cases in the courts of this state.

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

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

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

243 (i) Not supported by substantial evidence;

244 (ii) Arbitrary or capricious;

245 (iii) Beyond the power of the hearing officer to
246 make; or

247 (iv) In violation of some statutory or
248 constitutional right of the appellant.

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

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

260 (5) If, after twenty (20) calendar days of the date upon
261 which a campaign finance disclosure report is due, a candidate or
262 political committee identified in subsection (1) of this section
263 shall not have filed a valid report with the Secretary of State,
264 the Secretary of State shall notify the Attorney General of those
265 candidates and political committees who have not filed a valid
266 report, and the Attorney General shall thereupon prosecute the
267 delinquent candidates and political committees.

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

270 97-13-15. It shall be unlawful for any corporation,
271 incorporated company, incorporated association or labor union, by
272 whatever name it may be known, incorporated or organized under the
273 laws of this state, or doing business in this state, or for any
274 servant, agent, employee or officer thereof, to give, donate,
275 appropriate or furnish directly or indirectly, any money,
276 security, funds or property of such a corporation, incorporated
277 company, incorporated association or labor union in excess of Two
278 Thousand Dollars (\$2,000.00) per calendar year for the purpose of
279 aiding any political party or any candidate for any public office,
280 or any candidate for any nomination for any public office of any
281 political party, or to give, donate, appropriate or furnish,
282 directly or indirectly, any money, security, funds or property of
283 such a corporation, incorporated company, incorporated association
284 or labor union in excess of Two Thousand Dollars (\$2,000.00) to
285 any committee or person as a contribution to the expense of any
286 political party or any candidate, representative or committee of
287 any political party or candidate for nomination by any political
288 party, or any committee or other person acting in behalf of such
289 candidate. The limit of Two Thousand Dollars (\$2,000.00) for
290 contributions to political parties, candidates and committees or
291 other persons acting in behalf of such candidates shall be an
292 annual limitation applicable to each calendar year and shall not
293 apply to contributions made by political committees.

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

296 23-15-817. The Secretary of State shall compile a list of
297 all candidates for the Legislature or any statewide office who
298 fail to file a campaign disclosure report by the dates specified
299 in Section 23-15-807(2); the list shall be disseminated to the
300 members of the Mississippi Press Association within two (2)

301 working days after such reports are due and made available to the
302 public.

303 **SECTION 6.** The Attorney General of the State of Mississippi
304 shall submit this act, immediately upon approval by the Governor,
305 or upon approval by the Legislature subsequent to a veto, to the
306 Attorney General of the United States or to the United States
307 District Court for the District of Columbia in accordance with the
308 provisions of the Voting Rights Act of 1965, as amended and
309 extended.

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