

By: Representatives Willis, Alday, Barton, Bell, Boyd, Byrd, Carpenter, Chism, Currie, DeBar, Denny, Kinkade, Ladner, Martinson, Rushing, Shows, Staples, Taylor, White, Miles, Barker, Bennett, Eure

To: Ways and Means

HOUSE BILL NO. 802  
(As Passed the House)

1 AN ACT TO CREATE THE JESSICA SIBLEY UPSHAW FOOD BANK AND FOOD  
2 PANTRY SALES TAX RELIEF ACT; TO AMEND SECTION 27-65-111,  
3 MISSISSIPPI CODE OF 1972, TO EXEMPT FROM SALES TAXATION THE SALE  
4 OF NONPERISHABLE FOOD ITEMS TO CERTAIN CHARITABLE ORGANIZATIONS  
5 THAT OPERATE A FOOD BANK OR FOOD PANTRY OR FOOD LINES; TO EXEMPT  
6 FROM SALES TAXATION THE SALE OF TANGIBLE PERSONAL PROPERTY AND  
7 SERVICES TO THE UNITED WAY OF THE PINE BELT REGION, INC.; TO  
8 EXEMPT FROM SALES TAXATION SALES OF TANGIBLE PERSONAL PROPERTY AND  
9 SERVICES TO THE MISSISSIPPI CHILDREN'S MUSEUM; TO AMEND SECTIONS  
10 27-65-22 AND 27-65-105, MISSISSIPPI CODE OF 1972, TO EXEMPT FROM  
11 SALES TAXATION ANY ADMISSIONS TO AND PARKING AT LIVESTOCK  
12 FACILITIES, AGRICULTURE FACILITIES OR OTHER FACILITIES  
13 CONSTRUCTED, RENOVATED OR EXPANDED WITH FUNDS FROM THE GRANT  
14 PROGRAM AUTHORIZED UNDER SECTION 18 OF CHAPTER 530, LAWS OF 1995,  
15 WHEN THE NET PROCEEDS OF THE ADMISSION ARE TO BE USED SOLELY FOR  
16 RELIGIOUS, CHARITABLE, EDUCATIONAL OR CIVIC PURPOSES; AND FOR  
17 RELATED PURPOSES.

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

19 **SECTION 1.** Section 1 and 2 this act shall be known and may  
20 be cited as the "Jessica Sibley Upshaw Food Bank and Food Pantry  
21 Sales Tax Relief Act."

22 **SECTION 2.** Section 27-65-111, Mississippi Code of 1972, is  
23 amended as follows:

24 27-65-111. The exemptions from the provisions of this  
25 chapter which are not industrial, agricultural or governmental, or



26 which do not relate to utilities or taxes, or which are not  
27 properly classified as one (1) of the exemption classifications of  
28 this chapter, shall be confined to persons or property exempted by  
29 this section or by the Constitution of the United States or the  
30 State of Mississippi. No exemptions as now provided by any other  
31 section, except the classified exemption sections of this chapter  
32 set forth herein, shall be valid as against the tax herein levied.  
33 Any subsequent exemption from the tax levied hereunder, except as  
34 indicated above, shall be provided by amendments to this section.

35 No exemption provided in this section shall apply to taxes  
36 levied by Section 27-65-15 or 27-65-21, Mississippi Code of 1972.

37 The tax levied by this chapter shall not apply to the  
38 following:

39 (a) Sales of tangible personal property and services to  
40 hospitals or infirmaries owned and operated by a corporation or  
41 association in which no part of the net earnings inures to the  
42 benefit of any private shareholder, group or individual, and which  
43 are subject to and governed by Sections 41-7-123 through 41-7-127.

44 Only sales of tangible personal property or services which  
45 are ordinary and necessary to the operation of such hospitals and  
46 infirmaries are exempted from tax.

47 (b) Sales of daily or weekly newspapers, and  
48 periodicals or publications of scientific, literary or educational  
49 organizations exempt from federal income taxation under Section



50 501(c) (3) of the Internal Revenue Code of 1954, as it exists as of  
51 March 31, 1975, and subscription sales of all magazines.

52 (c) Sales of coffins, caskets and other materials used  
53 in the preparation of human bodies for burial.

54 (d) Sales of tangible personal property for immediate  
55 export to a foreign country.

56 (e) Sales of tangible personal property to an  
57 orphanage, old men's or ladies' home, supported wholly or in part  
58 by a religious denomination, fraternal nonprofit organization or  
59 other nonprofit organization.

60 (f) Sales of tangible personal property, labor or  
61 services taxable under Sections 27-65-17, 27-65-19 and 27-65-23,  
62 to a YMCA, YWCA, a Boys' or Girls' Club owned and operated by a  
63 corporation or association in which no part of the net earnings  
64 inures to the benefit of any private shareholder, group or  
65 individual.

66 (g) Sales to elementary and secondary grade schools,  
67 junior and senior colleges owned and operated by a corporation or  
68 association in which no part of the net earnings inures to the  
69 benefit of any private shareholder, group or individual, and which  
70 are exempt from state income taxation, provided that this  
71 exemption does not apply to sales of property or services which  
72 are not to be used in the ordinary operation of the school, or  
73 which are to be resold to the students or the public.



74 (h) The gross proceeds of retail sales and the use or  
75 consumption in this state of drugs and medicines:

76 (i) Prescribed for the treatment of a human being  
77 by a person authorized to prescribe the medicines, and dispensed  
78 or prescription filled by a registered pharmacist in accordance  
79 with law; or

80 (ii) Furnished by a licensed physician, surgeon,  
81 dentist or podiatrist to his own patient for treatment of the  
82 patient; or

83 (iii) Furnished by a hospital for treatment of any  
84 person pursuant to the order of a licensed physician, surgeon,  
85 dentist or podiatrist; or

86 (iv) Sold to a licensed physician, surgeon,  
87 podiatrist, dentist or hospital for the treatment of a human  
88 being; or

89 (v) Sold to this state or any political  
90 subdivision or municipal corporation thereof, for use in the  
91 treatment of a human being or furnished for the treatment of a  
92 human being by a medical facility or clinic maintained by this  
93 state or any political subdivision or municipal corporation  
94 thereof.

95 "Medicines," as used in this paragraph (h), shall mean and  
96 include any substance or preparation intended for use by external  
97 or internal application to the human body in the diagnosis, cure,  
98 mitigation, treatment or prevention of disease and which is



99 commonly recognized as a substance or preparation intended for  
100 such use; provided that "medicines" do not include any auditory,  
101 prosthetic, ophthalmic or ocular device or appliance, any dentures  
102 or parts thereof or any artificial limbs or their replacement  
103 parts, articles which are in the nature of splints, bandages,  
104 pads, compresses, supports, dressings, instruments, apparatus,  
105 contrivances, appliances, devices or other mechanical, electronic,  
106 optical or physical equipment or article or the component parts  
107 and accessories thereof, or any alcoholic beverage or any other  
108 drug or medicine not commonly referred to as a prescription drug.

109 Notwithstanding the preceding sentence of this paragraph (h),  
110 "medicines" as used in this paragraph (h), shall mean and include  
111 sutures, whether or not permanently implanted, bone screws, bone  
112 pins, pacemakers and other articles permanently implanted in the  
113 human body to assist the functioning of any natural organ, artery,  
114 vein or limb and which remain or dissolve in the body.

115 "Hospital," as used in this paragraph (h), shall have the  
116 meaning ascribed to it in Section 41-9-3, Mississippi Code of  
117 1972.

118 Insulin furnished by a registered pharmacist to a person for  
119 treatment of diabetes as directed by a physician shall be deemed  
120 to be dispensed on prescription within the meaning of this  
121 paragraph (h).



122 (i) Retail sales of automobiles, trucks and  
123 truck-tractors if exported from this state within forty-eight (48)  
124 hours and registered and first used in another state.

125 (j) Sales of tangible personal property or services to  
126 the Salvation Army and the Muscular Dystrophy Association, Inc.

127 (k) From July 1, 1985, through December 31, 1992,  
128 retail sales of "alcohol blended fuel" as such term is defined in  
129 Section 75-55-5. The gasoline-alcohol blend or the straight  
130 alcohol eligible for this exemption shall not contain alcohol  
131 distilled outside the State of Mississippi.

132 (l) Sales of tangible personal property or services to  
133 the Institute for Technology Development.

134 (m) The gross proceeds of retail sales of food and  
135 drink for human consumption made through vending machines serviced  
136 by full line vendors from and not connected with other taxable  
137 businesses.

138 (n) The gross proceeds of sales of motor fuel.

139 (o) Retail sales of food for human consumption  
140 purchased with food stamps issued by the United States Department  
141 of Agriculture, or other federal agency, from and after October 1,  
142 1987, or from and after the expiration of any waiver granted  
143 pursuant to federal law, the effect of which waiver is to permit  
144 the collection by the state of tax on such retail sales of food  
145 for human consumption purchased with food stamps.



146 (p) Sales of cookies for human consumption by the Girl  
147 Scouts of America no part of the net earnings from which sales  
148 inures to the benefit of any private group or individual.

149 (q) Gifts or sales of tangible personal property or  
150 services to public or private nonprofit museums of art.

151 (r) Sales of tangible personal property or services to  
152 alumni associations of state-supported colleges or universities.

153 (s) Sales of tangible personal property or services to  
154 National Association of Junior Auxiliaries, Inc. and chapters of  
155 the National Association of Junior Auxiliaries, Inc.

156 (t) Sales of tangible personal property or services to  
157 domestic violence shelters which qualify for state funding under  
158 Sections 93-21-101 through 93-21-113.

159 (u) Sales of tangible personal property or services to  
160 the National Multiple Sclerosis Society, Mississippi Chapter.

161 (v) Retail sales of food for human consumption  
162 purchased with food instruments issued the Mississippi Band of  
163 Choctaw Indians under the Women, Infants and Children Program  
164 (WIC) funded by the United States Department of Agriculture.

165 (w) Sales of tangible personal property or services to  
166 a private company, as defined in Section 57-61-5, which is making  
167 such purchases with proceeds of bonds issued under Section 57-61-1  
168 et seq., the Mississippi Business Investment Act.

169 (x) The gross collections from the operation of  
170 self-service, coin-operated car washing equipment and sales of the



171 service of washing motor vehicles with portable high-pressure  
172 washing equipment on the premises of the customer.

173 (y) Sales of tangible personal property or services to  
174 the Mississippi Technology Alliance.

175 (z) Sales of tangible personal property to nonprofit  
176 organizations that provide foster care, adoption services and  
177 temporary housing for unwed mothers and their children if the  
178 organization is exempt from federal income taxation under Section  
179 501(c) (3) of the Internal Revenue Code.

180 (aa) Sales of tangible personal property to nonprofit  
181 organizations that provide residential rehabilitation for persons  
182 with alcohol and drug dependencies if the organization is exempt  
183 from federal income taxation under Section 501(c) (3) of the  
184 Internal Revenue Code.

185 (bb) Retail sales of an article of clothing or footwear  
186 designed to be worn on or about the human body if the sales price  
187 of the article is less than One Hundred Dollars (\$100.00) and the  
188 sale takes place during a period beginning at 12:01 a.m. on the  
189 last Friday in July and ending at 12:00 midnight the following  
190 Saturday. This paragraph (bb) shall not apply to:

191 (i) Accessories including jewelry, handbags,  
192 luggage, umbrellas, wallets, watches, backpacks, briefcases,  
193 garment bags and similar items carried on or about the human body,  
194 without regard to whether worn on the body in a manner  
195 characteristic of clothing;





196                   (ii) The rental of clothing or footwear; and  
197                   (iii) Skis, swim fins, roller blades, skates and  
198 similar items worn on the foot.

199           From and after January 1, 2010, the governing authorities of  
200 a municipality, for retail sales occurring within the corporate  
201 limits of the municipality, may suspend the application of the  
202 exemption provided for in this paragraph (bb) by adoption of a  
203 resolution to that effect stating the date upon which the  
204 suspension shall take effect. A certified copy of the resolution  
205 shall be furnished to the Department of Revenue at least ninety  
206 (90) days prior to the date upon which the municipality desires  
207 such suspension to take effect.

208                   (cc) The gross proceeds of sales of tangible personal  
209 property made for the sole purpose of raising funds for a school  
210 or an organization affiliated with a school.

211           As used in this paragraph (cc), "school" means any public or  
212 private school that teaches courses of instruction to students in  
213 any grade from Kindergarten through Grade 12.

214                   (dd) Sales of durable medical equipment and home  
215 medical supplies when ordered or prescribed by a licensed  
216 physician for medical purposes of a patient, and when payment for  
217 the equipment or supplies is made, in part or in whole, on behalf  
218 of or for the benefit of an insured as a covered benefit under an  
219 insurance policy, contract or plan. As used in this paragraph



220 (dd), "durable medical equipment" means equipment, including  
221 repair and replacement parts for the equipment, which:

222 (i) Can withstand repeated use;

223 (ii) Is primarily and customarily used to serve a  
224 medical purpose;

225 (iii) Generally is not useful to a person in the  
226 absence of illness or injury; and

227 (iv) Is not worn in or on the body.

228 (ee) Sales of tangible personal property or services to  
229 Mississippi Blood Services.

230 (ff) Sales of nonperishable food items to charitable  
231 organizations that are exempt from federal income taxation under  
232 Section 501(c)(3) of the Internal Revenue Code and operate a food  
233 bank or food pantry or food lines.

234 (gg) Sales of tangible personal property or services to  
235 The United Way of the Pine Belt Region, Inc.

236 (hh) Sales of tangible personal property or services to  
237 the Mississippi Children's Museum.

238 **SECTION 3.** Section 27-65-22, Mississippi Code of 1972, is  
239 amended as follows:

240 27-65-22. (1) Upon every person engaging or continuing in  
241 any amusement business or activity, which shall include all manner  
242 and forms of entertainment and amusement, all forms of diversion,  
243 sport, recreation or pastime, shows, exhibitions, contests,  
244 displays, games or any other and all methods of obtaining



245 admission charges, donations, contributions or monetary charges of  
246 any character, from the general public or a limited or selected  
247 number thereof, directly or indirectly in return for other than  
248 tangible property or specific personal or professional services,  
249 whether such amusement is held or conducted in a public or private  
250 building, hotel, tent, pavilion, lot or resort, enclosed or in the  
251 open, there is hereby levied, assessed and shall be collected a  
252 tax equal to seven percent (7%) of the gross income received as  
253 admission, except as otherwise provided herein. In lieu of the  
254 rate set forth above, there is hereby imposed, levied and  
255 assessed, to be collected as hereinafter provided, a tax of three  
256 percent (3%) of gross revenue derived from sales of admission  
257 to \* \* \* publicly owned enclosed coliseums and auditoriums (except  
258 admissions to athletic contests between colleges and  
259 universities) \* \* \*. There is hereby imposed, levied and assessed  
260 a tax of seven percent (7%) of gross revenue derived from sales of  
261 admission to events conducted on property managed by the  
262 Mississippi Veterans Memorial Stadium, which tax shall be  
263 administered in the manner prescribed in this chapter, subject,  
264 however, to the provisions of Sections 55-23-3 through 55-23-11.

265 (2) The operator of any place of amusement in this state  
266 shall collect the tax imposed by this section, in addition to the  
267 price charged for admission to any place of amusement, and under  
268 all circumstances the person conducting the amusement shall be  
269 liable for, and pay the tax imposed based upon the actual charge



270 for such admission. Where permits are obtained for conducting  
271 temporary amusements by persons who are not the owners, lessees or  
272 custodians of the buildings, lots or places where the amusements  
273 are to be conducted, or where such temporary amusement is  
274 permitted by the owner, lessee or custodian of any place to be  
275 conducted without the procurement of a permit as required by this  
276 chapter, the tax imposed by this chapter shall be paid by the  
277 owner, lessee or custodian of such place where such temporary  
278 amusement is held or conducted, unless paid by the person  
279 conducting the amusement, and the applicant for such temporary  
280 permit shall furnish with the application therefor, the name and  
281 address of the owner, lessee or custodian of the premises upon  
282 which such amusement is to be conducted, and such owner, lessee or  
283 custodian shall be notified by the commission of the issuance of  
284 such permit, and of the joint liability for such tax.

285 (3) The tax imposed by this section shall not be levied or  
286 collected upon:

287 (a) Any admissions charged at any place of amusement  
288 operated by a religious, charitable or educational organization,  
289 or by a nonprofit civic club or fraternal organization (i) when  
290 the net proceeds of such admissions do not inure to any one or  
291 more individuals within such organization and are to be used  
292 solely for religious, charitable, educational or civic purposes;  
293 or (ii) when the entire net proceeds are used to defray the normal



294 operating expenses of such organization, such as loan payments,  
295 maintenance costs, repairs and other operating expenses;

296 (b) Any admissions charged to hear gospel singing when  
297 promoted by a duly constituted local, bona fide nonprofit  
298 charitable or religious organization, irrespective of the fact  
299 that the performers and promoters are paid out of the proceeds of  
300 admissions collected, provided the program is composed entirely of  
301 gospel singing and not generally mixed with hillbilly or popular  
302 singing;

303 (c) Any admissions charged at any athletic games or  
304 contests between high schools or between grammar schools;

305 (d) Any admissions or tickets to or for baseball games  
306 between teams operated under a professional league franchise;

307 (e) Any admissions to county, state or community fairs,  
308 or any admissions to entertainments presented in community homes  
309 or houses which are publicly owned and controlled, and the  
310 proceeds of which do not inure to any individual or individuals;

311 (f) Any admissions or tickets to organized garden  
312 pilgrimages and to antebellum and historic houses when sponsored  
313 by an organized civic or garden club;

314 (g) Any admissions to any golf tournament held under  
315 the auspices of the Professional Golf Association or United States  
316 Golf Association wherein touring professionals compete, if such  
317 tournament is sponsored by a nonprofit association incorporated



318 under the laws of the State of Mississippi where no dividends are  
319 declared and the proceeds do not inure to any individual or group;

320 (h) Any admissions to university or community college  
321 conference, state, regional or national playoffs or championships;

322 (i) Any admissions or fees charged by any county or  
323 municipally owned and operated swimming pools, golf courses and  
324 tennis courts other than sales or rental of tangible personal  
325 property;

326 (j) Any admissions charged for the performance of  
327 symphony orchestras, operas, vocal or instrumental artists in  
328 which professional or amateur performers are compensated out of  
329 the proceeds of such admissions, when sponsored by local music or  
330 charity associations, or amateur dramatic performances or  
331 professional dramatic productions when sponsored by a children's  
332 dramatic association, where no dividends are declared, profits  
333 received, nor any salary or compensation paid to any of the  
334 members of such associations, or to any person for procuring or  
335 producing such performance;

336 (k) Any admissions or tickets to or for hockey games  
337 between teams operated under a professional league  
338 franchise; \* \* \*

339 (l) Any admissions or tickets to or for events  
340 sanctioned by the Mississippi Athletic Commission that are held  
341 within publicly owned enclosed coliseums and auditoriums \* \* \*;

342 and



343           (m) Any admissions to livestock facilities, agriculture  
344 facilities or other facilities constructed, renovated or expanded  
345 with funds from the grant program authorized under Section 18 of  
346 Chapter 530, Laws of 1995, when the net proceeds of the admission  
347 are to be used solely for religious, charitable, educational or  
348 civic purposes.

349           **SECTION 4.** Section 27-65-105, Mississippi Code of 1972, is  
350 amended as follows:

351           27-65-105. The exemption from the provisions of this chapter  
352 which are of a governmental nature or which are more properly  
353 classified as governmental exemptions than any other exemption  
354 classification of this chapter shall be confined to those persons  
355 or property exempted by this section or by provisions of the  
356 Constitutions of the United States or the State of Mississippi.  
357 No governmental exemption as now provided by any other section  
358 shall be valid as against the tax herein levied. Any subsequent  
359 governmental exemption from the tax levied hereunder shall be  
360 provided by amendment to this section.

361           No exemption provided in this section shall apply to taxes  
362 levied by Section 27-65-15 or 27-65-21, Mississippi Code of 1972,  
363 except as provided by paragraph (f) of this section.

364           The tax levied by this chapter shall not apply to the  
365 following:

366           (a) Sales of property, labor, services or products  
367 taxable under Sections 27-65-17, 27-65-19, 27-65-23 and 27-19-26,



368 when sold to and billed directly to and payment therefor is made  
369 directly by the United States government, the State of Mississippi  
370 and its departments, institutions, counties and municipalities or  
371 departments or school districts of said counties and  
372 municipalities.

373 The exemption from the tax imposed under this chapter shall  
374 not apply to sales of tangible personal property or specified  
375 digital products, labor or services to contractors purchasing in  
376 the performance of contracts with the United States, the State of  
377 Mississippi, counties and municipalities.

378 (b) Sales to schools, when such schools are supported  
379 wholly or in part by funds provided by the State of Mississippi,  
380 provided that this exemption does not apply to sales of property  
381 which is not to be used in the ordinary operation of the school,  
382 or which is to be resold to the students or the public.

383 (c) Amounts received from the sale of school textbooks  
384 to students.

385 (d) Sales to the Mississippi Band of Choctaw Indians,  
386 but not to Indians individually.

387 (e) Sales of fire fighting equipment to governmental  
388 fire departments or volunteer fire departments for their use.

389 (f) Sales of any gas from any project, as defined in  
390 the Municipal Gas Authority of Mississippi Law, to any  
391 municipality shall not be subject to sales, use or other tax.





392 (g) Sales of home medical equipment and home medical  
393 supplies listed as eligible for payment under Title XVIII of the  
394 Social Security Act or under the state plan for medical assistance  
395 under Title XIX of the Social Security Act, prosthetics,  
396 orthotics, hearing aids, hearing devices, prescription eyeglasses,  
397 oxygen and oxygen equipment, when ordered or prescribed by a  
398 licensed physician for medical purposes of a patient, and when  
399 payment for such equipment or supplies, or both, is made, in part  
400 or in whole, under the provisions of the Medicare or Medicaid  
401 program, then the entire sale shall be exempt from the taxes  
402 imposed by this chapter.

403 (h) Sales to regional educational service agencies  
404 established under Section 37-7-345.

405 (i) Sales of buses and other motor vehicles, and parts  
406 and labor used to maintain and/or repair such buses and motor  
407 vehicles, to an entity that (a) has entered into a contract with a  
408 school board under Section 37-41-31 for the purpose of  
409 transporting students to and from schools and (b) uses or will use  
410 the buses and other motor vehicles for such transportation  
411 purposes. This paragraph (i) shall apply to contracts entered  
412 into or renewed on or after July 1, 2010.

413 (j) Parking at livestock facilities, agriculture  
414 facilities or other facilities constructed, renovated or expanded  
415 with funds from the grant program authorized under Section 18 of  
416 Chapter 530, Laws of 1995, when the net proceeds of the admission



417 are to be used solely for religious, charitable, educational or  
418 civic purposes.

419       **SECTION 5.** Nothing in this act shall affect or defeat any  
420 claim, assessment, appeal, suit, right or cause of action for  
421 taxes due or accrued under the sales tax laws before the date on  
422 which this act becomes effective, whether such claims,  
423 assessments, appeals, suits or actions have been begun before the  
424 date on which this act becomes effective or are begun thereafter;  
425 and the provisions of the sales tax laws are expressly continued  
426 in full force, effect and operation for the purpose of the  
427 assessment, collection and enrollment of liens for any taxes due  
428 or accrued and the execution of any warrant under such laws before  
429 the date on which this act becomes effective, and for the  
430 imposition of any penalties, forfeitures or claims for failure to  
431 comply with such laws.

432       **SECTION 6.** This act shall take effect and be in force from  
433 and after July 1, 2014.

