

By: Senator(s) Turner

To: Judiciary

SENATE BILL NO. 2692

1 AN ACT TO AMEND SECTION 23-15-801, MISSISSIPPI CODE OF 1972,
 2 TO REVISE THE DEFINITION OF INDEPENDENT EXPENDITURE; TO AMEND
 3 SECTION 23-15-807, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE
 4 SECRETARY OF STATE TO AUDIT BOOKS AND RECORDS OF POLITICAL
 5 COMMITTEES TO DETERMINE IF VIOLATIONS HAVE OCCURRED; TO AMEND
 6 SECTION 23-15-813, MISSISSIPPI CODE OF 1972, TO REVISE PENALTIES;
 7 TO AMEND SECTION 23-15-1021, MISSISSIPPI CODE OF 1972, TO PROVIDE
 8 A PENALTY FOR VIOLATING THE LIMITATION ON JUDICIAL CAMPAIGN
 9 CONTRIBUTIONS; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** Section 23-15-801, Mississippi Code of 1972, is
 12 amended as follows:

13 23-15-801. (a) "Election" shall mean a general, special,
 14 primary or runoff election.

15 (b) "Candidate" shall mean an individual who seeks
 16 nomination for election, or election, to any elective office other
 17 than a federal elective office and for purposes of this article,
 18 an individual shall be deemed to seek nomination for election, or
 19 election:

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

26 (ii) If such individual has given his or her consent to
 27 another person to receive contributions or make expenditures on
 28 behalf of such individual and if such person has received such
 29 contributions aggregating in excess of Two Hundred Dollars
 30 (\$200.00) during a calendar year, or has made such expenditures



31 aggregating in excess of Two Hundred Dollars (\$200.00) during a
32 calendar year.

33 (c) "Political committee" shall mean any committee, party,
34 club, association, political action committee, campaign committee
35 or other groups of persons or affiliated organizations which
36 receives contributions aggregating in excess of Two Hundred
37 Dollars (\$200.00) during a calendar year or which makes
38 expenditures aggregating in excess of Two Hundred Dollars
39 (\$200.00) during a calendar year for the purpose of influencing or
40 attempting to influence the action of voters for or against the
41 nomination for election, or election, of one or more candidates,
42 or balloted measures and shall, in addition, include each
43 political party registered with the Secretary of State.

44 (d) "Affiliated organization" shall mean any organization
45 which is not a political committee, but which directly or
46 indirectly establishes, administers or financially supports a
47 political committee.

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

52 (ii) "Contribution" shall not include the value of
53 services provided without compensation by any individual who
54 volunteers on behalf of a candidate or political committee; or the
55 cost of any food or beverage for use in any candidate's campaign
56 or for use by or on behalf of any political committee of a
57 political party;

58 (iii) "Contribution to a political party" includes any
59 gift, subscription, loan, advance or deposit of money or anything
60 of value made by any person, political committee, or other
61 organization to a political party and to any committee,
62 subcommittee, campaign committee, political committee and other



63 groups of persons and affiliated organizations of the political
64 party;

65 (iv) "Contribution to a political party" shall not
66 include the value of services provided without compensation by any
67 individual who volunteers on behalf of a political party or a
68 candidate of a political party.

69 (f) (i) "Expenditure" shall include any purchase, payment,
70 distribution, loan, advance, deposit, gift of money or anything of
71 value, made by any person or political committee for the purpose
72 of influencing any balloted measure or election for elective
73 office; and a written contract, promise, or agreement to make an
74 expenditure;

75 (ii) "Expenditure" shall not include any news story,
76 commentary or editorial distributed through the facilities of any
77 broadcasting station, newspaper, magazine, or other periodical
78 publication, unless such facilities are owned or controlled by any
79 political party, political committee, or candidate; or nonpartisan
80 activity designed to encourage individuals to vote or to register
81 to vote;

82 (iii) "Expenditure by a political party" includes 1.
83 any purchase, payment, distribution, loan, advance, deposit, gift
84 of money or anything of value, made by any political party and by
85 any contractor, subcontractor, agent, and consultant to the
86 political party; and 2. a written contract, promise, or agreement
87 to make such an expenditure.

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

89 (i) In the case of any individual, the name, the
90 mailing address, and the occupation of such individual, as well as
91 the name of his or her employer; and

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

94 (h) The term "political party" shall mean an association,
95 committee or organization which nominates a candidate for election



96 to any elective office whose name appears on the election ballot
97 as the candidate of such association, committee or organization.

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

100 (j) The term "independent expenditure" shall mean an
101 expenditure by a person expressly advocating the election or
102 defeat of a clearly identified candidate which is made without
103 cooperation or consultation with any candidate or any authorized
104 committee or agent of such candidate, and which is not made in
105 concert with or at the request or suggestion of any candidate or
106 any authorized committee or agent of such candidate or an
107 expenditure made by a person for the purpose of supporting or
108 opposing a candidate for judicial office including the
109 publication, advertisement or release of information, or payment
110 therefor, containing favorable or unfavorable information about a
111 judicial candidate.

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

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

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

115 or

116 (iii) The identity of the candidate is apparent by
117 unambiguous reference.

118 **SECTION 2.** Section 23-15-807, Mississippi Code of 1972, is
119 amended as follows:

120 23-15-807. (a) Each candidate or political committee shall
121 file reports of contributions and disbursements in accordance with
122 the provisions of this section. All candidates or political
123 committees required to report may terminate its obligation to
124 report only upon submitting a final report that it will no longer
125 receive any contributions or make any disbursement and that such
126 candidate or committee has no outstanding debts or obligations.
127 The candidate, treasurer or chief executive officer shall sign
128 each such report.



129 (b) Candidates who are seeking election, or nomination for
130 election, and political committees that make expenditures for the
131 purpose of influencing or attempting to influence the action of
132 voters for or against the nomination for election, or election, of
133 one or more candidates or balloted measures at such election,
134 shall file the following reports:

135 (i) In any calendar year during which there is a
136 regularly scheduled election, a preelection report, which shall be
137 filed no later than the seventh day before any election in which
138 such candidate or political committee has accepted contributions
139 or made expenditures and which shall be complete as of the tenth
140 day before such election;

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

145 (iii) In any calendar years except 1987 and except
146 every fourth year thereafter, a report covering the calendar year
147 which shall be filed no later than January 31 of the following
148 calendar year.

149 (c) All candidates for judicial office as defined in Section
150 23-15-975, or their political committees, shall file in the year
151 in which they are to be elected, periodic reports which shall be
152 filed no later than the tenth day after April 30, May 31, June 30,
153 September 30 and December 31.

154 (d) Contents of reports. Each report under this article
155 shall disclose:

156 (i) For the reporting period and the calendar year, the
157 total amount of all contributions and the total amount of all
158 expenditures of the candidate or reporting committee which shall
159 include those required to be identified pursuant to item (ii) of
160 this paragraph as well as the total of all other contributions and



161 expenditures during the calendar year. Such reports shall be
162 cumulative during the calendar year to which they relate;

163 (ii) The identification of:

164 1. Each person or political committee who makes a
165 contribution to the reporting candidate or political committee
166 during the reporting period, whose contribution or contributions
167 within the calendar year have an aggregate amount or value in
168 excess of Two Hundred Dollars (\$200.00) together with the date and
169 amount of any such contribution;

170 2. Each person or organization, candidate or
171 political committee who receives an expenditure, payment or other
172 transfer from the reporting candidate, political committee or its
173 agent, employee, designee, contractor, consultant or other person
174 or persons acting in its behalf during the reporting period when
175 the expenditure, payment or other transfer to such person,
176 organization, candidate or political committee within the calendar
177 year have an aggregate value or amount in excess of Two Hundred
178 Dollars (\$200.00) together with the date and amount of such
179 expenditure.

180 (iii) The total amount of cash on hand of each
181 reporting candidate and reporting political committee;

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

185 1. Each person or political committee who makes a
186 contribution to a political party during the reporting period and
187 whose contribution or contributions to a political party within
188 the calendar year have an aggregate amount or value in excess of
189 Two Hundred Dollars (\$200.00), together with the date and amount
190 of the contribution;

191 2. Each person or organization who receives an
192 expenditure by a political party or expenditures by a political
193 party during the reporting period when the expenditure or



194 expenditures to the person or organization within the calendar
195 year have an aggregate value or amount in excess of Two Hundred
196 Dollars (\$200.00), together with the date and amount of the
197 expenditure.

198 (e) The appropriate office specified in Section 23-15-805
199 must be in actual receipt of the reports specified in this article
200 by 5:00 p.m. on the dates specified in paragraph (b) of this
201 section. If the date specified in paragraph (b) of this section
202 shall fall on a weekend or legal holiday then the report shall be
203 due in the appropriate office at 5:00 p.m. on the first working
204 day before the date specified in paragraph (b) of this section.
205 The reporting candidate or reporting political committee shall
206 ensure that the reports are delivered to the appropriate office by
207 the filing deadline. The Secretary of State may approve specific
208 means of electronic transmission of completed campaign finance
209 disclosure reports, which may include, but not be limited to,
210 transmission by electronic facsimile (FAX) devices.

211 (f) (i) If any contribution of more than Two Hundred
212 Dollars (\$200.00) is received by a candidate or candidate's
213 political committee after the tenth day, but more than forty-eight
214 (48) hours before 12:01 a.m. of the day of the election, the
215 candidate or political committee shall notify the appropriate
216 office designated in Section 23-15-805, within forty-eight (48)
217 hours of receipt of the contribution. The notification shall
218 include:

- 219 1. The name of the receiving candidate;
- 220 2. The name of the receiving candidate's political
221 committee, if any;
- 222 3. The office sought by the candidate;
- 223 4. The identification of the contributor;
- 224 5. The date of receipt;
- 225 6. The amount of the contribution;



226 7. If the contribution is in-kind, a description
227 of the in-kind contribution; and

228 8. The signature of the candidate or the treasurer
229 or director of the candidate's political committee.

230 (ii) The notification shall be in writing, and may be
231 transmitted by overnight mail, courier service, or other reliable
232 means, including electronic facsimile (FAX), but the candidate or
233 candidate's committee shall ensure that the notification shall in
234 fact be received in the appropriate office designated in Section
235 23-15-805 within forty-eight (48) hours of the contribution.

236 (g) The Secretary of State is authorized, upon
237 reasonable notice and probable cause that a violation of this
238 section has occurred, to audit the books and records of a
239 political committee and to subpoena the appropriate records to
240 determine if a violation of this section has occurred.

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

243 23-15-813. (a) In addition to any other penalty permitted
244 by law, the Secretary of State shall require any candidate or
245 political committee, as identified in Section 23-15-805(a), and
246 any other political committee registered with the Secretary of
247 State, who fails to file a campaign finance disclosure report as
248 required under Sections 23-15-801 through 23-15-813, or Sections
249 23-17-47 through 23-17-53, or who shall file a report which fails
250 to substantially comply with the requirements of Sections
251 23-15-801 through 23-15-813, or Sections 23-17-47 through
252 23-17-53, to be assessed a civil penalty as follows:

253 (i) Within five (5) calendar days after any deadline
254 for filing a report pursuant to Sections 23-15-801 through
255 23-15-813, or Sections 23-17-47 through 23-17-53, the Secretary of
256 State shall compile a list of those candidates and political
257 committees who have failed to file a report. The Secretary of
258 State shall provide each candidate or political committee, who has



259 failed to file a report, notice of the failure by first-class
260 mail.

261 (ii) Beginning with the tenth calendar day after which
262 any report shall be due, the Secretary of State shall assess the
263 delinquent candidate and political committee a civil penalty of up
264 to Ten Thousand Dollars (\$10,000.00) for each day or part of any
265 day until a valid report is delivered to the Secretary of State,
266 up to a maximum of ten (10) days. However, in the discretion of
267 the Secretary of State, the assessing of the fine may be waived in
268 whole or in part if the Secretary of State determines that
269 unforeseeable mitigating circumstances, such as the health of the
270 candidate, interfered with timely filing of a report. Failure of
271 a candidate or political committee to receive notice of failure to
272 file a report from the Secretary of State is not an unforeseeable
273 mitigating circumstance, and failure to receive the notice shall
274 not result in removal or reduction of any assessed civil penalty.

275 (iii) Filing of the required report and payment of the
276 fine within ten (10) calendar days of notice by the Secretary of
277 State that a required statement has not been filed, constitutes
278 compliance with Sections 23-15-801 through 23-15-813, or Sections
279 23-17-47 through 23-17-53.

280 (iv) Payment of the fine without filing the required
281 report does not in any way excuse or exempt any person required to
282 file from the filing requirements of Sections 23-15-801 through
283 23-15-813, and Sections 23-17-47 through 23-17-53.

284 (v) If any candidate or political committee is assessed
285 a civil penalty, and the penalty is not subsequently waived by the
286 Secretary of State, the candidate or political committee shall pay
287 the fine to the Secretary of State within ninety (90) days of the
288 date of the assessment of the fine. If, after one hundred twenty
289 (120) days of the assessment of the fine the payment for the
290 entire amount of the assessed fine has not been received by the
291 Secretary of State, the Secretary of State shall notify the



292 Attorney General of the delinquency, and the Attorney General
293 shall file, where necessary, a suit to compel payment of the civil
294 penalty.

295 (b) (i) Upon the sworn application, made within sixty (60)
296 calendar days of the date upon which the required report is due,
297 of a candidate or political committee against whom a civil penalty
298 has been assessed pursuant to paragraph (a), the Secretary of
299 State shall forward the application to the State Board of Election
300 Commissioners. The State Board of Election Commissioners shall
301 appoint one or more hearing officers who shall be former
302 chancellors, circuit court judges, judges of the Court of Appeals
303 or justices of the Supreme Court, and who shall conduct hearings
304 held pursuant to this article. The hearing officer shall fix a
305 time and place for a hearing and shall cause a written notice
306 specifying the civil penalties that have been assessed against the
307 candidate or political committee and notice of the time and place
308 of the hearing to be served upon the candidate or political
309 committee at least twenty (20) calendar days before the hearing
310 date. The notice may be served by mailing a copy thereof by
311 certified mail, postage prepaid, to the last known business
312 address of the candidate or political committee.

313 (ii) The hearing officer may issue subpoenas for the
314 attendance of witnesses and the production of books and papers at
315 the hearing. Process issued by the hearing officer shall extend
316 to all parts of the state and shall be served by any person
317 designated by the hearing officer for the service.

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

322 (iv) At the hearing, the hearing officer shall
323 administer oaths as may be necessary for the proper conduct of the
324 hearing. All hearings shall be conducted by the hearing officer,



325 who shall not be bound by strict rules of procedure or by the laws
326 of evidence in the conduct of the proceedings, but the
327 determination shall be based upon sufficient evidence to sustain
328 it. The scope of review at the hearing shall be limited to making
329 a determination of whether failure to file a required report was
330 due to an unforeseeable mitigating circumstance.

331 (v) Where, in any proceeding before the hearing
332 officer, any witness fails or refuses to attend upon a subpoena
333 issued by the commission, refuses to testify, or refuses to
334 produce any books and papers the production of which is called for
335 by a subpoena, the attendance of the witness, the giving of his
336 testimony or the production of the books and papers shall be
337 enforced by any court of competent jurisdiction of this state in
338 the manner provided for the enforcement of attendance and
339 testimony of witnesses in civil cases in the courts of this state.

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

346 (c) (i) The right to appeal from the decision of the
347 hearing officer in an administrative hearing concerning the
348 assessment of civil penalties authorized pursuant to this section
349 is granted. The appeal shall be to the Circuit Court of Hinds
350 County and shall include a verbatim transcript of the testimony at
351 the hearing. The appeal shall be taken within thirty (30)
352 calendar days after notice of the decision of the commission
353 following an administrative hearing. The appeal shall be
354 perfected upon filing notice of the appeal and by the prepayment
355 of all costs, including the cost of the preparation of the record
356 of the proceedings by the hearing officer, and the filing of a
357 bond in the sum of Two Hundred Dollars (\$200.00), conditioned that



358 if the decision of the hearing officer be affirmed by the court,
359 the candidate or political committee will pay the costs of the
360 appeal and the action in court. If the decision is reversed by
361 the court, the Secretary of State will pay the costs of the appeal
362 and the action in court.

363 (ii) If there is an appeal, the appeal shall act as a
364 supersedeas. The court shall dispose of the appeal and enter its
365 decision promptly. The hearing on the appeal may be tried in
366 vacation, in the court's discretion. The scope of review of the
367 court shall be limited to a review of the record made before the
368 hearing officer to determine if the action of the hearing officer
369 is unlawful for the reason that it was 1. not supported by
370 substantial evidence, 2. arbitrary or capricious, 3. beyond the
371 power of the hearing officer to make, or 4. in violation of some
372 statutory or constitutional right of the appellant. The decision
373 of the court may be appealed to the Supreme Court in the manner
374 provided by law.

375 (d) If, after forty-five (45) calendar days of the date of
376 the administrative hearing procedure set forth in paragraph (b),
377 the candidate or political committee identified in paragraph (a)
378 of this section fails to pay the monetary civil penalty imposed by
379 the hearing officer, the Secretary of State shall notify the
380 Attorney General of the delinquency. The Attorney General shall
381 investigate the offense in accordance with the provisions of this
382 chapter, and where necessary, file suit to compel payment of the
383 unpaid civil penalty.

384 (e) If, after twenty (20) calendar days of the date upon
385 which a campaign finance disclosure report is due, a candidate or
386 political committee identified in paragraph (a) of this section
387 shall not have filed a valid report with the Secretary of State,
388 the Secretary of State shall notify the Attorney General of those
389 candidates and political committees who have not filed a valid



390 report, and the Attorney General shall thereupon prosecute the
391 delinquent candidates and political committees.

392 **SECTION 4.** Section 23-15-1021, Mississippi Code of 1972, is
393 amended as follows:

394 23-15-1021. It shall be unlawful for any individual or
395 political action committee not affiliated with a political party
396 to give, donate, appropriate or furnish directly or indirectly,
397 any money, security, funds or property in excess of Two Thousand
398 Five Hundred Dollars (\$2,500.00) for the purpose of aiding any
399 candidate or candidate's political committee for judge of a
400 county, circuit or chancery court or in excess of Five Thousand
401 Dollars (\$5,000.00) for the purpose of aiding any candidate or
402 candidate's political committee for judge of the Court of Appeals
403 or justice of the Supreme Court, or to give, donate, appropriate
404 or furnish directly or indirectly, any money, security, funds or
405 property in excess of Two Thousand Five Hundred Dollars
406 (\$2,500.00) to any candidate or the candidate's political
407 committee for judge of a county, circuit or chancery court or in
408 excess of Five Thousand Dollars (\$5,000.00) for the purpose of
409 aiding any candidate or candidate's political committee for judge
410 of the Court of Appeals or justice of the Supreme Court, as a
411 contribution to the expense of a candidate for judicial office.

412 Any person who violates the provisions of this section shall
413 be guilty of a misdemeanor and upon conviction shall be punished
414 by a fine not to exceed Five Thousand Dollars (\$5,000.00) or
415 imprisoned for up to one (1) year or by both such fine and
416 imprisonment.

417 **SECTION 5.** The Attorney General of the State of Mississippi
418 is hereby directed to submit this act, immediately upon approval
419 by the Governor, or upon approval by the Legislature subsequent to
420 a veto, to the Attorney General of the United States or to the
421 United States District Court for the District of Columbia in



422 accordance with the provisions of the Voting Rights Act of 1965,
423 as amended and extended.

424 **SECTION 6.** This act shall take effect and be in force from
425 and after the date it is effectuated under Section 5 of the Voting
426 Rights Act of 1965, as amended and extended.

