



**2008 BUSINESS REFORM COMMITTEES  
MEETING OF THE NONPROFITS/CHARITIES  
COMMITTEE**

**JUNE 18, 2008  
11:00 A.M.**

**Secretary of State's Office  
700 North Street  
Jackson, Mississippi**



700 NORTH STREET  
POST OFFICE BOX 136  
JACKSON, MISSISSIPPI 39205-1036

**STATE OF MISSISSIPPI**  
**SECRETARY OF STATE**  
**DELBERT HOSEMANN**  
**DIVISION OF POLICY AND RESEARCH**

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**AGENDA**

1. Welcome – Cheryn Baker
2. Roll Call of Teleconference Attendees – Cheryn Baker
3. Introduction of Committee Members and Attendees
4. Introductory Remarks – Mark McCrary
5. Discussion of Purpose and Mission of the Business Reform Committees – Secretary Hosemann and Cory Wilson
6. Introduction of Audrey R. Alvarado, Ph.D. – Cheryn Baker
7. Speaker Presentation – Audrey R. Alvarado, Ph.D.
8. Introduction of Issues – Mark McCrary
  - a. Regulation of Charitable Solicitations in Mississippi
    - i. How can Mississippi require charities to be responsive to the public while still encouraging the creation of small philanthropy?
      1. Implement requirements that give charities operating in Mississippi responsiveness and transparency to donors
      2. Improve enforcement efforts

3. Make compliance with statutory requirements easy for charities which are meeting needs and not in breach of community standards
4. Improve public confidence in charitable organizations and thus encourage philanthropy

b. Mississippi Nonprofit Corporation Act

- i. How can the Mississippi Nonprofit Corporation Act be revised to better serve the needs of nonprofits in the State?
  1. Allow electronic voting
  2. Adopt nonprofit conversion provisions

9. Reminder of Upcoming Meetings: Dates and Future Programs – Cheryn Baker

10. Other Business

11. Adjourn 1:00 P.M.

**Upcoming Meeting Dates**

July 1

July 22

August 12

August 26

September 8 – No Meeting; Recommendations Due



**Mississippi Secretary of State  
2008 Business Reform Committees  
Nonprofits and Charities Committee  
June 18, 2008**

**Included in this packet are the following items:**

1. Biographical Sketch of Audrey R. Alvarado, Ph.D., Executive Director, National Council of Nonprofit Associations
2. Summary of Mississippi's Charitable Solicitation Laws
3. Comparison of the Mississippi, Hawaii, and Model Charitable Solicitation Acts
4. Secretary of State Fee Schedules in Southeast re: Charities and Nonprofit Corporations
5. Mississippi Code § 79-11-501 et seq., Regulation of Charitable Solicitations
6. Mississippi House Bill No. 316, Amending § 79-11-507 of the Mississippi Code
7. Hawaii Senate Bill No. 3171, Relating to Charitable Trusts and Nonprofit Organizations



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## **Conference Call Instructions**

Conference Call Number: 1-866-212-0875

Conference Passcode: 553955#

Upon calling the toll free number, you will be prompted to enter your passcode followed by the pound key. This will join you to the conference.

## **Replay Instructions**

Conference Call Number: 1-866-212-0875

Replay Passcode: 169178#

The record number of the recording is always the date of the conference (MMDDYY)  
Ex. May 20, 2008 = record number is 052008

Call the conference call number as though you were joining a conference. Enter the replay passcode followed by the pound key. After logging on, press \*3 and you will be prompted to enter the record number which is always the date of the meeting.

The system will prompt you to enter the number of minutes you wish to skip from the beginning of the recording, followed by the # key. (If you do not wish to skip any minutes then press 0 followed by the # key.)

If you have any problems or questions, please call the Division of Policy and Research at 601-359-3101 or e-mail Phillips Strickland at [pstrickland@sos.state.ms.us](mailto:pstrickland@sos.state.ms.us).



### **Biographical Sketch**

**Audrey R. Alvarado, Ph.D.**

Executive Director

National Council of Nonprofit Associations

1101 Vermont Avenue NW Suite 1002

Washington, DC 20005

(202) 962-0322 | fax: (202) 962-0321 | aalvarado@ncna.org

Dr. Audrey R. Alvarado is the Executive Director of the National Council of Nonprofit Associations (NCNA). NCNA envisions a world that supports nonprofits in their missions with the essential resources they need and deserve. NCNA is working toward that future in two ways: first by advocating for and raising awareness of the nonprofit sector at the national level - voicing its concerns, needs, and value; and second, by strengthening the capacity of its state associations to offer leadership and essential services to nonprofits at the local level. Under her guidance, NCNA and the state association network have grown in influence and impact at the national, state and local level. NCNA is the convening organization for the Nonprofit Congress, an unprecedented initiative to unite nonprofits and strengthen the charitable sector.

Prior to her appointment she served as the associate dean for student and external affairs at the University of Colorado at Denver Graduate School of Public Affairs. Among other duties, she oversaw the nonprofit management academic areas for both master and doctoral students. Prior to her appointment as associate dean she served as Special Assistant to the Chancellor at the University overseeing areas such as affirmative action and the graduate school. She has also served as Executive Director of the Latin American Research and Service Agency in Denver, CO and Program Director of the Hispanic Office of Planning and Evaluation's Talent Search program in Boston, MA.

Dr. Alvarado has extensive experience as a board member, often serving in key leadership positions. Previous board service includes the National Council of La Raza (chair), the Colorado Association of Nonprofit Organizations (chair), Regis University Trustee, Latin American Youth Center, Community Resource Center, Colorado Women's Foundation, Colorado Women's Forum, and Rocky Mountain PBS. Current volunteer activities include the Foundation Center, BoardSource, Columbia Law School Charities Project Advisory Board, and Aspen Institute Nonprofit Sector Research Fund Advisory Committee.

Her political appointments include Governor Roy Romer's (CO) representative on the Western Interstate Commission on Higher Education (chair), the Immigration and Control Act (IRCA) State Committee (co-chair) and the Minority Economic Business Opportunity Task Force (co-chair).

Dr. Alvarado was recognized in 2001-2004 and 2006-2007 by *The NonProfit Times* as a member of the Power and Influence Top 50, an annual list of "leaders who are shaping the nonprofit world." Her byline in the 2006 issue stated, "Nonprofits at the state level are doing the sector's heavy lifting and Alvarado leads the umbrella organization for them all. She also is leveraging that clout with [the] Nonprofit Congress in Washington, D.C., later this year."

## Summary of Mississippi's Charitable Solicitation Laws

The regulation of charitable solicitations in Mississippi is effected by Sections 79-11-501 through 79-11-529 of the Mississippi Code, which, among other things:

- a) define what is, and what is not, a "charitable organization";
- b) require non-exempt charities to file annual registration and financial statements with the Secretary of State;
- c) require professional fund-raisers and fund-raising counsel to register with the Secretary of State;
- d) mandate that all contracts between charities and professional fund-raisers be in writing and kept on file with the Secretary of State;
- e) require professional fund-raisers to provide an annual accounting of monies collected;
- f) empower the Secretary of State to impose administrative penalties on parties in violation of these requirements; and
- g) impose criminal liability on parties who engage in misrepresentation or fraud in the course of their solicitations.

Following is a brief summary of Mississippi's current charitable solicitation laws:

### Definitions:

*What is a "charitable organization"?*

- Any organization determined to be tax-exempt under section 501(c)(3) of the Internal Revenue Code<sup>1</sup>;
- Any person or other entity actually or purporting to be established for any charitable purpose, or any person or other entity employing an appeal that suggests that there is a charitable purpose to any solicitation.<sup>2</sup>
- **Note:** Bona fide religious institutions are specifically excluded from this definition.<sup>3</sup>

*What constitutes a "solicitation"?*

- Any request, direct or indirect, for any thing of value upon the representation that the donation will be used for a charitable purpose or will benefit a charitable organization.<sup>4</sup>
- Examples<sup>5</sup>:
  - Making any oral or written request;

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<sup>1</sup> Miss. Code Ann. § 79-11-501(a)(i)(A).

<sup>2</sup> Miss. Code Ann. § 79-11-501(a)(i)(B).

<sup>3</sup> Miss. Code Ann. § 79-11-501(a)(iii).

<sup>4</sup> Miss. Code Ann. § 79-11-501(j).

<sup>5</sup> See Miss. Code Ann. § 79-11-501(j)(i)-(vi).



- Making an announcement via any medium which concerns an appeal or campaign for any charitable organization or purpose;
- Distributing any advertisement which directly or by implication seeks to obtain a contribution;
- Offering for sale any item in connection with an appeal for any charitable organization or purpose.

*What is a “professional fund-raiser”?*

- A professional fund-raiser is any person (or agent thereof) who, for compensation of any kind, is retained by a charitable organization to solicit contributions for charitable purposes.<sup>6</sup>
  - **Note:** An employee or officer of any organization is not considered a professional fund-raiser unless his or her salary is paid as a commission on the basis of funds raised.

*What is a “fund-raising counsel”?*

- Fund-raising counsel is a person who:
  - For a fee plans, manages, advises or consults with respect to the solicitation of contributions by a charitable organization;
  - Who does not solicit contributions directly or indirectly; and
  - Who does not have custody or control of contributions.
- Officers or employees of a charitable organization are **not** considered fund-raising counsel, nor are professionals who render professional services to charitable organizations or advise a person to make a charitable contribution.

## **Registration and filing requirements:**

*Annual registration statements*

- Every charitable organization which solicits or intends to solicit contributions must file an annual registration statement with the Secretary of State. The registration statement must generally contain the following:
  - The names and addresses of the officers, directors, trustees, and CEO of the organization;
  - The organization’s purpose(s) and the purpose(s) for which the contributions to be solicited will be used;
  - The names and addresses of any professional fund-raisers or fund-raising counsel retained by the organization;
  - Copies of contracts between the organization and any professional fund-raisers or fund-raising counsel retained by the organization;
  - A financial statement (see next section for details).<sup>7</sup>

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<sup>6</sup> Miss. Code Ann. § 79-11-501(g).

<sup>7</sup> Miss. Code Ann. § 79-11-503(1).

- Upon approval by the Secretary of State, registration will remain in effect for one year, after which point the registration may be renewed.<sup>8</sup> It is unlawful for an organization to solicit contributions after the expiration of its registration.<sup>9</sup>

### *Annual financial statements*

#### Detailed, verified statements required for certain organizations

- The following types of organizations are required to file a detailed, verified annual financial statement with the Secretary of State<sup>10</sup>:
  - Every charitable organization which receives more than \$500,000 in contributions during a fiscal year *and* whose fund-raising functions are carried on by people who are unpaid for their services; and
  - Every charitable organization whose fund-raising functions are not carried on solely by persons who are unpaid for their services.
- Such statement must set forth the following<sup>11</sup>:
  - A balance sheet and statement of income and expense;
  - Gross receipts and gross income from all sources, broken down into total receipts and income from each separate solicitation project or source;
  - Administrative costs;
  - Solicitation costs;
  - The cost of programs designed to inform or educate the public;
  - The total net amount disbursed or dedicated for each major purpose, charitable or otherwise.
- In addition, the statement must (a) be signed by the organization's president or other authorized officer; (b) be signed by the organization's chief fiscal officer' and (c) be accompanied by an opinion signed by an independent certified public accountant that the financial statement fairly represents the financial operations of the organization in sufficient detail to permit public evaluation of its operations.<sup>12</sup>

#### Standard financial statements

- Organizations receiving contributions of between \$250,000 and \$500,000 in a given fiscal year, and whose fund-raising functions are carried on by people who are unpaid for their services, must file an annual financial statement which:
  - Lists the gross receipts from contributions and describes how the proceeds were used;
  - Is certified by the organization's president or other authorized officer, under penalty of perjury, that the statement is true and correct; and

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<sup>8</sup> Miss. Code Ann. § 79-11-503(4).

<sup>9</sup> Miss. Code Ann. § 79-11-503(6).

<sup>10</sup> House Bill No. 316, which passed during the 2008 regular session, was signed by the Governor in May and will become effective on July 1 of this year. It amends the provisions of § 79-11-507 of the Mississippi Code by raising the threshold amount from \$100,000 to \$500,000.

<sup>11</sup> H.B. 316, § 1 (2008).

<sup>12</sup> *Id.*

- Must be reviewed (but not certified) by an independent certified public accountant.<sup>13</sup>
- Organizations receiving contributions under \$250,000 in a given fiscal year, and whose fund-raising functions are carried on by people who are unpaid for their services, must file an annual financial statement which:
  - Lists the gross receipts from contributions and describes how the proceeds were used; and
  - Is certified by the organization's president or other authorized officer, under penalty of perjury, that the statement is true and correct.<sup>14</sup>

### Audits

- Any organization which receives more than \$25,000, but less than \$500,000, in a given fiscal year must, at the request of the Secretary of State, submit additional financial information including an audited financial statement accompanied by an opinion signed by an independent certified public accountant that the financial statement fairly represents the financial operations of the organization in sufficient detail to permit public evaluation of its operations.<sup>15</sup>

### **Exempted organizations:**

- The above laws regulating charitable solicitations do not apply to the following types of organizations<sup>16</sup>:
  - Educational institutions that are either recognized by the State Board of Education or that are accredited;
  - Fraternal, patriotic, social, educational, alumni organizations and historical societies;
  - Persons requesting contributions for the relief or benefit of a particular individual;
  - Any charitable organization which does not intend to solicit and receive (and does not actually receive) contributions in excess of \$4,000 during a given fiscal year, provided all of its fund-raising functions are carried on by persons who are unpaid for such services;
  - Any other organization which the Secretary of State by rule or order exempts from the registration requirements.

### **Registration of professional fund-raisers and fund-raising counsel:**

- Every person acting as a professional fund-raiser or fund-raising counsel must register annually with the Secretary of State.<sup>17</sup> Such registrations expire on June 30 of each year and may be renewed.

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<sup>13</sup> H.B. 316, § 2 (2008).

<sup>14</sup> H.B. 316, § 3 (2008).

<sup>15</sup> H.B. 316, § 4 (2008).

<sup>16</sup> Miss. Code Ann. § 79-11-505(1). Note that many of the exemptions listed herein apply only if the organization does not pay fund-raisers for their services.

- At the time of application, professional fund-raiser applicants must file with the State Treasurer a bond in which the applicant is be the principal obligor in the amount of \$10,000 with one or more corporate sureties licensed to do business in this state.
- Prior to commencing any solicitations in the state, a professional fund-raiser must file with the Secretary of State a report detailing (among other things):
  - The fund-raising methods to be used;
  - The projected dates the solicitation campaign will commence and terminate;
  - The location and phone number from which the campaign will be conducted; and
  - The account number and location of each bank account in which receipts from the campaign are to be deposited.<sup>18</sup>

**Contracts with professional fund-raisers or fund-raising counsel:**

- All contracts between charitable organizations and either professional fund-raisers or fund-raising counsel **must be in writing**, and must be filed with the Secretary of State at least ten days prior to the rendering of any service.<sup>19</sup>
- Such contracts must contain information regarding (among other things):
  - The fees or rate to be paid under the contract;
  - A statement of the charitable purpose for which the solicitation is being conducted;
  - The effective and termination dates of the contract, and the dates that services will commence.

**Disclosure requirements for professional fund-raisers:**

- Prior to orally requesting a contribution, or contemporaneously with written requests for contributions, a professional fund-raiser must disclose:
  - His or her name;
  - The name of the charitable organization on behalf of who he or she is soliciting contributions;
  - A description of how contributions will be utilized for a charitable purpose; and
  - That the solicitation is being conducted by a professional fund-raiser who is being paid to solicit contributions.<sup>20</sup>

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<sup>17</sup> Miss. Code Ann. § 79-11-513.

<sup>18</sup> Miss. Code Ann. § 79-11-515(2).

<sup>19</sup> Miss. Code Ann. § 79-11-515(1).

<sup>20</sup> Miss. Code Ann. § 79-11-523(1)(a).

**Administrative and civil penalties:**

- The Secretary of state may suspend or revoke the registration of a charitable organization, professional fund-raiser, or fund-raising counsel for a number of reasons, including:
  - If charitable contributions are not being applied for the purpose(s) stated in the organization's registration statement;
  - If the applicant, registrant, officers, directors, or partners of the applicant or registrant, or their agents or employees, have been convicted of any felony, or of a misdemeanor involving dishonesty; and
  - If the applicant or registrant has engaged in the employment of dishonesty or fraud.<sup>21</sup>
- In addition, if it appears to the Secretary of State that any person has engaged in, or is about to engage in, any act in violation of the above laws, he may issue a letter directing the recipient to cease and desist from further illegal activity, and may issue an order imposing an administrative penalty up to a maximum of \$25,000 for each offense.<sup>22</sup>
- Similarly, the Attorney General may bring an action in circuit or chancery court to enjoin imminent illegal action. He may also seek civil penalties of up to \$25,000 for each offense.<sup>23</sup>

**Criminal penalties:**

- Section 79-11-509 lists a bevy of different acts which constitute violations of the charitable solicitation laws. Most of the prohibited acts involve misrepresentation, fraud, or deceit in some form.<sup>24</sup>
- Any person who knowingly and willingly performs such acts will be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of up to \$2,000, by imprisonment up to one year, or both.<sup>25</sup>
- Additionally, a person who, in connection with any solicitation, knowingly and willingly (a) employs any device, scheme, or artifice to defraud; (b) engages in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person, shall be guilty of a felony and, upon conviction, shall be punished by a fine of up to \$25,000, imprisoned up to five years, or both.

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<sup>21</sup> Miss. Code Ann. § 79-11-509(1).

<sup>22</sup> Miss. Code Ann. § 79-11-509(4).

<sup>23</sup> Miss. Code Ann. § 79-11-509(5).

<sup>24</sup> See Miss. Code Ann. § 79-11-509(3)-(6). Consult the statute for more detail.

<sup>25</sup> Miss. Code Ann. § 79-11-529.

**COMPARISON OF THE MISSISSIPPI, HAWAII, AND MODEL CHARITABLE SOLICITATION ACTS**

**MS statutes: Miss. Code Ann. §79-11-501 through § 79-11-529**

**Hawaii Act: Introduced as Senate Bill 3171 in 2008, signed by governor June 13**

**Model Charitable Solicitation Act (1986)**

<b>General Provisions</b>	<b>MISSISSIPPI</b>	<b>HAWAII SENATE BILL 3171</b>	<b>MODEL CHARITABLE SOLICITATION ACT</b>
Registration and Filing Requirements	<p>§ 79-11-503</p> <p>All non-exempt charitable organizations must file an annual registration statement with, and pay a filing fee of \$50, to the Secretary of State.</p>	<p>§467B-A</p> <p>(a) Every non-exempt public benefit corporation and charitable organization must register with the Attorney General.</p> <p>(c) The Attorney General may require electronic registration.</p>	<p>Section 2</p> <p>(a) Every non-exempt charitable organization must file a registration statement with an office to be determined by the state.</p>
Annual Report Requirements	<p>§ 79-11-507*</p> <p>(1) (a) Every non-exempt organization which receives more than \$500,000 in contributions in a fiscal year <i>and</i> whose fund-raising functions are carried on solely by unpaid persons, and (b) every charitable organization whose fund-raising functions are not carried on solely by unpaid persons, must submit a detailed financial statement signed by the president of the organization and verified by an independent CPA;</p> <p>(2) Every non-exempt organization receiving between \$250,000 and \$500,000 in contributions in a fiscal year must file a financial statement signed by the president of the organization and reviewed by an independent CPA;</p> <p>(3) Every non-exempt organization receiving less than \$250,000 in contributions in a fiscal year must file a financial statement signed by the president of the organization.</p>	<p>§467B-B</p> <p>(a) Every charitable organization required to register under §476B-A is required to file an annual report.</p> <p>(b) A charitable organization with gross annual revenues in excess of \$500,000 must include with its annual report an audit report conducted by a certified public accountant.</p> <p>(d) Each charitable organization must pay an accompanying fee according to its annual income, ranging from \$10 (if income is less than \$25,000) to \$750 (if income is more than \$5,000,000).</p>	<p>Section 3</p> <p>(a) Every charitable organization required to register shall file an annual financial report. A charitable organization whose gross revenue, excluding government grants, does not exceed (an amount determined by the state) shall not be required to file an annual financial report.</p> <p>(b) The annual financial report of every charitable organization which received more than (an amount determined by the state) in gross revenue during its most recently completed fiscal year must be accompanied by an audited financial statement.</p>

\* Denotes the amending of this statute through House Bill 316. Signed by Governor on May 10, 2008. Effective July 1, 2008.

<p>Professional Fund-raiser Requirements</p>	<p>§ 79-11-513</p> <p>Professional fund-raisers must register annually with the Secretary of State (paying a fee of \$250), and file with the State Treasurer and have approved by the Secretary of State a bond in which the applicant is the principal obligor in the sum of \$10,000. Professional fund-raisers must also file an annual written report with the Secretary or State.</p> <p>§79-11-515</p> <p>(2) Professional fund-raisers must file a pre-solicitation report with the Secretary of State prior to each solicitation campaign.</p>	<p>§467B-12</p> <p>(a) Every professional fund-raiser must register annually with the Attorney General, and pay a fee of \$250.</p> <p>(b) Professional fund-raisers are also required to secure a bond at the time of registration in which the applicant is the principal obligor in the sum of \$25,000.</p>	<p>Section 6</p> <p>(a) A paid solicitor shall register prior to engaging in any solicitation. Each registration is valid for one year and may be renewed for additional one year periods upon application and payment of fee.</p> <p>(b) A paid solicitor shall file with and have approved a bond, in which the paid solicitor shall be the principal obligor.</p> <p>(c) Prior to the commencement of each solicitation campaign the paid solicitor shall file a completed "Solicitation Notice."</p>
<p>Grounds for Revocation of Registration</p>	<p>§ 79-11-509(1)</p> <p>A registration may be suspended or revoked by the Secretary of State for the following reasons, among others:</p> <p>(a) incomplete application / unpaid fee;</p> <p>(c) false or misleading statements on application;</p> <p>(d) contributions applied for purposes not outlined in the documents filed with the Secretary of State;</p> <p>(e) violation of the provisions of this chapter;</p> <p>(f) the applicant, registrant, officers, directors, or partners have been convicted of any felony or of a misdemeanor involving misrepresentation or misuse of the money or property of another;</p> <p>(g) use of dishonesty, fraud, deception, misrepresentation, false promise, or false pretense;</p> <p>(h) denial, revocation, or suspension of charitable activities in another state.</p>	<p>§467B-9.7</p> <p>The Attorney General may revoke or suspend a registration for the following reasons:</p> <p>(1) violation of the provisions of this chapter;</p> <p>(2) refusal or failure, after notice, to produce any records of the organization or disclose information required to be disclosed under this chapter or by rule of the Attorney General;</p> <p>(3) making a material false statement in an application, statement, or report required to be filed with the Attorney General;</p> <p>(4) failure to file a financial report / filing an incomplete financial report</p>	<p>Section 17</p> <p>(a) The registration of any charitable organization, fund raising counsel, or paid solicitor which makes a false statement in a registration statement, annual report, or any other information required to be filed or which otherwise violates any provision of this act may be suspended or revoked.</p>

<p>Administrative Penalties</p>	<p>§ 79-11-509</p> <p>Secretary of State may issue cease-and-desist letters, revoke or suspend registrations, and/or impose a \$25,000 maximum fine for each violation.</p>	<p>§467B-9.7(b)</p> <p>(3) Attorney General may suspend registration, may revoke exemption, may issue a cease-and-desist letter, and/or may impose a fine of up to \$1,000 for each violation, plus an additional penalty of up to \$100 for each day during which the violation continues.</p>	<p>Section 17</p> <p>(c) may assess a civil penalty against the violator of not more than \$1,000 dollars for each act and an additional penalty of not more than \$25 dollars for each day during which such act, practice, or omission continues.  (g) violation of the terms of an injunction or other court order results in a fine of no more than \$10,000 for each violation.</p>
<p>Criminal Sanctions</p>	<p>§79-11-519</p> <p>Violations can be prosecuted by district attorneys, county prosecuting attorneys, and ultimately the Attorney General.</p> <p>§79-11-529</p> <p>Knowing and Willful Violations; guilty of misdemeanor and punishable by a maximum of \$200 fine and/or imprisonment up to a year. In connection with solicitation, is guilty of a felony with a maximum fine of \$25,000 and no more than 5 years in prison.</p>	<p>No mention of criminal sanctions.</p>	<p>Section 17</p> <p>(d) In addition to all other actions authorized by law, a cause of action can be brought to enjoin and prosecute all acts or practices declared unlawful pursuant to this act.</p>



<p>Requirements for Disclosure of Information</p>	<p>§ 79-11-515</p> <p>All contracts entered into between professional fundraisers and charitable organizations must be in writing and filed with the Secretary of State at least 10 days prior to performance by fundraiser.</p> <p>§ 79-11-515</p> <p>(3) Professional fund-raisers must file a written accounting report with the Secretary of State no more than 90 days after solicitation campaign has ended.</p> <p>(5) Professional fund-raisers must maintain records of campaign no less than 3 years after end of campaign</p> <p>§79-11-523</p> <p>Before requesting a contribution, professional fund-raisers must disclose:</p> <ol style="list-style-type: none"> <li>1. the professional fund-raiser's name as it appears on file with the Secretary of State;</li> <li>2. that the solicitation is being conducted by a professional fund-raiser;</li> <li>3. the name of the charitable organization represented;</li> <li>4. how the contributions will be utilized</li> </ol>	<p>§467B-2.5</p> <p>(a) within 90 days after solicitation campaign or event has been completed and on the anniversary of the commencement of a solicitation campaign lasting more than one year, a professional fund-raiser must file a financial report with the Attorney General. A professional fund-raiser must also maintain records for at least 3 years after the end of campaign.</p> <p>§467B-8</p> <p>Statements, reports, professional fund-raising counsel contracts, and all other documents and information required to be filed with the Attorney General shall become government records in the department and to be open to the general public for inspection.</p>	<p>Section 5</p> <p>(a) Must file a contract between organization and fund-raising counsel in writing and filed prior to the performance of any services.</p> <p>Section 6</p> <p>(d)(1) Contracts between a professional fund-raiser and a charitable organization must be in writing.</p> <p>Section 5(3) and Section 6(f)</p> <p>Must keep accounting records from fund-raising counsel and professional fund-raisers for three years and must be available on request.</p> <p>Section 6</p> <p>(1) Before requesting a contribution, a professional fund-raiser must disclose:</p> <ol style="list-style-type: none"> <li>(A) the name of the professional fund-raiser on file and that the solicitation;</li> <li>(B) that the solicitation is being conducted by a professional fund-raiser;</li> <li>(C) the percentage of gross revenue that the charitable organization will receive.</li> </ol> <p>Section 9</p> <p>All documents required to be filed under this act shall be public records and shall be open to public inspection at such times as prescribed.</p>
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<p>Exempt Organizations</p>	<p><i>§79-11-505</i></p> <p>The provisions of this chapter (e.g., registration and filing requirements, disclosures, etc.) do not apply to:</p> <ul style="list-style-type: none"> <li>(a) All educational institutions recognized by the State Board of Education;</li> <li>(b) Fraternal, patriotic, social, educational, alumni organizations, and historical societies;</li> <li>(c) Persons requesting contributions for the relief or benefit of a particular individual;</li> <li>(d) Any charitable organization which does not intend to solicit and receive (and does not actually receive) contributions of more than \$4,000 during a fiscal year;</li> <li>(e) Any other organization which the Secretary of State by rule or order exempts from the registration requirements.</li> </ul>	<p><i>§467B-C</i></p> <p>The provisions of the Act do not apply to:</p> <ul style="list-style-type: none"> <li>(f) Religious corporations, institutions, and societies;</li> <li>(g) Parent-teacher associations and educational institutions;</li> <li>(h) Nonprofit hospitals licensed by the State;</li> <li>(i) A person who solicits solely for the benefit of the organizations above;</li> <li>(j) Any charitable organization that normally receives less than \$25,000 annually.</li> </ul>	<p><i>Section 4</i></p> <p>The provisions of the Act do not apply to:</p> <ul style="list-style-type: none"> <li>(a) Persons that are exempt from filing a federal tax return pursuant to the Internal Revenue Code;</li> <li>(b) Political parties, candidates for federal or state office, and political action committees;</li> <li>(c) Charitable organizations which do not intend to or do not actually raise or receive gross revenue in excess of a state-set limit.</li> </ul>
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**SECRETARY OF STATE FEE SCHEDULES IN SOUTHEAST AS OF JANUARY 2008**  
**PREPARED BY THE MISSISSIPPI SECRETARY OF STATE'S OFFICE, DIVISION OF POLICY AND RESEARCH**

**Non-Profit Corporations – Domestic**

<b>Filing</b>	<b>Mississippi</b>	<b>Alabama</b>	<b>Arkansas</b>	<b>Louisiana</b>	<b>Tennessee</b>	<b>Average</b>	<b>Difference between MS and Average</b>
Articles of Incorporation	\$50	\$20	\$50	\$60	\$100	\$56	<i>MS is \$6 less</i>
Annual Report	No filing*	No filing	No filing	\$5	\$20	\$13	<i>No filing for MS</i>
Articles of Amendment	\$50	\$10	\$50	\$60	\$20	\$38	<i>MS is \$12 more</i>
Articles of Merger or Share Exchange	\$50	\$75	No filing	No filing	\$100	\$75	<i>MS is \$25 less</i>
Articles of Dissolution	\$25	\$5	\$50	\$60	\$20	\$32	<i>MS is \$7 less</i>
Articles of Revocation of Dissolution	\$25	\$5	No filing	\$60	No filing	\$30	<i>MS is \$5 less</i>
Application to Reserve Corporate Name	\$25	\$5	\$25	\$25	\$20	\$20	<i>MS is \$5 more</i>
Statement of Change of Registered Office and/or Registered Agent	\$10	\$5	\$0**	\$25	\$20	\$12	<i>MS is \$2 less</i>
<b>TOTAL</b>	<b>\$235</b>	<b>\$125</b>	<b>\$175</b>	<b>\$295</b>	<b>\$300</b>	<b>\$226</b>	<b>MS is \$9 more</b>

\* “No filing” indicates that no filing requirement was found for the state.

\*\* “\$0” indicates that the state requires a filing, but there is no filing fee.

### Non-Profit Corporations – Foreign

Filing	Mississippi	Alabama	Arkansas	Louisiana	Tennessee	Average	Difference between MS and Average
Application for a Certificate of Authority and Issuing Certificate of Authority	\$100	\$75	\$300	\$100	\$600	\$235	MS is \$135 less
Annual Report	No filing	No filing	No filing	\$25	\$20	\$23	No filing for MS
Name Registration	\$50	No filing	No filing	No filing	\$20	\$35	MS is \$15 more
Application for Appointment of Registered Agent (upon Initial Registration)	\$25	No filing	No filing	No filing	No filing	\$25	MS is equal
Application for Amended Certificate of Authority	\$50	\$25	No filing	\$100	\$20	\$49	MS is \$1 more
Filing of a Certified Copy of the Articles/Certificate of Merger or Certificate of Fact Reciting Merger	\$0	\$100	No filing	No filing	\$20	\$40	MS has no fee
Application for Certificate of Withdrawal	\$25	\$5	\$1	\$100	\$20	\$30	MS is \$5 less
Application to Reserve Corporate Name	\$25	\$5	\$25	\$25	\$20	\$20	MS is \$5 more
Statement of Change of Registered Office and/or Registered Agent	\$10	\$5	\$0	\$25	\$20	\$12	MS is \$2 less
<b>TOTAL</b>	<b>\$285</b>	<b>\$215</b>	<b>\$326</b>	<b>\$375</b>	<b>\$740</b>	<b>\$388</b>	<b>MS is \$103 less</b>

\* “No filing” indicates that no filing requirement was found for the state.

\*\* “\$0” indicates that the state requires a filing, but there is no filing fee.

## Charities

Filing	Mississippi	Alabama	Arkansas	Louisiana	Tennessee	Average	Difference between MS and Average
Charitable Registration	\$50	\$25	\$0	\$9	\$50	\$27	<i>MS is \$23 more</i>
Charitable Renewal	\$50	\$25	\$0	\$0	\$100	\$35	<i>MS is \$15 more</i>
Professional Fund Raiser/Solicitor Registration	\$250	\$25	\$200	Varies	\$800	\$319	<i>MS is \$69 less</i>
Professional Fund Raiser/Solicitor Renewal	\$250	\$25	\$200	Varies	\$800	\$319	<i>MS is \$69 less</i>
Fund Raising Counsel Registration	\$250	\$100	\$100	Filing not found	\$250	\$175	<i>MS is \$75 more</i>
Fund Raising Counsel Renewal	\$250	\$100	\$100	Filing not found	\$250	\$175	<i>MS is \$75 more</i>
<b>TOTAL</b>	<b>\$1,100</b>	<b>\$300</b>	<b>\$600</b>	<b>\$9</b>	<b>\$2,250</b>	<b>\$852</b>	<b>MS is \$248 more</b>

\* “No filing” indicates that no filing requirement was found for the state.

\*\* “\$0” indicates that the state requires a filing, but there is no filing fee.



**MISSISSIPPI CODE  
REGULATION OF CHARITABLE SOLICITATIONS**

**Delbert Hosemann  
Secretary of State**

**MISSISSIPPI CODE**  
**REGULATION OF CHARITABLE SOLICITATIONS**

- §79-11-501. Definitions
- §79-11-503. Registration statement; filing fee; forms; records; exceptions
- §79-11-504. Authority of Secretary of State to promulgate rules and regulations
- §79-11-505. Exemption from provisions; notice of exemption; burden of proof
- §79-11-507. Reports to Secretary of State; financial statements; administrative penalties
- §79-11-509. Effective date of registration; denial, suspension or revocation of registration or exemption; grounds for denial, suspension or revocation; procedure; violations and penalties
- §79-11-511. Out of state organization; service of process
- §79-11-513. Registration as professional fund-raiser or fund-raising counsel; bond; filing annual report
- §79-11-515. Contracts; filing with Secretary of State
- §79-11-517. Registration as professional solicitor in employ of professional fund-raiser
- §79-11-518. Records of solicitation activities
- §79-11-519. Powers and duties of district attorneys and county prosecuting attorneys; violation of article
- §79-11-521. Conduct of administrative hearings; contempt proceedings; special master designated by Secretary of State
- §79-11-523. Use of names, symbol or statement during solicitations for contributions; disclosure requirements for professional fundraisers
- §79-11-524. Restrictions on hours of telephone solicitations
- §79-11-525. Fiduciary Responsibility of person soliciting, collecting, or expending contributions
- §79-11-526. Sponsors and advertisers of events liable only when having control or supervision of events.
- §79-11-527. Reciprocal agreements with other states; public access to registration records
- §79-11-529. Fines and penalties

§ 79-11-501. *Definitions.*

The following words and phrases as used in Sections 79-11-501 through 79-11-529 shall have the meanings ascribed herein unless a different meaning is required by the context:

(a)

(i) "Charitable organization" means either of the following:

(A) Any person determined by the Internal Revenue Service to be a tax exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code; or

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(B) Any person actually or purporting to be established for any voluntary health and welfare, benevolent, philanthropic, patriotic, educational, humane, scientific, public health, environmental conservation, civic, or other eleemosynary purpose or for the benefit of law enforcement personnel, fire fighters, or other public safety organizations, or any person employing in any manner a charitable appeal as the basis of any solicitation or an appeal that suggests that there is a charitable purpose to any solicitation and includes each local, county or area division within this state of such charitable organization, provided such local, county or area division has authority and discretion to disburse funds or property otherwise than by transfer to any parent organization.

(ii) "Charitable organization" is not limited to only those organizations to which contributions are tax deductible under Section 170 of the Internal Revenue Code.

(iii) "Charitable organization" does not include any bona fide duly constituted religious institutions and such separate groups or corporations which form an integral part of religious institutions, provided that:

(A) Such religious institutions, groups or corporations are tax exempt pursuant to the Internal Revenue Code;

(B) No part of their net income inures to the direct benefit of any individual; and

(C) Their conduct is primarily supported by government grants or contracts, funds solicited from their own membership, congregations or previous donors, and fees charged for services rendered.

(b) "Charitable purpose" means either of the following:

(i) Any purpose described in Section 501(c)(3) of the Internal Revenue Code; or

(ii) Any voluntary health and welfare, charitable, benevolent, philanthropic, patriotic, educational, humane, scientific, public health, environmental conservation, civic, or other eleemosynary purpose or for the benefit of law enforcement personnel, fire fighters, or other public safety organizations;

"Charitable purpose" is not limited to only those purposes for which contributions are tax deductible under Section 170 of the Internal Revenue Code.

(c) "Container" means any box, carton, package, receptacle, canister, jar, dispenser, or machine that offers a product for sale or distribution which is or purports to be a solicitation of contributions for a charitable purpose.

(d) "Contribution" means the promise or grant of any money or property of any kind or value,

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including the promise to pay, except payments by members of an organization for membership fees, dues, fines, assessments or for services rendered to individual members, if membership in such organization confers a bona fide right, privilege, professional standing, honor or other direct benefit, other than the right to vote, elect officers or hold offices, and except money or property received from any governmental authority. Reference to the dollar amount of "contributions" in Sections 79-11-501 through 79-11-529 means in the case of promises to pay, or payments for merchandise or rights of any other description, the value of the total amount promised to be paid or paid for such merchandise or rights and not merely that portion of the purchase price to be applied to a charitable purpose.

(e) "Fund-raising counsel" means a person (i) who for a fixed fee or rate under a written agreement plans, manages, advises or consults with respect to the solicitation in this state of contributions by a charitable organization, (ii) who neither solicits contributions nor directly or indirectly employ, procure or engage any person compensated to solicit contributions, and (iii) who does not at any time, whether directly or indirectly, receive or have custody or control of contributions. A bona fide nontemporary salaried officer or employee of a charitable organization shall not be deemed to be a fund-raising counsel. No attorney, accountant or banker who renders professional services to a charitable organization or advises a person to make a charitable contribution during the course of rendering professional services to that person shall be deemed, as a result of the professional service or advice rendered, to be a fund-raising counsel.

(f) "Person" means any individual, organization, group, association, partnership, corporation, trust or any combination of them or any other entity however established within or without this state.

(g) "Professional fund-raiser" means any person who for compensation or other consideration is retained by a charitable organization to solicit in or from this state contributions for charitable purposes directly or in the form of payment for goods, services or admission to fund-raising events, whether such solicitation is performed personally or through his agents, servants or employees or through agents, servants or employees especially employed by or for a charitable organization who are engaged in the solicitation of contributions, the sale of goods or services or the production of fund-raising events under the direction of such person, or a person who plans, conducts, manages, carries on, advises or consults, whether directly or indirectly, in connection with the solicitation of contributions, sale of goods or services or the production of fund-raising events for or on behalf of any charitable organization, but does not qualify as a fund-raising counsel within the meaning of Sections 79-11-501 through 79-11-529, or who engages in the business of or holds himself out as independently engaged in the business of soliciting contributions for such purposes. A bona fide officer or employee of a charitable organization shall not be deemed a professional fund-raiser unless his salary or other compensation is paid as a commission which is computed on the basis of funds to be raised or actually raised.

(h) "Professional solicitor" means any person who is employed or retained for compensation by a professional fund-raiser to solicit contributions for charitable purposes from persons in this state.

(i) "Public safety organization" means a nongovernmental organization that uses in its name, whether in a publication of the organization, in a solicitation for contributions to the organizations, for membership in the organization, or to purchase advertising in a publication of the organization, or in a solicitation to purchase products or tickets to an event sponsored by or for the benefit of the organization by a solicitor, the term officer, peace officer, police officer, police law enforcement, reserve officer, deputy, deputy sheriff, constable, deputy constable, fireman, fire fighter, volunteer fireman, emergency medical service provider, civil employee or any other term in a manner that reasonably implies that the organization or that a contribution, purchase or membership will benefit public safety personnel.

(j) "Solicitation" or "solicit" means the request, directly or indirectly, for money, credit, property, financial assistance, or any other thing of value on the plea or representation that such money, credit, property, financial assistance, or any other thing of value or a portion of it will be used for a charitable purpose or will benefit a charitable organization. "Solicitation" or "solicit" includes, but is not limited to, the following methods of requesting or securing money, credit, property, financial assistance or any other thing of value:

(i) Any oral or written request.

(ii) The making of any announcement in the press, over the radio or television, by telephone, through the mail or any other media concerning an appeal or campaign by or for any charitable organization or purpose.

(iii) The distribution, circulation, posting or publishing of any handbill, written advertisement or other publication which directly or by implication seeks to obtain a contribution.

(iv) The offer of, attempt to sell, or sale of any advertising space, book, card, tag, coupon, device, magazine, membership, merchandise, subscription, flower, ticket, candy, cookies or other tangible item in connection with which any appeal is made for any charitable organization or purpose, or where the name of any charitable organization is used or referred to in any appeal as an inducement or reason for making any sale, or where any statement is made that the whole or any part of the proceeds from the sale will be used for any charitable purpose or will benefit any charitable organization.

(v) The use or employment of container, canisters, cards, receptacles or similar devices for the collection of money or other thing of value in connection with which any appeal is made for any charitable organization or purpose.

(vi) Any announcement requesting the public to attend an appeal, assemblage, athletic or competitive event, carnival, circus, concert, contest, dance, entertainment, exhibition, exposition, game, lecture, meal, party, show, social gathering or other performance or event of any kind.

A solicitation shall take place whether or not the person making the solicitation receives any contribution, except that a charitable organization's use of its own name in any communication shall not alone be sufficient to constitute a solicitation.

SOURCES: Laws, 1991, ch. 515, Sec. 1; reenacted, 1992, ch. 446, Sec. 1. Laws, 1997, ch. 444, Sec. 1, eff from and after July 1, 1997

Amendment Notes-

The 1997 amendment substantially revised this section for the purpose of regulating charitable solicitations

**§ 79-11-503. Registration statement; filing fee; forms; records; exceptions.**

(1) Except as otherwise provided in Section 79-11-505 and prior to any solicitation of contributions, every charitable organization as defined in Section 79-11-501 which solicits or intends to solicit contributions by any means whatsoever shall file a registration statement with, and pay a filing fee of Fifty Dollars (\$50.00) to, the Secretary of State. A registration statement that contains false, misleading, deceptive or incomplete information or documentation shall not be considered sufficient. The registration statement shall be on forms prescribed by the Secretary of State and shall contain the following information and such other information that the Secretary of State may require by rule:

- (a) The name of the organization and the name or names under which it intends to solicit contributions;
- (b) The names and addresses of the officers, directors, trustees and chief executive officer of the organization;
- (c) The addresses of the organization and any offices in this state. If the organization does not maintain a principal office, the name and address of the person having custody of its financial records;
- (d) Where and when the organization was legally established, the form of its organization and its tax exempt status;
- (e) The purpose for which the organization and the purpose or purposes for which the contributions to be solicited will be used;
- (f) The date on which the fiscal year of the organization ends;

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(g) Whether the organization is authorized by any other governmental authority to solicit contributions and a statement of (i) whether the charitable organization or any of its present officers, directors, executive personnel or trustees have ever had a license or registration denied, suspended, revoked or enjoined by any court or other governmental authority in this state or any other state, or (ii) whether the charitable organization has voluntarily entered into an assurance or voluntary discontinuance or agreement with any jurisdiction or federal agency or officer;

(h) The names and addresses of any professional fund-raisers or fund-raising counsel who are acting or have agreed to act on behalf of the organization;

(i) Methods by which solicitation will be made;

(j) Copies of contracts between charitable organizations and professional fund-raisers or fund-raising counsel relating to financial compensation or profit to be derived by the professional fund-raisers or fund-raising counsel. If any such contract is executed after filing of a registration statement, a copy thereof shall be filed within ten (10) days of the date of execution;

(k) The board, group or individual having final authority over the distribution, custody and use of contributions received;

(l) A financial report as required by Section 79-11-507;

(m) With the initial registration only, a copy of the current charter, articles of incorporation, agreement of association, instrument of trust, constitution, or other organizational instrument and a copy of the bylaws of the charitable organization; and

(n) With the initial registration or, if after registration, within thirty (30) days after its receipt, a copy of any federal tax exemption determination letter, any correspondence rescinding the charitable organization's tax exempt status, or any notification from the Internal Revenue Service of any challenge to or investigation of the charitable organization's continued entitlement to federal tax exemption.

(2) The registration statement shall be signed and sworn to under penalties of perjury by the president or other authorized officer and the chief fiscal officer of the organization.

(3) The Secretary of State shall issue a certificate of registration to a charitable organization once the Secretary of State determines that such organization has complied with all provisions of this chapter. No charitable organization required to be registered under this section shall solicit funds without a valid certificate of registration.

(4) Such registration shall remain in effect for one (1) year, unless renewed by the filing of forms as prescribed by the Secretary of State and upon payment of the Fifty Dollars (\$50.00) renewal fee.

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(5) Every registered organization shall notify the Secretary of State within thirty (30) days of any change in the information required to be furnished by such organization under Sections 79-11-501 through 79-11-529.

(6) In no event shall a registered charitable organization continue to solicit contributions in or from this state after the date such organization should have filed, but failed to file, a renewal and the financial report in accordance with the requirements of Sections 79-11-501 through 79-11-529.

(7) If any local, county or area division of a charitable organization is supervised and controlled by a superior or parent organization, incorporated, qualified to do business, or doing business within this state, such local, county or area division shall not be required to register under this section if the superior or parent organization files a registration statement on behalf of the local, county or area division in addition to or as part of its own registration statement. If a registration statement has been filed by a superior or parent organization as provided in Section 79-11-503(1), it shall file the annual report required under Section 79-11-507 on behalf of the local, county or area division in addition to or as part of its own report, but the accounting information required under Section 79-11-507 shall be set forth separately and not in consolidated form with respect to every local, county or area division which raises or expends more than Four Thousand Dollars (\$4,000.00).

SOURCES: Laws, 1991, ch. 515, Sec. 2; reenacted and amended, 1992, ch. 446, Sec. 2. Laws, 1997, ch. 444, Sec. 2, eff from and after July 1, 1997

Amendment Notes-

The 1997 amendment, in subsection (1), added "by rule" at the end of the opening paragraph, substantially revised paragraph (g) by adding the statement requirement, added "or fund-raising counsel" after "professional fund-raisers" in paragraphs (h) and (j), deleted former paragraph (k), redesignated former paragraph (l) as paragraph (k) and added ", custody" following "distribution", added paragraphs (l), (m), and (n), added "and sworn to under penalties of perjury" in subsection (2), added reference to sections 79-11-501 through 79-11-529 in subsections (5) and (6), deleted former subsections (7) and (9), and redesignated subsection (8) as subsection (7)

#### **§ 79-11-504. Authority of Secretary of State to promulgate rules and regulations.**

The Secretary of State shall have the authority to:

(a) Promulgate rules of procedure and regulations necessary for the administration of Sections 79-11-501 through 79-11-529, Mississippi Code of 1972, subject to the provisions of the Mississippi Administrative Procedures Law.

(b) Honor written requests from interested person for interpretative opinions regarding registration and exemptions from registration.

(c) Publish and disseminate information to the public concerning persons subject to Sections 79-11-501 through 79-11-529, Mississippi Code of 1972.

(d) Perform any other functions and duties which may be necessary to carry out the provisions of Sections 79-11-501 through 79-11-529, Mississippi Code of 1972.

SOURCES: Laws, 1997, ch. 444, Sec. 3, eff from and after July 1, 1997

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**§ 79-11-505. Exemption from provisions; notice of exemption; burden of proof.**

(1) The provisions of Sections 79-11-501 through 79-11-529 shall not apply to the following organizations:

(a) All educational institutions that are recognized by the State Board of Education or that are accredited by a regional accrediting association or by an organization affiliated with the National Commission on Accrediting, any foundation having an established identity with any of the aforementioned educational institutions, any other educational institution which makes the solicitation of contributions solely by its student body, alumni, faculty and trustees and their families or a library established under the laws of this state.

(b) Fraternal, patriotic, social, educational, alumni organizations and historical societies when solicitation of contributions is made solely by their membership; however, posts of the American Legion and posts of the Veterans of Foreign Wars of the United States may utilize nonmembers to assist designated supervisors in the conduct of bingo under the Charitable Bingo Law and qualify for this exemption. This exemption shall be extended to any subsidiary of a parent or superior organization if such solicitation is made solely by the membership of the subsidiary, parent or superior organization.

(c) Persons requesting any contributions for the relief or benefit of any individual, specified by name at the time of the solicitation, if the contributions collected are turned over to the named beneficiary, first deducting reasonable expenses for costs of banquets or social gatherings, if any, provided all fund-raising functions are carried on by persons who are unpaid, directly or indirectly, for such services.

(d) Any charitable organization which does not intend to solicit and receive and does not actually receive contributions in excess of Four Thousand Dollars (\$4,000.00) during any twelve-month period ending June 30 of any year, provided all of its fund-raising functions are carried on by persons who are unpaid for such services. However, if the gross contributions received by such charitable organization during any twelve-month period ending June 30 of any year shall be in excess of Four Thousand Dollars (\$4,000.00) it shall, within thirty (30) days after the date it shall have received total contributions in excess of Four Thousand Dollars (\$4,000.00), register with and report to the Secretary of State as required by this chapter.

(e) Any charitable organization receiving an allocation from an incorporated community chest or united fund, provided such chest or fund is complying with the provisions of Sections 79-11-501 through 79-11-529 relating to registration and filing of annual reports with the Secretary of State, and provided such organization does not actually receive, in addition to such allocation, contributions in excess of Four Thousand Dollars (\$4,000.00) during any twelve-month period ending June 30 of any year, and provided further, that all the fund-raising functions of such organization are carried on by persons who are unpaid for such services. However, if the gross contributions other than such allocation received by such charitable organization during any

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Charitable Solicitations Registration  
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twelve-month period ending June 30 of any year shall be in excess of Four Thousand Dollars (\$4,000.00), it shall, within thirty (30) days after the date it shall have received such contributions in excess of Four Thousand Dollars (\$4,000.00), register with and report to the Secretary of State as required by this chapter.

(f) All volunteer fire departments or rescue units, rural or otherwise, chartered under the laws and statutes of the State of Mississippi as nonprofit corporations.

(g) Any humane society organized under the laws of Mississippi which contracts with counties or municipalities for the care and keeping of estrays.

(h) Any other organization which the Secretary of State by rule or order exempts from the registration requirements of this chapter upon finding that (i) such registration is neither necessary in the public interest nor for the protection of contributors, or (ii) such exemption shall further the objectives of compatibility with uniformity among the states.

(2) Prior to any solicitations for contributions, each charitable organizations claiming to be exempt shall file a Notice of Exemption on the forms prescribed by the Secretary of State. In any proceeding under this chapter, the burden of proving an exemption, or an exception from a definition, is upon the person claiming it.

SOURCES: Laws, 1991, ch. 515, Sec. 3; reenacted and amended, 1992, ch. 446, Sec. 3; 1994, ch. 393, Sec. 1 Laws, 1997, ch. 444, Sec. 4, eff from and after July 1, 1997; Laws, 2007, ch. \_\_\_\_, Sec. \_\_\_\_, eff from and after passage.

Amendment Notes-

The 1997 amendment deleted former paragraph (a), redesignated the remaining paragraphs under subsection (1) as (a) through (h), in the beginning of the first sentence of subsection (2), added "Prior to any solicitations for contributions, such" and "shall" following "exempt"

### **§79-11-507. Reports to Secretary of State; financial statements; administrative penalties.**

(1) Every charitable organization registered pursuant to Section 79-11-503 which shall receive in any fiscal year contributions in excess of One Hundred Thousand Dollars (\$100,000.00), and every charitable organization whose fund-raising functions are not carried on solely by persons who are unpaid for such services shall file a financial report for its most recently completed fiscal year with the Secretary of State. Such financial report shall be filed along with the registration statement required by Section 79-11-503 and any renewals thereafter. Such financial report shall include a balance sheet and statement of income and expense and shall be consistent with forms furnished by the Secretary of State clearly setting forth the following: gross receipts and gross income from all sources, broken down into total receipts and income from each separate solicitation project or source; cost of administration; cost of solicitation; cost of programs designed to inform or educate the public; total net amount disbursed or dedicated for each major purpose, charitable or otherwise. The report shall be signed by the president or other authorized officer and the chief fiscal officer of the organization, and shall be accompanied by an opinion signed by an independent certified public accountant that the financial statement therein fairly represents the financial operations of the organization in sufficient detail to permit public evaluation of its operations. Such financial report shall be accompanied by any and all forms required to be filed by a charitable organization with the

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- (2) Every organization registered pursuant to Section 79-11-503 that shall receive in any fiscal year contributions not in excess of One Hundred Thousand Dollars (\$100,000.00) and all of whose fund-raising functions are carried on by persons who are unpaid for such services shall file a financial report along with the registration statement required by Section 79-11-503 and any renewals thereafter with the Secretary of State upon forms prescribed by him. Such financial report shall cover the most recently completed fiscal year and include such information as required by the Secretary of State by rule or otherwise, including, but not limited to, the gross receipts from contributions and the use of the proceeds of such contributions. The report shall be signed by the president or other authorized officer of the organization who shall certify under penalties of perjury that the statements therein are true and correct to the best of their knowledge. Such financial report shall be accompanied by any and all forms required to be filed by a charitable organization with the United States Internal Revenue Service.
- (3) Any charitable organization receiving more than Twenty-five Thousand Dollars (\$25,000.00) but less than One Hundred Thousand Dollars (\$100,000.00) shall, at the request of the Secretary of State, submit additional financial information, including, but not limited to, an audited financial statement prepared in accordance with generally accepted accounting principles and accompanied by an opinion signed by an independent certified public accountant that the financial statement therein fairly represents the financial operations of the organization in sufficient detail to permit public evaluation of its operations.
- (4) The Secretary of State pursuant to Section 79-11-509 may impose an administrative penalty against any organization which fails to comply with subsections (1), (2) or (3) of this section within the time therein prescribed, or fails to furnish such additional information as is requested by the Secretary of State within the required time.

SOURCES: Laws, 1991, ch. 515, Sec. 4; reenacted and amended, 1992, ch. 446, Sec. 4. Laws, 1997, ch. 444, Sec. 5, eff from and after July 1, 1997

Amendment Notes-

The 1997 amendment, in subsections (1) and (2), substituted "One Hundred Thousand Dollars (\$100,000.00)" for "Fifty Thousand Dollars (\$50,000.00)", added the second sentence in subsection (1) requiring the financial report to be filed along with the registration statement, added the final sentence in subsection (1) requiring the financial report to be accompanied by any other required forms, in subsection (2), added the second and fourth sentences, added subsection (3), and redesignated former subsection (3) as subsection (4)

**§ 79-11-509. Effective date of registration; denial, suspension or revocation of registration or exemption; grounds for denial, suspension or revocation; procedure; violations and penalties.**

- (1) The Secretary of State shall deny, suspend or revoke a registration or an exemption for the following reasons:
  - (a) The application for registration or renewal is incomplete.
  - (b) The application or renewal fee (where applicable) has not been paid.
  - (c) A document filed with the Secretary of State contains one or more false or misleading

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statements or omits material facts.

- (d) The charitable contributions have not been or are not being applied for the purpose or purposes stated in the documents filed with the Secretary of State.
  - (e) The applicant or registrant has violated or failed to comply with any provisions of this chapter or any rule or order thereunder.
  - (f) The applicant, registrant, officers, directors, or partners of the applicant or registrant, or their agents or employees, have been convicted of any felony or of a misdemeanor where such misdemeanor involved misrepresentation, misapplication or misuse of the money or property of another.
  - (g) The applicant or registrant has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense.
  - (h) The applicant or registrant has had the authority to engage in charitable or fund-raising activities denied, revoked or suspended by the Secretary of State or any other state or jurisdiction.
  - (i) The applicant or registrant has been convicted of any criminal offense committed in connection with the performance of activities regulated under Sections 79-11-501 through 79-11-529 or any criminal offense involving untruthfulness or dishonesty or any criminal offense relating adversely to the registrant's or applicant's fitness to perform activities regulated by Sections 79-11-501 through 79-11-529. For the purposes of this paragraph, a plea of guilty, non vult, nolo contendere or any other similar disposition of alleged criminal activity shall be deemed a conviction.
  - (j) The applicant or registrant has engaged in other forms of misconduct as may be determined by the rules adopted by the Secretary of State.
- (2) The Secretary of State shall notify the applicant or licensee of his intent to deny, suspend or revoke a license. The notification shall contain the reasons for the action and shall inform him of his right to request an administrative hearing within thirty (30) days of receipt of the notification. The denial, suspension or revocation shall become effective thirty (30) days after receipt of the notification unless a request for an administrative hearing is received by the Secretary of State before the expiration of the thirty (30) days. If a hearing is requested and the denial, suspension or revocation is upheld, the denial, suspension or revocation shall become effective upon the service of the final administrative decision on the applicant or licensee.
- (3) Registration shall become effective no later than noon of the thirtieth day after a completed application is filed, if no denial order is in effect and no proceeding is pending under this chapter.

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The Secretary of State may, by rule or order, specify an earlier effective date, and the Secretary of State may, by order, defer the effective date until noon of the thirtieth day after the filing of any amendment.

- (4) Whenever it appears to the Secretary of State that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder, he may, in his discretion, seek the following remedies in addition to other remedies authorized by law:
- (a) Issue a cease and desist order, with or without a prior hearing against the person or persons engaged in the prohibited activities, directing them to cease and desist from further illegal activity; or
  - (b) Issue an order in the case of a registered charity, professional fund-raiser or solicitor, or other person who violated this chapter, imposing an administrative penalty up to a maximum of Twenty-five Thousand Dollars (\$25,000.00) for each offense, each violation to be considered as a separate offense in a single proceeding or a series of related proceedings;
  - (c) For the purpose of determining the amount or extent of a sanction, if any, to be imposed under subparagraph (b) of this section, the Secretary of State shall consider, among other factors, the frequency, persistence and willfulness of the conduct constituting a violation of this chapter or a rule promulgated thereunder or an order of the Secretary of State, the number of persons adversely affected by the conduct, and the resources of the person committing the violation.
- (5) Whenever it appears to the Attorney General that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of Sections 79-11-501 through 79-11-529 or any rule or order thereunder, he may, in his discretion, bring an action in chancery court to enjoin the acts or practices to enforce compliance with Sections 79-11-501 through 79-11-529 or any rule or order thereunder. Upon a proper showing a permanent or temporary injunction, restraining order or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. In addition, upon a proper showing by the Attorney General, the court may enter an order of rescission, restitution or disgorgement directed to any person who has engaged in any act constituting a violation of any provision of Sections 79-11-501 through 79-11-529 or any rule or order thereunder or the court may impose a civil penalty up to a maximum of Twenty-five Thousand Dollars (\$25,000.00) for each offense, and each violation shall be considered as a separate offense in a single proceeding or a series of related proceedings. The court may not require the Attorney General to post a bond.

SOURCES: Laws, 1991, ch. 515, Sec. 5; reenacted and amended, 1992, ch. 446, Sec. 5. Laws, 1997, ch. 444, Sec. 6, eff from and after July 1, 1997

Amendment Notes-

The 1997 amendment added paragraphs (g), (h), (i) and (j) under subsection (1), added language throughout expanding the Secretary of State's power to suspend or revoke a registration or an exemption, and added subsection (5) granting the Secretary power to bring an action for an injunction

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## **§ 79-11-511. Out of state organization; service of process.**

Any charitable organization, person, professional fund-raiser, fund-raising counsel or professional solicitor, which or who solicits contributions in this state, but does not maintain an office within the state, shall be subject to service of process by designating a registered agent upon which process may be served in the State of Mississippi, or if no designation has been made, then service of process shall be upon the Secretary of State of Mississippi.

SOURCES: Laws, 1991, ch. 515, Sec. 6; reenacted, 1992, ch. 446, Sec. 6. Laws, 1997, ch. 444, Sec. 7, eff from and after July 1, 1997

Amendment Notes-

The 1997 amendment added the words ", fund-raising counsel" after the words "professional fund-raiser"

## **§ 79-11-513. Registration as professional fund-raiser or fund-raising counsel; bond; filing annual report.**

No person shall act as a professional fund-raiser or fund-raising counsel for a charitable organization before he has registered with the Secretary of State or after the expiration or cancellation of such registration or any renewal thereof. Applications for registration and renewals shall be in writing sworn to under penalties of perjury in the form prescribed by the Secretary of State and accompanied by the filing of a fee of Two Hundred Fifty Dollars (\$250.00). The professional fund-raiser applicant, at the time of making application, shall file with the State Treasurer and have approved by the Secretary of State a bond in which the applicant shall be the principal obligor in the sum of Ten Thousand Dollars (\$10,000.00) with one or more corporate sureties licensed to do business in this state whose liability in the aggregate will at least equal such sum. The bond shall run to the Secretary of State for the use of the state and to any person who may have a cause of action against the obligor of the bond for any malfeasance or misfeasance in the conduct of such solicitation; provided, that the aggregate limit of liability of the surety to the state and to all such persons shall, in no event, exceed the sum of such bond. Such limitation of liability, as to the sum of the bond, as to the surety, shall not otherwise affect any liability to any person by any charitable organization, professional fund-raiser, professional solicitor or any other person for a violation of this chapter. Registration when effected shall be for a period of one (1) year, or a part thereof, expiring on the thirtieth day of June and may be renewed upon written application, under oath, in the form prescribed by the Secretary of State and upon the remittance of the renewal fee of Two Hundred Fifty Dollars (\$250.00) and the filing of the bond for additional one-year periods. Every professional fund-raiser and fund-raising counsel required to register pursuant to Sections 79-11-501 through 79-11-529 shall file an annual written report with the Secretary of State containing such information and documentation as he may require by rule.

SOURCES: Laws, 1991, ch. 515, Sec. 7; reenacted and amended, 1992, ch. 446, Sec. 7. Laws, 1997, ch. 444, Sec. 8, eff from and after July 1, 1997

Amendment Notes-

The 1997 amendment added references to "fund-raising counsel" throughout, reference to "renewals" and "sworn to under penalties of perjury" in the second sentence, added "professional fund-raiser" at the beginning of the third sentence, and in the final sentence, added "and documentation" following "information"

## **§ 79-11-515. Contracts; filing with Secretary of State.**

(1) All contracts entered into between professional fund-raisers or fund-raising counsel and charitable organizations shall be in writing and a true and correct copy of such contract shall be filed by the

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professional fund-raiser or fund-raising counsel who is a party thereto with the Secretary of State at least ten (10) days prior to the performance by the professional fund-raiser or fund-raising counsel of any service. The contract must be signed by two (2) authorized officials of the charitable organization, one (1) of whom must be a member of the organization's governing body, and the authorized contracting officer for the professional fund-raiser or fund-raising counsel. True and correct copies of such contracts shall be kept on file in the offices of the charitable organization and the professional fund-raiser or fund-raising counsel during the term thereof and until the expiration of a period of three (3) years subsequent to the date the solicitation of contributions provided for therein actually terminates. The contract shall contain all of the following provisions:

- (a) The legal name and address of the charitable organization as registered with the Secretary of State, unless that charitable organization is exempt from registration;
  - (b) A statement of the charitable purpose for which the solicitation campaign is being conducted;
  - (c) A statement of the respective obligations of the professional fund-raiser or fund-raising counsel and the charitable organization;
  - (d) A clear statement of the fees or rate which will be paid to the professional fund-raiser or fund-raising counsel;
  - (e) The effective and termination dates of the contract and the date services will commence with respect to the solicitation in this state of contributions for a charitable organization;
  - (f) For fund-raising counsel, a statement that the fund-raising counsel will not at any time have custody or control of contributions;
  - (g) A statement that the charitable organization exercises control and approval over the content and volume of any solicitation; and
  - (h) Any other information required by the rules of the Secretary of State.
- (2) Prior to the commencement of any solicitation, the professional fund-raiser shall file all of the following with the Secretary of State and such other information that the Secretary of State may, by rule, require a written report on forms prescribed by the Secretary of State containing information about the solicitation campaign, including, but not limited to, the following:
- (a) The fund-raising methods to be used;
  - (b) The projected dates when the solicitation campaign will commence and terminate;
  - (c) The location and telephone number from where the solicitation campaign will be conducted if it will be conducted by telephone;

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- (d) The name and residence address of each person responsible for directing and supervising the conduct of the solicitation campaign;
  - (e) A statement of whether the professional fund-raiser will at any time have custody of any contributions;
  - (f) The account number and location of each bank account where receipts from the campaign are to be deposited;
  - (g) A full and fair description of the charitable program for which the solicitation campaign is being carried out; and
  - (h) The written and signed consent of every charitable organization on whose behalf the professional fund-raiser will be soliciting contributions or whose name will be mentioned during the solicitation.
- (3) Not later than ninety (90) days after a solicitation campaign has been completed and on the anniversary of the commencement of a solicitation campaign lasting more than one (1) year, the professional fund-raiser shall furnish an accounting of all contributions collected and expenses paid to the charitable organization with which the professional fund-raiser has contracted. The accounting shall be in writing and shall be retained by the professional fund-raiser and charitable organization for three (3) years. The professional fund-raiser shall file a final report of the accounting with the Secretary of State on forms prescribed by him and containing such information he may, by rule, require not later than seven (7) days after it is furnished to the charitable organization. This report shall be signed by the contracting agent with the professional fund-raiser and also by an authorized officer of the charitable organization.
- (4) Not later than two (2) days after receipt of each contribution, the professional fund-raiser shall deposit the entire amount of the contribution in an account at a bank or other federally insured financial institution which shall be in the name of the charitable organization with which the professional fund-raiser has contracted. Each contribution collected by the professional fund-raiser shall be solely in the name of that charitable organization. The charitable organization shall have sole control of all withdrawals from the account and the professional fund-raiser shall not be given the authority to withdraw any deposited funds from the account.
- (5) During each solicitation campaign and for not less than three (3) years after its completion, the professional fund-raiser shall maintain the following records that shall be made available to the Attorney General or the Secretary of State upon request:
- (a) A record of each contribution that at any time is in the custody of the professional fund-raiser, including the name and address of each contributor and the date and amount of the contribution; and
  - (b) The location of each bank or financial institution in which the professional fund-raiser has deposited revenue from the solicitation campaign and the account number of each account into

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which the deposits were made.

- (6) Any material change in any information filed with the Secretary of State pursuant to this section shall be reported in writing by the professional fund-raiser or fund-raising counsel to the Secretary of State not more than seven (7) days after such change occurs.

SOURCES: Laws, 1991, ch. 515, Sec. 8; reenacted and amended, 1992, ch. 446, Sec. 8. Laws, 1997, ch. 444, Sec. 9, eff from and after July 1, 1997

Amendment Notes-

The 1997 amendment redesignated the former undesignated paragraph as subsection (1) and added paragraphs (a) through (e) under that subsection, and added subsections (2), (3), (4), (5), and (6)

### **§ 79-11-517. Registration as professional solicitor in employ of professional fund-raiser.**

No person shall act as a professional solicitor in the employ of a professional fund-raiser required to register pursuant to Section 79-11-513 before he has registered with the Secretary of State or after the expiration or cancellation of such registration or any renewal thereof. Application for registration or renewal shall be in writing sworn to under penalties of perjury in the form prescribed by the Secretary of State. Such registration when effected shall be for a period of one (1) year, or a part thereof, expiring on the thirtieth day of June, and may be renewed upon written application, sworn to under penalties of perjury, in the form prescribed by the Secretary of State for additional one-year periods.

SOURCES: Laws, 1991, ch. 515, Sec. 9; reenacted, 1992, ch. 446, Sec. 9. Laws, 1997, ch. 444, Sec. 10, eff from and after July 1, 1997

Amendment Notes-

The 1997 amendment substituted the words "sworn to under penalties of perjury" for the words "under oath"

### **§ 79-11-518. Records of solicitation activities.**

Every charitable organization, professional fund-raiser, professional solicitor, or fund-raising counsel, whether or not required to register pursuant to Sections 79-11-501 through 79-11-529, Mississippi Code of 1972, shall keep true and correct books and records of solicitation activities that are covered by Sections 79-11-501 through 79-11-529, Mississippi Code of 1972, or any rule or order adopted under Sections 79-11-501 through 79-11-529, Mississippi Code of 1972. All such books and records shall be open to inspection at all reasonable times by the Secretary of State or the Attorney General, or their duly authorized representatives. The records shall be retained for a period of at least three (3) years.

SOURCES: Laws, 1997, ch. 444, Sec. 11, eff from and after July 1, 1997

### **§ 79-11-519. Powers and duties of district attorneys and county prosecuting attorneys; violations of article.**

- (1) It is the duty of the district attorneys and county prosecuting attorneys of this state to prosecute all violations of the provisions of Sections 79-11-501 through 79-11-529. In addition, actions for violations of Sections 79-11-501 through 79-11-529 may be prosecuted by the Attorney General.

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- (2) Sections 79-11-501 through 79-11-529 shall not be construed to limit or restrict the exercise of the powers or the performance of the duties of the Attorney General which he otherwise is authorized to exercise or perform under any other provision of law by statute or otherwise except the rendering of interpretative opinions in accordance with Section 79-11-503 which shall be limited to the Secretary of State.
- (3) It shall be a violation of Sections 79-11-501 through 79-11-529 for any person:
- (a) To misrepresent the purpose or beneficiary of a solicitation;
  - (b) To misrepresent the purpose or nature of a charitable organization;
  - (c) To use or exploit the fact of registration so as to lead the public to believe that such registration constitutes an endorsement or approval by the state;
  - (d) To misrepresent that any other person sponsors or endorses a solicitation;
  - (e) To use the name of a charitable organization, or to display any emblem, device or printed matter belonging to or associated with a charitable organization without the express written permission of the charitable organization;
  - (f) To make any false or misleading statement on any document required by Sections 79-11-501 through 79-11-529 or any rule or order thereunder;
  - (g) To fail to comply with the requirements of Sections 79-11-501 through 79-11-529 or any rule or order thereunder;
  - (h) To commit any unfair or deceptive act or practice;
  - (i) To fail to provide complete and timely payment to a charitable organization of the proceeds from a solicitation campaign or a charitable sales promotion;
  - (j) To employ any device, scheme or artifice to defraud;
  - (k) To make any false or misleading statements in the solicitations of contributions in this state or to omit to state any fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading;
  - (l) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person;
  - (m) To refuse or fail, after notice, to produce any records required to be kept under Sections 79-11-501 through 79-11-529, or any rule or order promulgated thereunder;

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- (n) To obtain money or property by means of any false pretense, representation or promise; or
  - (o) To violate any provisions of Sections 79-11-501 through 79-11-529 or any rule or order thereunder.
- (4) It shall be a violation of Sections 79-11-501 through 79-11-529 for any charitable organization:
- (a) To engage in any financial transaction which is not related to the accomplishment of its charitable purpose, or which jeopardizes or interferes with the ability of the charitable organization to accomplish its charitable purpose;
  - (b) To expend an unreasonable amount of money for solicitation or management;
  - (c) To use the name which is the same as or confusingly similar to the name of another charitable organization unless the latter organization shall consent in writing to its use;
  - (d) To represent itself as being associated with another charitable organization without the express written acknowledgment and endorsement of such other charitable organization;
  - (e) To use the services of an unregistered professional fund-raiser or fund-raising counsel or professional solicitor; or
  - (f) To violate any provisions of Sections 79-11-501 through 79-11-529 or any rule or order thereunder.
- (5) It shall be a violation of Sections 79-11-501 through 79-11-529 for any professional fund-raiser, professional fund-raising counsel or any professional solicitor:
- (a) To perform any services on behalf of an unregistered charitable organization;
  - (b) To violate any provisions of Sections 79-11-501 through 79-11-529; or
  - (c) To violate any provisions of Sections 79-11-501 through 79-11-529 or any rule or order thereunder.
- (6) It shall be a violation of Sections 79-11-501 through 79-11-529 for any person, in connection with a public safety organization solicitation:
- (a) To use any representation that implies that the contribution is for or on behalf of a public safety agency or a public safety organization, or using any emblem, device, or printed matter belonging to or associated with a public safety agency or organization, unless authorized in writing to do so by the agency or organization;



- (b) Using a name, symbol, or statement that is similar to that used by a public safety agency or organization in a manner that is intended to confuse or mislead a person being solicited;
  - (c) Representing or implying that the solicitor is a peace officer or member of a public safety agency or public safety organization if the solicitor is not;
  - (d) Soliciting for a public safety organization, independent promoter, public safety publication, or cause by representing that those who respond affirmatively to the solicitation will receive favored treatment by public safety personnel; or
  - (e) To violate any provisions of Sections 79-11-501 through 79-11-529 or any rule or order thereunder.
- (7) A misrepresentation may be accomplished by words or conduct or failure to disclose a material fact. Regardless of a person's intent or the lack of injury, the above acts and practices are prohibited in the planning, conduct or execution of any solicitation or charitable sales promotion.
- (8) The Secretary of State or the Attorney General may exercise the authority granted in this section against any charitable organization or person which or who operates under the guise or pretense of being an organization exempted by the provisions of Section 79-11-505, and is not in fact an organization entitled to such an exemption.

SOURCES: Laws, 1991, ch. 515, Sec. 10; reenacted and amended, 1992, ch. 446, Sec. 10. Laws, 1997, ch. 444, Sec. 12, eff from and after July 1, 1997

Amendment Notes-

The 1997 amendment substantially revised subsection (3) defining what constitutes a violation of Sections 79-11-501 through 79-11-529, redesignated former subsection (4) as subsection (8), deleted former subsection (5), and added subsections (4), (5), (6) and (7).

**§ 79-11-521. Conduct of administrative hearings; contempt proceedings; special master designated by Secretary of State.**

When the Attorney General requires the attendance of any persons or the production of any documents he shall issue an investigative demand setting forth the time and the place where attendance is required and shall cause the same to be served upon the person at least fourteen (14) days before the date fixed for attendance. Such investigative demand shall have the same force and effect as a subpoena and, upon application by the Attorney General, obedience to the investigative demand may be enforced by any Chancery Court of Hinds County, Mississippi, in the same manner as though the notice were a subpoena. Such court may, in case of contumacy or refusal to obey the investigative demand issued by the Attorney General, issue an order requiring such person to appear before the Attorney General or to produce documentary evidence, if so ordered, or to give evidence touching the matter in question, and any failure to obey such order of the court may be punished by that court as a contempt.

SOURCES: Laws, 1991, ch. 515, Sec. 11; reenacted and amended, 1992, ch. 446, Sec. 11. Laws, 1997, ch. 444, Sec. 13, eff from and after July 1, 1997

Amendment Notes-

The 1997 amendment, in the first sentence, added "or the production of any documents" following "of any persons", in the third sentence, added "investigative demand" following "to obey the", and deleted the last two sentences

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**§ 79-11-523. Use of names, symbol or statement during solicitations for contributions; disclosure requirements for professional fund raisers.**

(1)

(a) Prior to orally requesting a contribution or contemporaneously with written requests for a contribution, a professional fund-raiser and professional solicitor shall be responsible for clearly and conspicuously disclosing:

- (1) The name of the professional fund-raiser as on file with the Secretary of State and that the solicitation is being conducted by a professional fund-raiser who is being paid for his services;
- (2) If the professional solicitor acting on behalf of the professional fund-raiser identifies himself by name, the professional solicitor's legal name; and
- (3) The name of the charitable organization as on file with the Secretary of State and a description of how the contributions raised by the solicitation will be utilized for a charitable purpose or, if no charitable organization exists, a description as to how the contributions raised by the solicitation will be utilized for a charitable purpose.

(b) All responses given by a professional fund-raiser and professional solicitor to an oral or written request for information shall be truthful.

(c) In the case of a solicitation campaign conducted orally, whether by telephone or otherwise, any written confirmation, receipt or reminder sent to any person who has contributed or has pledged to contribute shall include a clear and conspicuous disclosure of the information required under paragraph (1)(a) of this section.

(2) If requested by the person being solicited, the professional fund-raiser and professional solicitor shall inform that person orally and then in writing within fourteen (14) days of the request of the fixed percentage of the gross revenue or the reasonable estimate of the percentage of the gross revenue that the charitable organization or sponsor will receive as benefit from the solicitation campaign.

(3) In addition to the information required by subsection (1), any written confirmation, receipt and reminder of a contribution made pursuant to an oral solicitation and any written solicitation shall conspicuously state verbatim:

The official registration and financial information of (insert the legal name of the charity as registered with the Secretary of State) may be obtained from the Mississippi Secretary of State's office by calling 1-888-236-6167. Registration by the Secretary of State does not imply endorsement by the Secretary of State.

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Mississippi Secretary of State's Office  
Business Regulation and Enforcement  
Charitable Solicitations Registration  
Post Office Box 136  
Jackson, Mississippi 39205

(601) 359-1633

1-888-236-6167

[www.sos.state.ms.us](http://www.sos.state.ms.us)

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- (4) Prior to orally requesting or contemporaneously with written requests for advertising to appear in a for-profit publication which relates to, purports to relate to or which could reasonably be construed to relate to any charitable purpose, the professional fund-raiser or fund-raising counsel shall be responsible for clearly and conspicuously disclosing:
- That the publication is a for-profit, commercial enterprise;
  - (a) The true name of the solicitor and the fact that the solicitor is being paid for his services; and
  - (b) The publication is not directly affiliated or sponsored by any charitable organization.
- (5) Every container, as defined in Section 79-11-501, shall have a printed or typed notice affixed to the container, in a conspicuous place and accessible to the public, that is easily readable and legible that informs the public of the following:
- (a) The approximate annual percentage paid, if any, to any person to maintain, service or collect the contributions raised by the solicitation;
  - (b) The net percentage or sum annually paid for the most recent calendar year paid to the specific charitable purpose; and
  - (c) If the maintenance, service and collection from the container is done by volunteers or by paid individuals.

The disclosure as required in this provision shall not apply to persons requesting any contributions for the relief or benefit of any individual, specified by name at the time of the solicitation, if all of the contributions collected are turned over to the named beneficiary, and provided all fund-raising functions are carried on by persons who are unpaid, directly or indirectly, for such services.

SOURCES: Laws, 1997, ch. 444, Sec. 18, eff from and after July 1, 1997

#### **§79-11-524. Restrictions on hours of telephone solicitation.**

Any fund-raising counsel, professional fund-raiser, professional solicitor or employee of any of these who makes a telephone solicitation subject to the provisions of this chapter to a residential telephone number shall make calls only between the hours of 9:00 a.m. and 9:00 p.m., Monday through Saturday. No calls shall be made on Sundays.

SOURCES: Laws, 1997, ch. 444, Sec. 18, eff from and after July 1, 1997

#### **§ 79-11-525. Fiduciary responsibility of person soliciting, collecting, or expending contributions.**

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Every person who solicits, collects or expends contributions on behalf of a charitable organization or for a charitable purpose, or who conducts a charitable sales promotion, and every officer, director, trustee or employee of that person who is concerned with the solicitation, collection or expenditure of those contributions shall be considered a fiduciary and as acting in a fiduciary capacity. This section does not supersede or otherwise alter the standard of care or the limitations on the liability of volunteers.

SOURCES: Laws, 1991, ch. 515, Sec. 13; reenacted and amended, 1992, ch. 446, Sec. 13. Laws, 1997, ch. 444, Sec. 15, eff from and after July 1, 1997

Amendment Notes-  
The 1997 amendment rewrote this section

### **§ 79-11-526. Sponsors and advertisers of events liable only when having control or supervision of events.**

- (1) For purposes of this section, the following words and phrases shall have the meanings ascribed in this section unless the context clearly indicates otherwise:
  - (a) "Sponsor" or "advertiser" means any person, corporation or legal entity who, for charitable purposes or for the promotion of the health, peace and welfare of the community, donates or contributes products, material, money or pays fees for advertising or displaying trademarks in order that an event may be held or conducted.
  - (b) "Event" means a concert, benefit, fundraiser, auction or other occasion at which entertainment, food or beverages are provided.
- (2) A sponsor or advertiser of an event shall not be held vicariously liable for the negligence of another in connection with or as a consequence of his involvement as a sponsor or advertiser of an event if he does not exercise any control or supervision over any aspect of the event.
- (3) This section shall not confer immunity on a sponsor or advertiser of an event for willful acts or gross negligence, and a sponsor or advertiser of an event shall not be considered to be a part of a joint venture or the principal of an agent, with regard to any other person, corporation or legal entity which is participating in the event in a capacity other than that of a sponsor or advertiser.

Sources: Laws, 2003, ch. 448, § 1, eff from and after passage (approved Mar. 18, 2003.)

### **§ 79-11-527. Reciprocal agreements with other states; public access to registration records.**

The Secretary of State may enter into reciprocal agreements with a like authority of any other state or states for the purpose of exchanging information made available to the Secretary of State or to such other like authority.

The information contained in or filed with any registration application, renewal or report may be made available to the public under such rules as the Secretary of State prescribes. Information in the possession of, filed with or obtained by the Secretary of State in connection with any investigation or examination

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under Sections 79-11-501 through 79-11-529 shall be confidential and exempt from the requirements of the Mississippi Public Records Act of 1983. No such information may be disclosed by the Secretary of State or any of his officers or employees unless necessary or appropriate in connection with a particular investigation or proceeding under Sections 79-11-501 through 79-11-529 or for any law enforcement purpose.

SOURCES: Laws, 1991, ch. 515, Sec. 14; reenacted, 1992, ch. 446, Sec. 14. Laws, 1997, ch. 444, Sec. 16, eff from and after July 1, 1997

Amendment Notes-

The 1997 amendment added the second paragraph to this section

### **§ 79-11-529. Fines and penalties.**

Any person who knowingly and willingly violates the provisions of Sections 79-11-501 through 79-11-527 shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding Two Thousand Dollars (\$2,000.00) or by imprisonment in the county jail for not more than one (1) year or both. In connection with any solicitation, any person employing a device, scheme or artifice to defraud; or engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person, or obtaining money or property by means of any false pretense, representation or promise shall be guilty of a felony and, upon conviction, shall be punished by a fine not exceeding Twenty-five Thousand Dollars (\$25,000.00) or imprisoned not more than five (5) years, or both. No indictment or information may be returned under Sections 79-11-501 through 79-11-529 more than five (5) years after the alleged violation.

SOURCES: Laws, 1991, ch. 515, Sec. 15; reenacted, 1992, ch. 446, Sec. 15. Laws, 1997, ch. 444, Sec. 17, eff from and after July 1, 1997

Editor's Note-

Amendment Notes-

The 1997 amendment added the last two sentences to this section

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By: Representatives Brown, Palazzo, Aldridge To: Appropriations

HOUSE BILL NO. 316  
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 79-11-507, MISSISSIPPI CODE OF 1972,  
2 TO INCREASE THE AMOUNT CHARITABLE ORGANIZATIONS MAY RECEIVE IN  
3 CONTRIBUTIONS IN ANY FISCAL YEAR BEFORE IT SHALL FILE A FINANCIAL  
4 STATEMENT ACCOMPANIED BY AN OPINION SIGNED BY AN INDEPENDENT  
5 CERTIFIED PUBLIC ACCOUNTANT AND TO REVISE THE THRESHOLDS  
6 TRIGGERING THE VARIOUS REQUIREMENTS TO FILE; AND FOR RELATED  
7 PURPOSES.

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

9 **SECTION 1.** Section 79-11-507, Mississippi Code of 1972, is  
10 amended as follows:

11 79-11-507. (1) Every charitable organization registered  
12 pursuant to Section 79-11-503 that shall receive in any fiscal  
13 year contributions in excess of Five Hundred Thousand Dollars  
14 (\$500,000.00) and all of whose fund-raising functions are carried  
15 on by persons who are unpaid for such services, and every  
16 charitable organization registered pursuant to Section 79-11-503  
17 whose fund-raising functions are not carried on solely by persons  
18 who are unpaid for such services shall file a financial statement  
19 for its most recently completed fiscal year with the Secretary of  
20 State. The financial statement shall be filed along with the  
21 registration statement required by Section 79-11-503 and any  
22 renewals thereafter. The financial statement shall include a  
23 balance sheet and statement of income and expense and shall be  
24 consistent with forms furnished by the Secretary of State clearly  
25 setting forth the following: gross receipts and gross income from  
26 all sources, broken down into total receipts and income from each  
27 separate solicitation project or source; cost of administration;  
28 cost of solicitation; cost of programs designed to inform or  
29 educate the public; total net amount disbursed or dedicated for



30 each major purpose, charitable or otherwise. The statement shall  
31 be signed by the president or other authorized officer and the  
32 chief fiscal officer of the organization, and shall be accompanied  
33 by an opinion signed by an independent certified public accountant  
34 that the financial statement therein fairly represents the  
35 financial operations of the organization in sufficient detail to  
36 permit public evaluation of its operations. The financial  
37 statement shall be accompanied by any and all forms required to be  
38 filed by a charitable organization with the United States Internal  
39 Revenue Service.

40 (2) Every organization registered pursuant to Section  
41 79-11-503 that shall receive in any fiscal year contributions of  
42 at least Two Hundred Fifty Thousand Dollars (\$250,000.00) but not  
43 more than Five Hundred Thousand Dollars (\$500,000.00) and all of  
44 whose fund-raising functions are carried on by persons who are  
45 unpaid for their services shall file a financial statement  
46 reviewed by an independent certified public accountant along with  
47 the registration statement required by Section 79-11-503 and any  
48 renewals thereafter with the Secretary of State upon forms  
49 prescribed by him. The reviewed financial statement shall cover  
50 the most recently completed fiscal year and include such  
51 information as required by the Secretary of State by rule or  
52 otherwise, including, but not limited to, the gross receipts from  
53 contributions and the use of the proceeds of such contributions.  
54 The statement shall be signed by the president or other authorized  
55 officer of the organization who shall certify under penalties of  
56 perjury that the statements therein are true and correct to the  
57 best of the signer's knowledge. The reviewed financial statement  
58 shall be accompanied by any and all forms required to be filed by  
59 a charitable organization with the United States Internal Revenue  
60 Service.

61 (3) Every organization registered pursuant to Section  
62 79-11-503 that shall receive in any fiscal year contributions not



63 in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) and  
64 all of whose fund-raising functions are carried on by persons who  
65 are unpaid for their services shall file a financial report along  
66 with the registration statement required by Section 79-11-503 and  
67 any renewals thereafter with the Secretary of State upon forms  
68 prescribed by him. Such financial report shall cover the most  
69 recently completed fiscal year and include such information as  
70 required by the Secretary of State by rule or otherwise,  
71 including, but not limited to, the gross receipts from  
72 contributions and the use of the proceeds of such contributions.  
73 The report shall be signed by the president or other authorized  
74 officer of the organization who shall certify under penalties of  
75 perjury that the statements therein are true and correct to the  
76 best of the signer's knowledge. Such financial report shall be  
77 accompanied by any and all forms required to be filed by a  
78 charitable organization with the United States Internal Revenue  
79 Service.

80 (4) Any charitable organization receiving more than  
81 Twenty-five Thousand Dollars (\$25,000.00) but less than Five  
82 Hundred Thousand Dollars (\$500,000.00) shall, at the request of  
83 the Secretary of State, submit additional financial information,  
84 including, but not limited to, an audited financial statement  
85 prepared in accordance with generally accepted accounting  
86 principles and accompanied by an opinion signed by an independent  
87 certified public accountant that the financial statement therein  
88 fairly represents the financial operations of the organization in  
89 sufficient detail to permit public evaluation of its operations.

90 (5) The Secretary of State pursuant to Section 79-11-509 may  
91 impose an administrative penalty against any organization which  
92 fails to comply with \* \* \* this section within the time \* \* \*  
93 prescribed, or fails to furnish such additional information as is  
94 requested by the Secretary of State within the required time.





95           **SECTION 2.** This act shall take effect and be in force from  
96 and after July 1, 2008.



THE SENATE  
TWENTY-FOURTH LEGISLATURE, 2008  
STATE OF HAWAII

**S.B. NO.** 3171  
S.D. 2  
H.D. 2  
C.D. 1

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# A BILL FOR AN ACT

*RELATING TO CHARITABLE TRUSTS AND NONPROFIT ORGANIZATIONS.*

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

SECTION 1. Hawaii has more than 5,000 charities and nonprofit organizations that employ 41,000 individuals who provide needed services to Hawaii residents. Hawaii charities have revenues over \$2,000,000,000 and pay over \$1,000,000,000 in wages. According to a study conducted in 2002, local residents made \$430,000,000 worth of cash and in-kind donations in one year to Hawaii and national charities.

However, Hawaii is one of only 11 states that do not require charities to register with a state agency. Nonprofit experts have noted that Hawaii's oversight of charities is one of the weakest in the nation. According to a 2004 survey, Hawaii was ranked last in the number of state positions budgeted for charity oversight and enforcement. New York had 55 budgeted positions, Pennsylvania had 30 positions, and Oregon had nearly 20 positions. Hawaii has a single deputy attorney general who serves on a part-time basis to oversee charities in the state.

Due to the absence of a registration system, the department of the attorney general may only pursue an investigation if an individual complains or questionable conduct is revealed and disclosed to the public. Recent news articles reported a pre-school with an enrollment of three hundred students had \$2,000,000 in annual revenues, paid a top executive \$250,000 annually, made an illegal \$100,000 loan to another

officer whose spouse is another executive, and paid \$1,200 per month for two leased luxury cars for its husband and wife management team. New reports have revealed other instances of improper and illegal conduct by charities and leaders.

The legislature finds that a registration system is needed for charities. A registration system will provide the State with valuable information on which nonprofit groups are raising funds, what programs these groups seek to fund, and how these groups are spending collected funds. Registration can help enforcement officials spot red flags, such as questionable transactions or compensation deals, and answer questions from the public. The review of annual filings may also serve as a deterrent to abuse. Before making a contribution, donors could find out if an organization is a legitimate charity and determine if the group has provided the State with information on its finances.

The purpose of this Act is to:

- (1) Require charitable trusts and nonprofits to register and file annual financial reports with the attorney general;
- (2) Provide standards for registration of professional fund raising counsel and professional solicitors, and registration of charitable trusts and nonprofits;
- (3) Authorize the attorney general to conduct investigation on possible violations;
- (4) Prohibit contracting with unregistered solicitors;
- (5) Require submittal of a filing fee based on total revenue of organization; and
- (6) Appropriate funds to staff additional positions.

SECTION 2. Chapter 467B, Hawaii Revised Statutes, is amended by adding four new sections to be appropriately designated and to read as follows:

**"§467B-A Registration of charitable organizations.** (a) Every public benefit corporation domiciled in Hawaii and every charitable organization not exempted by section 467B-C shall register with the

department prior to conducting any solicitation or prior to having any solicitation conducted on its behalf by others. Two authorized officers of the charitable organization shall sign the registration form and shall certify that the statements therein are true and correct to the best of their knowledge subject to penalties imposed by section 710-1063. A consolidated application for registration may, at the option of the charitable organization, be submitted by a parent organization for itself and any or all of its related foundations, supporting organizations, chapters, branches, or affiliates in this state.

(b) The attorney general may make available a registration form to assist in the registration by charitable organizations that must register in other states and shall designate the uniform registration statement developed by the National Association of State Charity Officials be used as the registration form under this section.

(c) The attorney general may require that registration forms be filed with the department electronically and may require the use of electronic signatures.

**§467B-B Annual financial reports; fiscal records and fees.** (a) Every charitable organization required to register pursuant to section 467B-A shall annually file with the department a report for its most recently completed fiscal year. The report shall include a financial statement and other information as the department may require. The charitable organization shall file the report not more than eight months following the close of its fiscal year on or before the date the organization files a Form 990 or 990EZ with the Internal Revenue Service. The report shall be accompanied by a filing fee as prescribed by subsection (d) and shall be signed by two authorized officers of the organization, one of whom shall be the chief fiscal officer of the organization. These officers shall certify that the report is true and

correct to the best of their knowledge. The department shall prescribe the form of the report and shall prescribe standards for its completion. The department shall accept, under such conditions as the attorney general may prescribe, a copy or duplicate original of financial statements, reports, or returns filed by the charitable organization with the Internal Revenue Service or another state having requirements similar to the provisions of this section; provided that the attorney general may prescribe the form of the annual financial report for charitable organizations that file the Form 990N with the Internal Revenue Service.

(b) A charitable organization with gross revenue in excess of \$500,000 in the year covered by the report shall include with its annual financial report, an audit report prepared by a certified public accountant; provided that any charitable organization shall include with its annual financial report an audit report prepared by a certified public accountant as a result of a requirement imposed by a governmental authority or a third party. For purpose of this subsection, "gross revenue" does not include grants or fees from government agencies or revenue derived from funds held in trust for the benefit of the organization.

(c) The department, upon written request and for good cause shown, may grant an extension of time, not to exceed three months, for the filing of the report.

(d) Each charitable organization filing a report required by this section shall pay a filing fee to the department, based on the total amount of its income and receipts during the time covered by the report at the close of the calendar or fiscal year adopted by the charitable organization as follows:

- (1) \$10, if less than \$25,000;
- (2) \$25, if \$25,000 but less than \$50,000;

- (3) \$50, if \$50,000 but less than \$100,000;
- (4) \$100, if \$100,000 but less than \$250,000;
- (5) \$150, if \$250,000 but less than \$500,000;
- (6) \$200, if \$500,000 but less than \$1,000,000;
- (7) \$300, if \$1,000,000 but less than \$2,000,000;
- (8) \$500, if \$2,000,000 but less than \$5,000,000; or
- (9) \$750, if \$5,000,000 or more.

(e) If a return or report required under this section is not filed, taking into account any extension of time for filing, unless it is shown that the failure is due to reasonable cause, a fine of \$20 shall be imposed for each day during which the violation continues; provided that the total amount imposed under this subsection shall not exceed \$1,000. Returns and reports submitted without the proper filing fee shall not be accepted for filing.

(f) Every charitable organization subject to sections 467B-A and 467B-B shall keep true fiscal records that shall be available to the department for inspection upon request. The organization shall retain the records for no less than three years after the end of the fiscal year to which they relate.

**§467B-C Charitable organizations exempted from registration and financial disclosure requirements.** The following charitable organizations shall not be subject to sections 467B-A and 467B-B, if each organization submits information as the department may require to substantiate an exemption under this section:

- (1) Any duly organized religious corporation, institution, or society;
- (2) Any parent-teacher association or educational institution, the curricula of which in whole or in part are registered or approved by any state or the United States either directly or by acceptance of accreditation by an accrediting body;

- (3) Any nonprofit hospital licensed by the State or any similar provision of the laws of any other state;
- (4) Any governmental unit or instrumentality of any state or the United States;
- (5) Any person who solicits solely for the benefit of organizations described in paragraphs (1) to (4); and
- (6) Any charitable organization that normally receives less than \$25,000 in contributions annually, if the organization does not compensate any person primarily to conduct solicitations.

**§467B-D Investigations; subpoenas; court orders.** (a) The department, on its own motion or on complaint of any person, may conduct an investigation to determine whether any person has violated or is about to violate any provision of sections 467B-A, 467B-B, and 467B-9.

(b) The attorney general or the attorney general's authorized representative may subpoena documentary material relating to any matter under investigation, issue subpoenas to any person involved in or who may have knowledge of any matter under investigation, administer an oath or affirmation to any person, and conduct hearings on any matter under investigation.

(c) If any person fails to obey any subpoena issued by the department pursuant to this section, the department, after notice, may apply to the circuit court for the first circuit, State of Hawaii, for a hearing on the application, and after the hearing, the court may issue an order requiring the person to obey the subpoena or any part thereof, together with any other relief as may be appropriate. Any disobedience of any order entered under this section by any court shall be punished as a contempt thereof."

SECTION 3. Section 467B-1, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to be appropriately inserted and to read:

"Gross revenue" means income of any kind from all sources, including all amounts received as the result of any solicitation by a professional solicitor.

"Person" means an individual, corporation, limited liability company, association, partnership, trust, foundation, and any other entity, however styled."

2. By amending the definition of "parent organization" to read:

"Parent organization" means that part of a charitable organization that coordinates, supervises, or exercises control over policy, fund raising, and expenditures, or assists or advises one or more related foundations, supporting organizations, chapters, branches, or affiliates of such organization in ~~[the State.]~~ this state."

3. By repealing the definition of "person".

~~["Person" means any individual, organization, trust, foundation, group, association, partnership, corporation, society, or any combination thereof."]~~

SECTION 4. Section 467B-2.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Within ninety days after a solicitation campaign or event has been completed and on the anniversary of the commencement of a solicitation campaign lasting more than one year, a professional solicitor shall file with the attorney general a financial report for the campaign, including gross revenue and an itemization of all expenses incurred~~[.]~~ on a form prescribed by the attorney general. This report shall be signed under penalty provided by section 710-1063 by the authorized contracting agent for the professional solicitor and two authorized officials of the charitable organization~~[.]~~ and shall report gross revenue from Hawaii donors and national gross revenue from a solicitation activity or campaign. A professional solicitor shall maintain during each solicitation campaign and for not less than three years after the completion of that campaign the following records, which shall be available for inspection upon demand by the attorney general:



- (1) The date and amount of each contribution received and the name and address of each contributor;
- (2) The name and residence of each employee, agent, or other person involved in the solicitation;
- (3) Records of all revenue received and expenses incurred in the course of the solicitation campaign; and
- (4) The location and account number of each bank or other financial institution account in which the professional solicitor has deposited revenue from the solicitation campaign."

SECTION 5. Section 467B-5.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Prior to the commencement of any charitable sales promotion in this [~~State~~] state conducted by a commercial co-venturer using the name of a charitable organization, the commercial co-venturer shall obtain the written consent of the charitable organization whose name will be used during the charitable sales promotion. The commercial co-venturer shall file a copy of the written consent with the department not less than ten days prior to the commencement of the charitable sales promotion within this state. An authorized representative of the charitable organization and the commercial co-venturer shall sign the written consent, and the terms of the written consent shall include the following:

- (1) The goods or services to be offered to the public;
- (2) The geographic area where, and the starting and final date when, the offering is to be made;
- (3) The manner in which the name of the charitable organization is to be used, including any representation to be made to the public as to the amount or per cent per unit of goods or services purchased or used that is to benefit the charitable organization;
- (4) A provision for a final accounting on a per unit basis to be given by the commercial co-venturer to the charitable organization and the date when it is to be made; and
- (5) The date when and the manner in which the benefit is to be conferred on the charitable organization."

SECTION 6. Section 467B-8, Hawaii Revised Statutes, is amended to read as follows:

**"§467B-8 Information filed to become public records.** Statements, reports, professional fundraising counsel contracts or professional

solicitor contracts, and all other documents and information required to be filed under this chapter or by the attorney general shall become government records in the department and be open to the general public for inspection [~~at such times and under such conditions as the attorney general may prescribe.~~] pursuant to chapter 92F; provided that information in any registration statement concerning the residential addresses of any officer or director or that identifies a charitable organization's financial or banking accounts shall be confidential under chapter 92F."

SECTION 7. Section 467B-9, Hawaii Revised Statutes, is amended to read as follows:

**"§467B-9 Prohibited acts.** (a) No person, for the purpose of soliciting contributions from persons in the [~~State,~~] state, shall use the name of any other person except that of an officer, director, or trustee of the charitable organization by or for which contributions are solicited, without the written consent of the other persons.

A person shall be deemed to have used the name of another person for the purpose of soliciting contributions if the latter person's name is listed on any stationery, advertisement, brochure, or correspondence in or by which a contribution is solicited by or on behalf of a charitable organization or the latter person's name is listed or referred to in connection with a request for a contribution as one who has contributed to, sponsored, or endorsed the charitable organization or its activities.

(b) No charitable organization, professional solicitor, or professional fundraising counsel soliciting contributions shall use a name, symbol, or statement so closely related or similar to that used by another charitable organization or governmental agency that the use thereof would tend to confuse or mislead the public.

(c) No person, in connection with any solicitation or sale, shall

misrepresent or mislead anyone by any manner, means, practice, or device whatsoever, to believe that the solicitation or sale is being conducted on behalf of a charitable organization or that the proceeds of the solicitation or sale will be used for charitable purposes, if that is not the fact.

(d) No professional solicitor, and no agent, employee, independent contractor, or other person acting on behalf of the professional solicitor, shall solicit in the name of or on behalf of any charitable organization unless:

(1) The professional solicitor has obtained the written authorization of two officers of the organization, which authorization shall bear the signature of the professional solicitor and the officers of the charitable organization and shall expressly state on its face the period for which it is valid, which shall not exceed one year from the date of issuance, and has filed a copy of the written authorization with the attorney general prior to the solicitation; and

(2) The professional solicitor and any person who, for compensation, acts as an agent, employee, independent contractor, or otherwise on behalf of the professional solicitor carries a copy of the authorization while conducting solicitations, and exhibits it on request to persons solicited or police officers or agents of the department.

(e) No charitable organization, professional fundraising counsel, or professional solicitor subject to this chapter shall use or exploit the fact of filing any statement, report, professional fundraising counsel contracts, or professional solicitor contracts or other documents or information required to be filed under this chapter or with the department so as to lead the public to believe that the filing in any manner constitutes an endorsement or approval by the State of the purposes or goals for the solicitation by the charitable organization, professional fundraising counsel, or professional solicitor; provided that the use of the following statement shall not be deemed a prohibited exploitation: "Information regarding this organization has been filed with the State of Hawaii department of the attorney general. Filing does not imply endorsement or approval of the organization or the public solicitation for contributions."

(f) No person, while soliciting, shall impede or obstruct, with the intent to physically inconvenience the general public or any member thereof in any public place or in any place open to the public.

(g) No person shall submit for filing on behalf of any charitable organization, professional fundraising counsel, or professional solicitor, any statement, financial statement, report, attachment, or other information to be filed with the department that contains information, statements, or omissions that are false or misleading.

(h) No person shall solicit contributions from persons in the [~~State~~] state or otherwise operate in the [~~State~~] state as a charitable organization, an exempt charitable organization, professional fundraising counsel, professional solicitor, or commercial co-venturer unless the person has filed the information required by this chapter with the department in a timely manner.

(i) No person shall aid, abet, or otherwise permit any persons to solicit contributions from persons in the [~~State~~] state unless the person soliciting contributions has complied with the requirements of this chapter.

(j) No person shall fail to file the information and registration statement, annual or financial reports, and other statements required by this chapter or fail to provide any information demanded by the attorney general pursuant to this chapter in a timely manner.

(k) No person shall employ in any solicitation or collection of contributions for a charitable organization, any device, scheme, or artifice to defraud or obtain money or property by means of any false, deceptive, or misleading pretense, representation, or promise.

(l) No person, in the course of any solicitation, shall represent that funds collected will be used for a particular charitable purpose, or particular charitable purposes, if the funds solicited are not used for the represented purposes.

(m) No person shall receive compensation from a charitable organization for obtaining moneys or bequests for that charitable organization if that person has also received compensation for advising the donor to make the donation; provided that compensation may be received if the person obtains the written consent of the donor to receive compensation from the charitable organization.

(n) No person shall act as a professional solicitor if the person, any officer, any person with a controlling interest therein, or any person the professional solicitor employs, engages, or procures to solicit for compensation, has been convicted by any federal or state court of any felony, or of any misdemeanor involving dishonesty or arising from the conduct of a solicitation for a charitable organization or purpose.

(o) No charitable organization shall use the services of an unregistered professional solicitor or professional fundraising counsel."

SECTION 8. Section 467B-9.7, Hawaii Revised Statutes, is amended to read as follows:

**"§467B-9.7 Administrative enforcement and penalties.** (a) The attorney general may refuse to register[, ~~may revoke, or may suspend~~] or may revoke or suspend the registration of any charitable organization, professional fundraising counsel, or professional solicitor whenever the attorney general finds that a charitable organization, professional fundraising counsel, or professional solicitor, or an agent, servant, or employee thereof:

(1) Has violated or is operating in violation of this chapter, the rules of the attorney general, or an order issued by the attorney general;

(2) Has refused or failed, after notice, to produce any records of the organization or to disclose any information required to be disclosed under this chapter or the rules of the attorney general;

(3) Has made a material false statement in an application, statement, or report required to be filed under this chapter; or

(4) Has failed to file the financial report required by section 467B-2.5, or filed an incomplete financial report.

(b) When the attorney general finds that the registration of any person may be refused, suspended, or revoked under the terms of subsection (a), the attorney general may:

(1) Revoke a grant of exemption from any provisions of this chapter;

(2) Issue an order directing that the person cease [~~and desist~~] specified fundraising activities;

(3) Impose an administrative fine not to exceed \$1,000 for each act or omission that constitutes a violation of this chapter and an additional penalty, not to exceed \$100, for each day during which the violation continues. Registration shall be automatically suspended upon final affirmation of an administrative fine until the fine is paid or until the normal expiration date of the registration. No registration shall be renewed until the fine is paid; or

(4) Place the registrant on probation for [~~such~~] any period of time and subject to [~~such~~] any conditions as the attorney general may determine.

(c) Any person aggrieved by an action of the attorney general under this section may request a hearing to review that action in accordance with chapter 91 and rules adopted by the attorney general. Any request for hearing shall be made within ten days after the attorney general has served the person with notice of the action, which notice shall be deemed effective upon mailing.

(d) The attorney general may apply to the circuit court for the first circuit, State of Hawaii, for relief, and the court may issue a temporary injunction or a permanent injunction to restrain violations of this chapter, appoint a receiver, order restitution or an accounting, or grant other relief as may be appropriate to ensure the due application of charitable funds. Proceedings thereon shall be brought in the name of the State."

SECTION 9. Section 467B-12, Hawaii Revised Statutes, is amended to read as follows:

**"§467B-12 Filing requirements for professional fundraising counsel and professional solicitors.** (a) Every professional fundraising counsel

or professional solicitor, prior to any solicitation, shall register with the department. The registration statement [~~shall be in the form prescribed by the attorney general and~~] shall contain the information [~~as the attorney general may require.~~] set forth in subsection (e). The registration statement shall be accompanied by a fee in the amount of \$250, or in the amount and with any additional sums as may be prescribed by the attorney general. [~~The statement shall list the names and addresses of all owners, officers, and directors of a professional fundraising counsel, and the names and addresses of all owners, officers, and directors of a professional solicitor.~~] Renewal registration statements shall be filed with the department on or before July 1 of each calendar year by each professional fundraising counsel or professional solicitor [~~and shall be effective until June 30 of the next calendar year~~]. The renewal statement shall [~~be in a form prescribed by the attorney general.~~] contain the information set forth in subsection (e). A renewal fee of \$250, or in any amount and with any additional sums as may be prescribed by the attorney general, shall accompany the renewal statement.

(b) [~~The professional fundraising counsel or~~] Each professional solicitor, at the time of each filing, shall file with and have approved by the attorney general a bond in which the applicant is the principal obligor in the penal sum of \$25,000 issued with good and sufficient surety or sureties approved by the attorney general and which shall remain in effect for one year. The bond shall inure to the benefit of the State, conditioned that the applicant, its officers, directors, employees, agents, servants, and independent contractors shall not violate this chapter. A partnership or corporation that is a [~~professional fundraising counsel or~~] professional solicitor may file a consolidated bond on behalf of all its members, officers, and employees.

(c) The attorney general shall examine each registration statement

and supporting document filed by a professional fundraising counsel or professional solicitor and shall determine whether the registration requirements are satisfied. If the attorney general determines that the registration requirements are not satisfied, the attorney general shall notify the professional fundraising counsel or professional solicitor in writing within fifteen business days of its receipt of the registration statement; otherwise the registration statement is deemed to be approved. Within seven business days after receipt of a notification that the registration requirements are not satisfied, the professional fundraising counsel or professional solicitor may request a hearing.

(d) The attorney general may ~~[adopt rules to provide for:~~

- ~~(1) The extension of filing deadlines;~~
- ~~(2) The online availability of forms required to be filed;~~
- ~~(3) The electronic filing of required registration statements, contracts, forms, and reports; and~~
- ~~(4) The acceptance of electronic signatures.]~~

require that registration and renewal registration, surety bonds, and contracts be filed with the department electronically and may require the use of electronic signatures.

(e) Each registration and renewal registration shall contain:

- (1) The names and addresses of all owners, officers, and directors of a professional fundraising counsel, and the names and addresses of all owners, officers, and directors of a professional solicitor;
- (2) A statement concerning the corporate form of the registrant, whether corporation, limited liability corporation, partnership, or individual;
- (3) A statement whether the registrant has an office in Hawaii and the name and phone number of the person in charge of the office;
- (4) The names and addresses of any individuals supervising any solicitation activity;
- (5) A statement whether the registration has entered into a consent agreement with, or been disciplined by or subject to administrative action by, another governmental agency;
- (6) A statement whether any officer, director, or any person with a controlling interest in the registrant has ever been convicted of a felony or a misdemeanor involving dishonesty in the solicitation for a charitable purpose;



(7) The date that the registrant began soliciting Hawaii residents on behalf of a charitable organization or providing professional fundraising counsel services; and

(8) Whether any owners, directors, or officers are related to:

(A) Any other officers, directors, owners, or employees of the registrant;

(B) Any officer, director, trustee, or employee of a charitable organization under contract with the registrant; and

(C) Any vendor or supplier providing goods or services to a charitable organization under contract with the registrant."

SECTION 10. There is appropriated out of the solicitation of funds for charitable purposes special fund the sum of \$238,725 or so much thereof as may be necessary for fiscal year 2008-2009 for two permanent full-time equivalent (2.00 FTE) deputy attorney general positions, one permanent full-time equivalent (1.00 FTE) auditor position, and one permanent full-time equivalent (1.00 FTE) legal assistant position.

The sum appropriated shall be expended by the department of the attorney general for the purposes of this Act.

SECTION 11. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 13. This Act shall take effect on January 1, 2009; provided that:

(1) Sections 5 through 9 of this Act shall take effect on July 1, 2008; and

(2) Any charitable organization required to register under this Act shall file the annual financial report with the attorney general as provided in section 467B-B(a), Hawaii Revised Statutes, no later than eight months following the close of its 2008 taxable year, together with the fees prescribed by section 467B-B(d), Hawaii Revised Statutes.