



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

**JULY 1, 2008  
11:00 A.M.**

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

# **Enforcement**

*Enforcement*

Ideas:

- (1) Amend the Mississippi Nonprofit Corporation Act (MNCA) to allow the Secretary of State to revoke the corporate status of a charitable organization upon suspension, revocation, etc., of its registration to solicit funds.
  - Both the Mississippi Nonprofit Corporation Act (§ 79-11-347) and the Mississippi Business Corporations Act (§ 79-4-14.20) allow administrative dissolution in other contexts – if a corporation does not pay certain fines, file reports on time, appoint a registered agent, etc. Thus, it does not seem that this would be an overly bold step.
  - Additionally, the MNCA already allows the Secretary of State to administratively dissolve a nonprofit corporation if it does not pay fines or penalties within 60 days of being due. *See* Miss. Code Ann. § 79-11-347.

Questions to consider:

- What effect would administrative dissolution in Mississippi have on a charitable organization's status in other states? Do we care? For example, Miss. Code Ann. § 79-11-509(1)(h) directs the Secretary of State to deny or suspend registration to charitable organization whose status has been denied, suspended, or revoked in another jurisdiction.

Miss. Code Ann. § 79-11-347

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Title 79. Corporations, Associations, and Partnerships

▣ [Chapter 11. Nonprofit, Nonshare Corporations and Religious Societies](#)

▣ [Mississippi Nonprofit Corporation Act \(Refs & Annos\)](#)

→ **§ 79-11-347. Grounds for administrative dissolution**

The Secretary of State may commence a proceeding under [Section 79-11-349](#) to administratively dissolve a corporation if:

- (a) The corporation does not pay within sixty (60) days after they are due any taxes or penalties imposed by [Sections 79-11-101 et seq.](#) or other law;
- (b) The corporation does not deliver a requested status report to the Secretary of State within sixty (60) days after it is due;
- (c) The corporation is without a registered agent or registered office in this state for sixty (60) days or more;
- (d) The corporation does not notify the Secretary of State within one hundred twenty (120) days that its registered agent or registered office has been changed, that its registered agent has resigned or that its registered office has been discontinued; or
- (e) The corporation's period of duration, if any, stated in its articles of incorporation expires.

CREDIT(S)

Laws 1987, Ch. 485, § 124, eff. January 1, 1988.

CROSS REFERENCES

Executive department, secretary of state, in general, see [§ 7-3-1 et seq.](#)

Miss. Code Ann. § 79-11-347, **MS ST § 79-11-347**

Current through all 2007 Sessions and Chs. 302, 309, 312, 373 and 376 of the 2008 Reg. Sess.

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Title 79. Corporations, Associations, and Partnerships

Chapter 4. Mississippi Business Corporation Act

▣ [Article 14](#). Dissolution▣ [Subarticle B](#). Administrative Dissolution**→ § 79-4-14.20. Grounds**

The Secretary of State may commence a proceeding under [Section 79-4-14.21](#) to administratively dissolve a corporation if:

- (1) The corporation does not pay within sixty (60) days after they are due any franchise taxes or penalties imposed by [Sections 79-4-1.01 et seq.](#) or other law;
- (2) The corporation does not deliver its annual report to the Secretary of State within sixty (60) days after it is due;
- (3) The corporation is without registered agent or registered office in this state for sixty (60) days or more;
- (4) The corporation does not notify the Secretary of State within sixty (60) days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or
- (5) The corporation's period of duration stated in its articles of incorporation expires.

**CREDIT(S)**

Laws 1987, Ch. 486, § 14.20, eff. January 1, 1988.

**RESEARCH REFERENCES**

## Encyclopedias

[Encyclopedia of Mississippi Law § 22:242](#), Administrative Dissolution.

## Forms

[Mississippi Civil Trial Practice Forms § 8:129](#), Petition for Reinstatement of an Administratively Dissolved Corporation.

**JUDICIAL DECISIONS****In general 1****1. In general**

Where owner of domestic corporation assumed to act as corporation after corporation was suspended from doing



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Title 79. Corporations, Associations, and Partnerships

▢ Chapter 11. Nonprofit, Nonshare Corporations and Religious Societies

▢ Regulation of Charitable Solicitations

→ § 79-11-509. Effectiveness of registration; remedies; 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 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 adminis-

trative 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. 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.

CREDIT(S)

[Laws 1991, Ch. 515, § 5; Laws 1992, Ch. 446, § 5; Laws 1997, Ch. 444, § 6, eff. July 1, 1997.](#)

HISTORICAL AND STATUTORY NOTES

(2) Amend §79-11-509(5) of the Charitable Solicitation laws to allow the Secretary of State to bring suit in chancery court to prevent (enjoin) potential violations of the solicitation laws, and additionally to pursue other remedies such as restitution, disgorgement, etc.

- The current Mississippi Securities and Pre-Need Acts both allow this.
  - *See* Miss. Code Ann. § 75-63-69 (Pre-Need).
  - *See* Miss. Code Ann. § 75-71-715 (Securities).



West's Annotated Mississippi Code [Currentness](#)

Title 75. Regulation of Trade, Commerce and Investments

▣ [Chapter 63](#). Sales of Cemetery Merchandise and Funeral Services

▣ [Article 3](#). Pre-Need Cemetery and Funeral Registration

→ § 75-63-69. **Violations; remedies**

(1) Whenever it appears to the Secretary of State that any person has engaged, or is about to engage, in any act or practice constituting a violation of any provision of this article or any rule or order hereunder, he may, in his discretion, seek any or all of the following remedies:

(a) Issue a cease and desist order with a prior hearing against the person or persons engaged in the prohibited activities directing them to cease and desist from further illegal activity;

(b)(i) Issue an order in the case of any person, partnership or, if a corporation, the officers and directors who sell or offer to sell pre-need contracts, or other person who violated this article, imposing an administrative penalty up to a maximum of One Thousand Dollars (\$1,000.00) for each offense and each violation shall be considered as a separate offense in a single proceeding or a series of related proceedings, with total penalties not to exceed Five thousand Dollars (\$5,000.00) in any such proceedings, to be paid to the Secretary of State and requiring reimbursement to the Secretary of State for all costs and expenses incurred in the investigation of the violation(s) and in the institution of administrative proceedings, if any, as a result thereof;

(ii) For the purpose of determining the amount or extent of a sanction, if any, to be imposed under paragraph (b)(i) of this subsection, the Secretary of State shall consider, among other factors, the frequency, persistence and willfulness of the conduct constituting a violation of this act 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;

(c) Bring an action in chancery court to enjoin the acts or practices to enforce compliance with this article or any rule or order hereunder. 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 Secretary of State, the court may enter an order of rescission or restitution directed to any person who has engaged in any act constituting a violation of any provision of this article or any rule or order hereunder, or the court may impose a civil penalty up to a maximum of One Thousand Dollars (\$1,000.00) for each offense and each violation shall be considered as a separate offense in a single proceeding or a series of related proceedings, with total penalties not to exceed Five Thousand Dollars (\$5,000.00) in any such proceedings. The court may not require the Secretary of State to post a bond.

(2) The Secretary of State may, with a prior hearing, suspend or revoke any pre-need establishment or salesperson registration for violation of statutes or regulations established under this article.

(3) Any person, partnership or, if a corporation, the officers and directors who sell or offer to sell a pre-need contract with a suspended or revoked registration shall be guilty of a misdemeanor and, upon conviction thereof, shall be punishable by a fine not less than Two Hundred Dollars (\$200.00) nor more than Five Hundred Dollars

Miss. Code Ann. § 75-71-715



West's Annotated Mississippi Code [Currentness](#)

Title 75. Regulation of Trade, Commerce and Investments

▢ [Chapter 71](#). Uniform Securities Law ([Refs & Annos](#))

▢ [Article 13](#). Enforcement, Remedies, Liabilities and Penalties

→ **§ 75-71-715. Remedies sought by Secretary of State**

Whenever it appears to the Secretary of State that any person has engaged 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 any or all of the following remedies:

- (1) 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;
- (2)(a) Issue an order in the case of an issuer of registered securities, broker-dealer, investment advisor, agent, investment adviser representative, 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 and each violation shall be considered as a separate offense in a single proceeding or a series of related proceedings; to be paid to the Secretary of State and requiring reimbursement to the Secretary of State for all costs and expenses incurred in the investigation of the violation(s) and in the institution of administrative proceedings, if any, as a result thereof;
  - (b) For the purpose of determining the amount or extent of a sanction, if any, to be imposed under subparagraph (2)(a) 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; or
- (3) Bring an action in chancery court to enjoin the acts or practices to enforce compliance with this chapter or any rule or order hereunder. 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 Secretary of State 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 this chapter or any rule or order hereunder 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 Secretary of State to post a bond.

CREDIT(S)

Laws 1981, Ch. 521, § 408; Laws 1987, Ch. 477, § 15; Laws 1989, Ch. 435, § 1; Laws 1990, Ch. 352, § 13, eff. from and after passage (approved March 12, 1990).

HISTORICAL AND STATUTORY NOTES

(\$500.00) or by imprisonment for a term of not more than one (1) year, or both fine and imprisonment.

(4) Any person, partnership or, if a corporation, the officers and directors who embezzle or fraudulently or knowingly and willfully misapply or convert pre-need funds shall, upon conviction, be punished by imprisonment in the custody of the Mississippi Department of Corrections for a term of not less than ten (10) years, or be fined not more than One Thousand Dollars (\$1,000.00) and imprisoned in the county jail not more than one (1) year, or both fine and imprisonment. Each such violation shall constitute a separate offense.

(5) Upon reasonable belief that a person or corporation is acting in violation of the portions of this article requiring fines or imprisonment, the Secretary of State shall immediately report this violation accompanied by all relevant records to the Insurance Integrity Enforcement Bureau within the Office of Attorney General created in [Section 7-5-301](#).

(6) No order shall be entered under this section without the following:

- (a) An appropriate prior notice to the applicant or registrant;
- (b) An opportunity for a hearing; and
- (c) Written findings of fact and conclusions of law.

CREDIT(S)

Added by [Laws 2001, Ch. 513, § 10, eff. January 1, 2002](#).

Miss. Code Ann. § 75-63-69, **MS ST § 75-63-69**

Current through all 2007 Sessions and Chs. 302, 309, 312, 373 and 376 of the 2008 Reg. Sess.

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(3) Amend the Charitable Solicitation laws to explicitly allow the Secretary of State to seek settlement with violators via mediation, rather than forcing litigation.

- Section 6-205 of the Maryland Business Code allows the Secretary of State, if it has grounds to believe that a charitable organization has violated the laws, to enter into mediation with the apparent violators and enter into a settlement agreement.
- Such a settlement, for example, could cover the cost of the Secretary of State's investigation, could include payment of civil penalties that a court could order, and could also require restitution to donors.

MD Code, Business Regulation, § 6-205



West's Annotated Code of Maryland [Currentness](#)

Business Regulation ([Refs & Annos](#))

↳ [Title 6](#). Charitable Organizations and Charitable Representatives ([Refs & Annos](#))

↳ [Subtitle 2](#). Powers and Duties of the Secretary of State

→ **§ 6-205. Investigation of alleged violations**

- (a)(1) The Secretary of State or the Secretary's designee may investigate an alleged violation of this title.
- (2)(i) In the course of any examination, investigation, or hearing, the Secretary of State may subpoena witnesses, administer oaths, examine an individual under oath, serve written interrogatories, and compel production of records, books, papers, and other documents.
- (ii) In the course of any examination, investigation, or hearing, the legal counsel for the Office of the Secretary of State may administer oaths and examine an individual under oath.
- (iii) Information obtained under this subsection is not admissible in a subsequent criminal proceeding against the person who provided the information.
- (b) If the Secretary of State finds or has reasonable grounds to believe that a charitable organization, charitable representative, or public safety solicitor has violated this title, the Secretary of State may take 1 or more of the following actions:
- (1) by mediation with the apparent violators and any representatives they may choose to assist them, enter into a written assurance of discontinuance, written assurance of voluntary compliance, or other settlement agreement with the apparent violators, in accordance with subsection (c) of this section;
- (2) summarily issue a cease and desist order to the violator, if the Secretary of State:
- (i) finds that this title has been violated and that the public health, safety, or welfare requires emergency action; and
- (ii) gives the violator written notice of the order, the reasons for the order, and the right of the violator to request a hearing under subsection (g) of this section; or
- (3) refer the matter to:
- (i) the Attorney General for civil enforcement; or
- (ii) the appropriate State's Attorney for prosecution.
- (c) A settlement agreement under subsection (b)(1) of this section may include one or more of the following stipulations or conditions:
- (1) payment by the apparent violator of the cost of the investigation;

- (2) payment by the apparent violator of civil penalties a court could order under this title;
  - (3) payment by the apparent violator of refunds to donors a court could order under this title;
  - (4) payment by the apparent violator of contributions received to charitable or public safety beneficiaries or for charitable or public safety purposes consistent with the beneficiaries named or purposes represented in the charitable or public safety solicitations which generated the contributions; or
  - (5) any other stipulation, condition, or remedy that will correct a violation of this title.
- (d) An agreement under this section is for conciliation purposes only and does not constitute an admission by any party that the law has been violated.
- (e)(1) It is a violation of this title to fail to adhere to any provision contained in a settlement agreement.
- (2) A failure of the Secretary of State to enforce a violation of any provision of a settlement agreement does not constitute a waiver of that or any other provision, or of any right of the Secretary of State.
- (f) On referral by the Secretary of State, the Attorney General may sue in the Circuit Court for Anne Arundel County for an order that:
- (1) restrains further violation of this title;
  - (2) restrains the defendant from making further charitable or public safety solicitations in the State;
  - (3) except as provided under [§ 6-5A-11](#) of this title, recovers for the State a civil penalty not to exceed \$5,000 for each willful violation of this title;
  - (4) except as provided under [§ 6-5A-11](#) of this title, recovers for the State a civil penalty not to exceed \$3,000 for each grossly negligent violation of this title;
  - (5) enforces compliance with this title; or
  - (6) secures any other appropriate relief, including:
    - (i) refunds to donors; and
    - (ii) payment of the charitable or public safety contributions received by the solicitor to charitable or public safety purposes or beneficiaries consistent with the purposes represented or beneficiaries named in the charitable or public safety solicitations which generated the contributions.
- (g)(1) If the Secretary of State issues a cease and desist order to a person, the person may request a hearing from the Secretary of State.
- (2) Within 30 days after a request is submitted, the Secretary of State shall hold a hearing in accordance with Title 10, Subtitle 2 of the State Government Article.

## CREDIT(S)

Acts 1992, c. 4, § 2; Acts 1993, c. 386, § 3; Acts 1995, c. 89, § 1, eff. Oct. 1, 1995. Acts 1996, c. 10, § 11, eff.

- (4) Amend the Charitable Solicitation laws to give the Secretary of State more powerful investigative tools, such as the power to issue subpoenas (both for testimony and documents), and to compel witnesses to obey subpoenas.
- The current Mississippi Securities and Pre-Need Acts both allow this.
    - *See* Miss. Code Ann. § 75-63-73 (Pre-Need).
    - *See* Miss. Code Ann. § 75-71-709 through 713 (Securities).

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Title 75. Regulation of Trade, Commerce and Investments

▢ [Chapter 63](#). Sales of Cemetery Merchandise and Funeral Services

▢ [Article 3](#). Pre-Need Cemetery and Funeral Registration

→ **§ 75-63-73. Powers of secretary of state**

For the purpose of any investigation or proceeding under this article, the Secretary of State, or any officer designated by him, may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the Secretary of State deems relevant or material to the inquiry.

CREDIT(S)

Added by [Laws 2001, Ch. 513, § 12, eff. January 1, 2002](#).

Miss. Code Ann. § 75-63-73, **MS ST § 75-63-73**

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Miss. Code Ann. § 75-71-709

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Title 75. Regulation of Trade, Commerce and Investments

▣ [Chapter 71](#). Uniform Securities Law ([Refs & Annos](#))

▣ [Article 13](#). Enforcement, Remedies, Liabilities and Penalties

→ **§ 75-71-709. Authority of secretary of state; witnesses and evidence**

For the purpose of any investigation or proceeding under this chapter, the secretary of state or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the secretary of state deems relevant or material to the inquiry.

CREDIT(S)


Laws 1981, Ch. 521, § 407, eff. July 1, 1981.

HISTORICAL AND STATUTORY NOTES

**Uniform Laws:**

This section is based upon [§ 407\(b\) of the Uniform Securities Act](#) (1956 Act). See 7B Uniform Laws Annotated, Master Edition.

LIBRARY REFERENCES

Securities Regulation 274.

WESTLAW Topic No. 349B.

[C.J.S. Securities Regulation §§ 413, 415.](#)

Miss. Code Ann. § 75-71-709, **MS ST § 75-71-709**

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Miss. Code Ann. § 75-71-711

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Title 75. Regulation of Trade, Commerce and Investments

▢ [Chapter 71. Uniform Securities Law \(Refs & Annos\)](#)

▢ [Article 13. Enforcement, Remedies, Liabilities and Penalties](#)

→ **§ 75-71-711. Order compelling obedience of witness**

In case of contumacy by, or refusal to obey a subpoena issued to, any person, the chancery court of the first judicial district of Hinds County, Mississippi, upon application by the secretary of state, may issue to the person an order requiring him to appear before the secretary of state, or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

CREDIT(S)


Laws 1981, Ch. 521, § 407, eff. July 1, 1981.

HISTORICAL AND STATUTORY NOTES

**Uniform Laws:**

This section is based upon [§ 407\(c\) of the Uniform Securities Act](#) (1956 Act). See 7B Uniform Laws Annotated, Master Edition.

LIBRARY REFERENCES

Securities Regulation  274.

WESTLAW Topic No. 349B.

[C.J.S. Securities Regulation §§ 413, 415.](#)

Miss. Code Ann. § 75-71-711, MS ST § 75-71-711

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Miss. Code Ann. § 75-71-713

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Title 75. Regulation of Trade, Commerce and Investments

▣ [Chapter 71](#). Uniform Securities Law ([Refs & Annos](#))

▣ [Article 13](#). Enforcement, Remedies, Liabilities and Penalties

→ **§ 75-71-713. Immunity of witness**

No person is excused from attending and testifying or from producing any document or record before the secretary of state, or in obedience to the subpoena of the secretary of state or any officer designated by him, or in any proceeding instituted by the secretary of state, on the ground that the testimony or evidence (documentary or otherwise) required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

CREDIT(S)


Laws 1981, Ch. 521, § 407, eff. July 1, 1981.

HISTORICAL AND STATUTORY NOTES

**Uniform Laws:**

This section is based upon [§ 407\(d\) of the Uniform Securities Act](#) (1956 Act). See 7B Uniform Laws Annotated, Master Edition.

LIBRARY REFERENCES

Securities Regulation  274.

WESTLAW Topic No. 349B.

[C.J.S. Securities Regulation §§ 413, 415.](#)

Miss. Code Ann. § 75-71-713, MS ST § 75-71-713

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- (5) Amend the Charitable Solicitation laws to give the Secretary of State explicit authority to regulate solicitation of charitable donations over the Internet, provided that certain criteria are met.
- Currently, the law is hazy as to whether an out-of-state charity must register in Mississippi if it solicits contributions via the Internet and some donors happen to be physically located in Mississippi.
    - See *Fundraising in Cyberspace: The current state of Internet law, fundraising and revenue generation*, located at <http://www.perlmanandperlman.com/pubs/articles/Internet%20Fundraising%20Article%201.pdf>.
  - With such authority, the Secretary of State could require non-domestic organizations to register if they operate a website which (a) specifically targets Mississippians for solicitations, or (b) receives contributions from Mississippi on a repeated and ongoing, substantial basis.
  - Such an amendment would also make it easier for non-Mississippi-based charities to determine whether they need to register with the Secretary of State.
  - The attached *Charleston Principles*, adopted by the National Association of State Charity Officials (NASCO) in 2001, could serve as a very good starting point. While we are not aware of any states which have adopted the Principles into statute, at least one state (Tennessee) has promulgated regulations implementing the Principles.

Questions to consider: Are the Principles too vague to truly assist out-of-state charities in determining whether they should register in Mississippi? If so, what benchmarks should be adopted to guide these charities? Should the Principles be implemented legislatively or through Secretary of State regulations?

## **THE CHARLESTON PRINCIPLES: GUIDELINES ON CHARITABLE SOLICITATIONS USING THE INTERNET**

### **WHEREAS:**

- 1.** Most charitable organizations provide valuable services to society--services that are not provided by government or the private for-profit sector. At the same time, deceptive charitable solicitations, including fraud and misuse of charitable contributions, are significant problems in our country. Reasonable state oversight of charitable organizations and professional fundraisers can remedy or minimize such abuses while facilitating the charitable missions of those who provide needed services to our nation and communities, and by providing information and education to donors;
- 2.** Registration and financial reporting by charitable organizations and their internal fundraisers, their external commercial fundraisers and, where applicable, their fundraising counsel and commercial co-venturers is critical to (a) providing information to the public in order to increase donor confidence in those who solicit their support and (b) providing information to law enforcers to enable them to fight deception and misuse of contributions;
- 3.** Existing registration statutes generally, of their own terms, encompass and apply to Internet solicitations. The application of those statutes beyond more established fundraising techniques, such as telephone, direct mail, and in-person solicitations, raises a number of issues that state charity officials are often called upon to address;
- 4.** The proliferation of Web site solicitations compels state charity officials to address the issue of who has to register where;
- 5.** State charity officials consistently gain valuable insights when the views of the regulated communities are sought;
- 6.** Consistent guidelines addressing online charitable solicitations will assist state charity officials, as well as donors, charities, and online entrepreneurs, throughout the nation. These Principles have been adopted as guidance to state charity officials, but with the express intention of both creating a climate in which creativity and enterprise in the use of the Internet to support charitable activities is encouraged and in which the public interest is vigorously protected; and
- 7.** Therefore, state charity officials discussed the formation of these Principles while gathered at the National Association of Attorneys General/National Association of State Charity Officials (“NAAG/NASCO”) Conference in Charleston, South Carolina in October 1999. During the public portion of that conference, which was devoted to the subject of Internet solicitations, state charity officials began a dialogue with invited guests on this topic.

**THEREFORE WE, THE BOARD OF DIRECTORS OF NASCO, OFFER THE FOLLOWING PRINCIPLES:**

**I. General Principles**

- A. These Principles are offered as a guide to states as to when charities, and their fundraisers, fundraising counsel and commercial co-venturers may be required to register, or may be subject to enforcement action, and in what jurisdictions, with regard to charitable solicitations via the Internet. States are encouraged to use these Principles to develop common policies to implement their specific state laws, but these Principles are not necessarily the views of any particular individual, office, or state, nor do they state an official policy position of NASCO. These Principles recognize that the laws of individual states vary, and that implementation of these Principles may also vary.
- B. These Principles are necessarily dynamic, and may change as laws, technology and business models change. Further discussions among states and between states and the regulated community are desirable.
- C. The Internet can be a valuable and efficient forum for conducting charitable solicitations. State charity officials do not desire to discourage or limit its use.
- D. The basic premise of these Principles is this: Although existing state laws govern charitable solicitations on the Internet, in many instances the use of the Internet raises new questions that state charity officials must answer in order to effectively carry out their statutory missions. Therefore, state charity officials should require registration of those over whom their state courts could constitutionally assert personal jurisdiction to enforce a registration requirement. State charity officials and those who solicit contributions using the Internet should note that in actions to enforce state laws against deceptive charitable solicitations, including fraud and misuse of charitable funds, jurisdiction typically exists over some organizations not required to register in the state.
- E. Nothing in these Principles is intended to limit jurisdiction available under common law. The traditional jurisprudence analysis for jurisdiction is the appropriate rule with which states need to comply.

## **II. Actions to Enforce State Laws Against Charitable Solicitation Fraud**

States will enforce the law against any entity whose Internet solicitations mislead or defraud persons physically located within a particular state, without regard to whether that entity is domiciled in the state or is required to register in that state pursuant to these Principles.

## **III. Application of Registration Requirements to Internet Solicitation**

### **A. Entities That Are Domiciled Within the State**

1. An entity that is domiciled within a state and uses the Internet to conduct charitable solicitations in that state must register in that state. This is true without regard to whether the Internet solicitation methods it uses are passive or interactive, maintained by itself or another entity with which it contracts, or whether it conducts solicitations in any other manner.
2. An entity is domiciled within a particular state if its principal place of business is in that state.

### **B. Entities That Are Domiciled Outside the State**

1. An entity that is not domiciled within a state must register in accordance with the law of that state if:
  - a. Its non-Internet activities alone would be sufficient to require registration;
  - b. (1) The entity solicits contributions through an interactive Web site; and  
(2) Either the entity:
    - i. Specifically targets persons physically located in the state for solicitation, or
    - ii. Receives contributions from the state on a repeated and ongoing basis or a substantial basis through its Web site.; or
  - c. (1) The entity solicits contributions through a site that is not interactive, but either specifically invites further offline activity to complete a contribution, or establishes other contacts with that state, such as sending e-mail messages or other communications that promote the Web site; and  
(2) The entity satisfies Principle III(B)(1)(b)(2).
2. For purposes of these Principles, each of the following terms shall have the following meanings:

*Final—Approved by NASCO Board as advisory guidelines, March 14, 2001*

- a. An interactive Web site is a Web site that permits a contributor to make a contribution, or purchase a product in connection with a charitable solicitation, by electronically completing the transaction, such as by submitting credit card information or authorizing an electronic funds transfer. Interactive sites include sites through which a donor may complete a transaction online through any online mechanism processing a financial transaction even if completion requires the use of linked or redirected sites. A Web site is interactive if it has this capacity, regardless of whether donors actually use it.
  - b. To specifically target persons physically located in the state for solicitation means to either (i) include on its Web site an express or implied reference to soliciting contributions from that state; or (ii) to otherwise affirmatively appeal to residents of the state, such as by advertising or sending messages to persons located in the state (electronically or otherwise) when the entity knows or reasonably should know the recipient is physically located in the state. Charities operating on a purely local basis, or within a limited geographic area, do not target states outside their operating area, if their Web site makes clear in context that their fundraising focus is limited to that area even if they receive contributions from outside that area on less than a repeated and ongoing basis or on a substantial basis.
  - c. To receive contributions from the state on a repeated and ongoing basis or a substantial basis means receiving contributions within the entity's fiscal year, or relevant portion of a fiscal year, that are of sufficient volume to establish the regular or significant (as opposed to rare, isolated, or insubstantial) nature of those contributions. States should set, and communicate to the regulated entities, numerical levels at which it will regard this criterion as satisfied. Such numerical levels should define "repeated and ongoing" in terms of a number of contributors and "substantial" in terms of a total dollar amount of contributions or percentage of total contributions received by or on behalf of the charity. Meeting any threshold would give rise to a registration requirement but would not limit an enforcement action for deceptive solicitations. For example, a state might explain that an entity receives contributions on a repeated and ongoing basis if it receives at least one hundred online contributions at any time in a year and that it receives substantial contributions if it receives \$25,000, or a stated percentage of its total contributions, in online contributions in a year.
3. An entity that solicits via e-mail into a particular state shall be treated the same as one that solicits via telephone or direct mail, if the soliciting party knew or reasonably should have known that the recipient was a resident of or was physically located in that state.
  4. Questions may arise as to whether individual charities are required to register in a particular state when the operator of a Web site through which contributions for that charity are solicited or received is required to register, but the charity itself would not independently satisfy the criteria of Principle III(B)(1)(b). As to such charities:
    - a. If the law of the state does not universally require the registration of all charities on whose behalf contributions are solicited or received through a commercial fundraiser, commercial co-venturer,



*Final—Approved by NASCO Board as advisory guidelines, March 14, 2001*

or fundraising counsel who is required to register, then states should independently apply the criteria of Principle III(B)(1)(b) to each charity and require registration only by charities that independently meet those tests; but

- b. If the law of the state universally requires registration of all charities under such circumstances, states should consider whether, as a matter of prosecutorial discretion, public policy, and the prioritized use of limited resources, it would take action to enforce registration requirements as to charities who do not independently meet the criteria of Principle III(B)(1)(b); and
  - c. For purposes of this Principle, a charity satisfies the interactivity criterion of Principle III(B)(1)(b)(i) if (i) any Web site through which contributions are solicited or received for that charity satisfies that requirement, and (ii) that Web site is operated by an entity with whom the charity contracts. This paragraph does not define the concept of interactivity, but merely addresses the application of that concept in this specific context.
5. Solicitations for the sale of a product or service that include a representation that some portion of the price shall be devoted to a charitable organization or charitable purpose (often referred to as “commercial coventuring” or “cause marketing”) shall be governed by the same standards as otherwise set out in these Principles governing charitable solicitations. Registration is therefore required in those states that require registration for such activities, by charitable organizations and their internal fundraisers, their external commercial fundraisers as applicable.

### **C. General Exclusions from Registration**

1. Maintaining or operating a Web site that does not contain a solicitation of contributions but merely provides program services via the Internet—such as through a public information Web site—does not, by itself, invoke a registration requirement. This is true even if unsolicited donations are received.
2. Entities that provide solely administrative, supportive or technical services to charities without providing substantive content, or advice concerning substantive content, are not required to register. Such service providers (a) include Internet service providers and entities that do nothing more than process online transactions for a separate firm that operates a Web site or provide similar services, but (b) do not include commercial fundraisers, commercial co-venturers, or fundraising counsel. Administrative, supportive, or technical service providers may be required to register if they do more than simply provide such technical services and actually solicit, promote a Web site or engage in other conduct that requires registration. Compensation for services based on the amount of funds raised may be a strong indication the entity is doing more than simply providing technical services.

### **IV. Principles Related to Minimizing Regulatory Responsibilities for Multi-State Filers**

- A. State charity officials recognize that the burden of compliance by charitable organizations and their agents, professional fundraisers, commercial co-venturers and/or professional fundraising counsel

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should be kept reasonable in relation to the benefits to the public achieved by registration. The acceptance and use of the Unified Registration Statement for charitable organizations by state charity offices and the development and acceptance of other related projects to create such common forms are strongly encouraged.

- B. State charity officials recognize the power of the Internet to assist in the registration of charitable organizations and their agents. State charity offices are strongly encouraged to publish their registration and reporting forms, their laws and regulations and other related information on the Internet to facilitate registration and reporting by charitable organizations and their agents while assuring proper public accountability by regulated entities.
- C. State charity officials, charitable organizations and their agents, professional fundraisers, commercial co-venturers and/or professional fundraising counsel have a mutual interest in exploring how to develop the information technology infrastructure so that registration and reporting can be accomplished electronically in the future. Collaboration on this project between state charity officials and these entities, where appropriate, will advance the timeframe for establishing electronic filing. This collaboration may include discussion of the types of information that entities soliciting through the Internet should be required to retain, so that these Principles can be applied to a particular Web site. This would include information sufficient to determine, within the scope of the law and relevant donor privacy concerns, whether an entity's ties to a particular state are sufficient to give rise to a registration requirement.
- D. Because disclosure to the public promotes informed giving, charitable organizations are encouraged to satisfy the IRS "widely available" standard by posting, without charge, their current Unified Registration Statement, their last three IRS Forms 990, and their complete IRS Form 1023 or 1024 application and resulting determination letter on their Web pages. Links to other sites that provide such information, including any relevant state agency, or other Web sites, are also encouraged. Such postings, however, do not currently fulfill any applicable registration requirements.

**RULES  
OF  
SECRETARY OF STATE  
CHARITABLE SOLICITATIONS DIVISION**

**CHAPTER 1360-3-1  
REGULATION OF CHARITABLE ORGANIZATIONS  
AND PROFESSIONAL SOLICITATION**

**TABLE OF CONTENTS**

1360-3-1-.01	Definitions	1360-3-1-.05	Denial of Registration and Appeal
1360-3-1-.02	Filing of Registration	1360-3-1-.06	Application of Registration Requirements to Internet Solicitation
1360-3-1-.03	Filing of Registration Renewal Application		
1360-3-1-.04	Professional Solicitors and Fundraising		

**1360-3-1-.01 DEFINITIONS.**

- (1) Terms defined in the Charitable Solicitations Act, T.C.A. § 48-101-501 et seq. shall have the same meaning for the purposes of these rules and regulations.
- (2) "The Act" shall mean the Charitable Solicitations Act.
- (3) "Branch" or "Affiliate" shall mean a subordinate organization, which is a chapter, local, post, or unit of a central organization. A central organization may be a subordinate itself, such as a state organization that has subordinate units and is itself affiliated with a national organization. A subordinate organization may or may not be incorporated, but it must have an organizing document. A subordinate that is organized and operated in a foreign country may not be included in a group exemption letter. A subordinate organization classified by the Internal Revenue Service as 501(c)(3) may not be included in a group exemption letter if it is a private foundations described as 509(a).
- (4) "Fund Raising Costs" shall mean the total expenses incurred in soliciting contributions including, but not limited to, costs incurred: publicizing and conducting fundraising campaigns; soliciting bequests and grants from foundations or other organizations, or government grants; participating in federated fundraising campaigns; preparing and distributing fundraising manuals, instructions, and other materials; and conducting special events that generate contributions.
- (5) "Gross contributions" shall mean all contributions received by an organization including, but not limited to: all donated items; all funds or the entire value of noncash items raised by an outside fundraiser in a charity's name and not just the amount actually received by the charity; amounts received from individuals, trusts, corporations, estates, and foundations, or raised by an outside professional fundraiser; and contributions and grants from public charities and other exempt organizations that are neither fundraising organizations nor affiliates of the filing organization.
- (6) "Membership" shall mean a status applied upon condition of the payment of fees, dues, assessments, etc., in an organization which provides services and confers a bona fide right, privilege, professional standing, honor or other direct benefit, in addition to the right to vote, elect officers, or hold offices. The term "membership" shall not include those persons who are granted a membership upon making a contribution.
- (7) "Parent" shall mean a central organization, which is an organization that has one or more subordinates under its general supervision or control.

(Rule 1360-3-1-.01, continued)

- (8) "The public" shall mean individuals, trusts, corporations, estates, foundations, public charities, other exempt organizations that are neither fundraising organizations nor affiliates of the filing organization, and outside professional fundraisers.
- (9) "Interactive Web site" is a Web site that permits a contributor to make a contribution, or purchase a product in connection with a charitable solicitation, by electronically completing the transaction, such as by submitting credit card information or authorizing an electronic funds transfer. Interactive sites include sites through which a donor may complete a transaction online through any online mechanism processing a financial transaction even if completion requires the use of linked or redirected sites.
- (10) "Specifically target persons physically located in the state for solicitation" means to either (i) include on its Web site an express or implied reference to soliciting contributions from that state; or (ii) to otherwise affirmatively appeal to residents of the state, such as by advertising or sending messages to persons located in the state (electronically or otherwise) when the entity knows or reasonably should know the recipient is physically located in the state. Charities operating on a purely local basis, or within a limited geographic area, do not target states outside their operating area, if their Web site makes clear in context that their fundraising focus is limited to that area even if they receive contributions from outside that area on less than a repeated and ongoing basis or on a substantial basis.
- (11) "Receive contributions from the state on a repeated and ongoing basis or a substantial basis" means receiving contributions within the entity's fiscal year, or relevant portion of a fiscal year, that are of sufficient volume to establish the regular or significant (as opposed to rare, isolated, or insubstantial) nature of those contributions. An entity receives contributions on a repeated and ongoing basis if it receives at least one hundred online contributions at any time in a year. It receives substantial contributions if it receives \$25,000 in online contributions in a year.

**Authority:** T.C.A. § 48-101-503(b). **Administrative History:** Original rule filed June 17, 1977; effective July 18, 1977. Public necessity rule filed August 22, 2007; expired February 3, 2008. Repeal and new rule filed November 6, 2007; effective March 28, 2008.

#### **1360-3-1-.02 FILING OF REGISTRATION STATEMENT.**

- (1) In lieu of the registration application prescribed by the Secretary of State, an organization may submit a Unified Registration Statement, along with all accompanying documents required by the Secretary for registration.
- (2) Every charitable organization which has completed a fiscal year of operation, shall file with its application for registration an annual report filed by the charitable organization with the Internal Revenue Service, unless the organization is not required to file such report. Additionally, the organization shall file an audited financial statement if the organization's gross revenue exceeds five hundred thousand dollars (\$500,000), excluding grants from government agencies and private foundations.

**Authority:** T.C.A. § 48-101-504(a-e); T.C.A. § 48-101-506; Chapter 523 §14 of the Public Acts of 2007. **Administrative History:** Original rule filed June 17, 1977; effective July 18, 1977. Amendment filed October 4, 1982; effective November 3, 1982. Public necessity rule filed August 22, 2007; expired February 3, 2008. Repeal and new rule filed November 6, 2007; effective March 28, 2008.

**1360-3-1-.03 FILING OF REGISTRATION RENEWAL APPLICATION AND EXTENSION REQUESTS.**

- (1) The renewal application shall be accompanied by an annual report filed by the charitable organization with the Internal Revenue Service, unless the organization is not required to file such report. Additionally, the organization shall file an audited financial statement if the organization's gross revenue exceeds five hundred thousand dollars (\$500,000), excluding grants from government agencies and private foundations.
- (2) All organizations requesting an extension of time for filing a renewal of registration shall file the request on the form prescribed by the Secretary and shall provide any supporting documentation with the form (e.g. an application for extension to file an exempt organization return that was filed with the Internal Revenue Service).

**Authority:** T.C.A. § 48-101-506; Chapter 523 §§ 14, 16 of the Public Acts of 2007. **Administrative History:** Original rule filed June 17, 1977; effective July 18, 1977. Public necessity rule filed August 22, 2007; expired February 3, 2008. Repeal and new rule filed November 6, 2007; effective March 28, 2008.

**1360-3-1-.04 PROFESSIONAL SOLICITORS AND FUND RAISING COUNSEL.**

- (1) Commercial co-venturers and political consultants for political parties, candidates and political action committees shall not be considered to be "professional fund raising counsel" or "professional solicitors."

**Authority:** T.C.A. § 48-101-503(b). **Administrative History:** Original rule filed June 17, 1977; effective July 18, 1977. Public necessity rule filed August 22, 2007; expired February 3, 2008. Repeal and new rule filed November 6, 2007; effective March 28, 2008.

**1360-3-1-.05 DENIAL OF REGISTRATION AND APPEAL.**

- (1) Any applicant who appeals the denial of registration shall have a hearing held before an administrative law judge from the Administrative Procedures Division of the Tennessee Department of State. The hearing shall be conducted pursuant to Rule 1360-4-1-.14, Uniform Rules of Procedure for Hearing Contested Cases of State Agencies.
- (2) The hearing may be conducted telephonically by agreement of the parties.
- (3) The order of the administrative law judge shall be the final order in the case, and shall include findings of fact and conclusions of law.

**Authority:** T.C.A. § 4-5-314(b), (c); T.C.A. § 48-101-508(a), (b); Chapter 523 § 24 of the Public Acts of 2007. **Administrative History:** Original rule filed June 17, 1977; effective July 18, 1977. Public necessity rule filed August 22, 2007; expired February 3, 2008. Repeal and new rule filed November 6, 2007; effective March 28, 2008.

**1360-3-1-.06 APPLICATION OF REGISTRATION REQUIREMENTS TO INTERNET SOLICITATION**

- (1) Entities That Are Domiciled Within Tennessee
  - (a) An entity that is domiciled within Tennessee and uses the Internet to conduct charitable solicitations in Tennessee must register with the division, unless exempt from the registration requirements pursuant to Tennessee Code Annotated Section 48-101-502. This is true without regard to whether the Internet solicitation methods it uses are

(Rule 1360-3-1-.06, continued)

passive or interactive, maintained by itself or another entity with which it contracts, or whether it conducts solicitations in any other manner.

- (b) An entity is domiciled within Tennessee if its principal place of business is in Tennessee.

(2) Entities That Are Domiciled Outside Tennessee

An entity that is not domiciled within Tennessee must register in accordance with the law of Tennessee, unless exempt from the registration requirements, if:

- (a) Its non-Internet activities alone would be sufficient to require registration;
- (b) The entity solicits contributions through an interactive Web site; and
- (c) Either the entity:
  - (i) Specifically targets persons physically located in Tennessee for solicitation, or
  - (ii) Receives contributions from Tennessee on a repeated and ongoing basis or a substantial basis through its Web site; or
- (d) The entity solicits contributions through a site that is not interactive, but either specifically invites further offline activity to complete a contribution, or establishes other contacts with Tennessee state, such as sending e-mail messages or other communications that promote the Web site; and
- (e) The entity satisfies (2)(c).

**Authority:** T.C.A. § 48-101-503(b). **Administrative History:** Original rule filed November 6, 2007; effective March 28, 2007.

Other enforcement ideas:

- (6) Amend the Charitable Solicitation laws to give the Secretary of State the authority to fine and/or ban a particular individual (in addition to fining the charitable organization in question) if it can be shown that he or she has repeatedly flouted the laws governing charitable solicitations.
- (7) Require charitable organizations to safeguard any personal data they collect from donors.
- (8) Allow first violators to avoid punishment by instead taking a course from the Mississippi Center for Nonprofits.

## **Other suggestions from the Division of Regulation and Enforcement**

- 1. Add commercial co-venturers to definition of professional fund-raiser (MCA §79-11-105(g)).**
- 2. Add fee for interpretive opinion (MCA §79-11-504).**
- 3. MCA §79-11-509(1)(f) - criminal convictions - time limit. This has come up in the past and may be something the committee should discuss. The Division suggests a lifetime ban for felony convictions in which deceit is an element of the crime.**
- 4. MCA §79-11-509(2) provides exempt organizations have 30 days from receipt of notification to request hearing. Division suggests 20 days.**
- 5. MCA §79-11-519 - the way this section is organized implies that DAs or AG may prosecute violations in listed in (3), (4), (5), and (6), not the SOS. I suggest moving number (8) to the top.**
- 6. MCA §79-11-524 (prohibition of Sunday telephone solicitation) - charities using professional fund-raisers complain that this is unconstitutional.**
- 7. Unmanned collection bins is a hot topic with charity regulators right now.**
- 8. Charities report annually when they re-register. Charities that file an initial registration and elect not to re-register, are not required to file a final report.**
- 9. Add language from proposed Uniform Securities Act regarding Administrative Enforcement.**
- 10. A lifetime ban on registration for bad actors/repeat violators.**



Mississippi Secretary of State, Division of Policy & Research  
July 1, 2008

# **Transparency / Compliance**

*Transparency / compliance*

Ideas:

- (1) Re-examine reporting requirements for charitable organizations. Is the modified reporting scheme (*see* Miss. Code Ann. §79-11-507, as amended by House Bill 316) sufficient?
  - The new § 79-11-507 (effective July 1, 2008) creates a three-tier reporting scheme. Under this law, charities receiving more than \$500,000 per year must submit detailed financial statements to the Secretary of State each year. These statements must be verified by an independent CPA. Charities receiving between \$250,000 and \$500,000 per year must submit a more basic financial statement which must be reviewed by an independent CPA. Charities receiving less than \$250,000 are required only to submit a basic financial statement.
  
- (2) Currently, charities pay an annual registration fee of \$50, which is set by statute (*see* Miss. Code Ann. § 79-11-503). Should this fee be modified? Should Mississippi adopt a sliding-scale fee schedule based on charities' annual revenues?
  - Some states (like Hawaii – see attached bill for more detail) tie annual registration fees to the annual income of the charity in question. Registration fees in Hawaii range from \$10 per year (for charities whose annual income is less than \$25,000) to \$750 (for charities whose annual income is more than \$5 million). Maryland adopts a less severe sliding scale which ranges from \$0 (for charities receiving less than \$25,000 in a given year) to \$200 (for charities receiving more than \$100,000 in a year).

**MISSISSIPPI 2008 SESSION LAWS  
2008 REGULAR SESSION**

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Additions are indicated by **Text**; deletions by  
\*\*\*. Changes in tables are made but not highlighted.  
Vetoed provisions within tabular material are not displayed.

Chapter No. 559

H.B. No. 316

CHARITIES--CONTRIBUTIONS--FINANCIAL STATEMENTS AND REPORTS

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

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

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

<< MS ST § 79-11-507 >>

79-11-507. (1) Every charitable organization registered pursuant to Section 79-11-503 **that** shall receive in any fiscal year contributions in excess of **Five Hundred Thousand Dollars (\$500,000.00) and all of whose fund-raising functions are carried on by persons who are unpaid for such services**, and every charitable organization **registered pursuant to Section 79-11-503** whose fund-raising functions are not carried on solely by persons who are unpaid for such services shall file a financial **statement** for its most recently completed fiscal year with the Secretary of State. **The** financial **statement** shall be filed along with the registration statement required by Section 79-11-503 and any renewals thereafter. **The** financial **statement** 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 **statement** 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. **The** financial **statement** shall be accompanied by any and all forms required to be filed by a charitable organization with the United States Internal Revenue Service.

(2) **Every organization registered pursuant to Section 79-11-503 that shall receive in any fiscal year contributions of at least Two Hundred Fifty Thousand Dollars (\$250,000.00) but not more than Five Hundred Thousand Dollars (\$500,000.00) and all of whose fund-raising functions are carried on by persons who are unpaid for their services shall file a financial statement reviewed by an independent certified public accountant 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. The reviewed financial statement 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 statement 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 the signer's knowledge. The reviewed financial statement shall be accompanied by any and all forms required to be filed by a charitable organization with the United States Internal Revenue Service.**

**(3)** Every organization registered pursuant to Section 79-11-503 that shall receive in any fiscal year contributions not in excess of **Two Hundred Fifty Thousand Dollars (\$250,000.00)** and all of whose fund-raising functions are carried on by persons who are unpaid for **their** 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 **the signer's** 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.

**(4)** Any charitable organization receiving more than Twenty-five Thousand Dollars (\$25,000.00) but less than **Five Hundred Thousand Dollars (\$500,000.00)** 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.

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

**SECTION 2. [Effective date]** This act shall take effect and be in force from and after July 1, 2008.

APPROVED May 10, 2008

MS LEGIS 559 (2008)

END OF DOCUMENT

<< HI ST § 467B-B >>

**§ 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.**

- (3) Revisit the issue of exemptions, particularly the dollar amount which triggers a charitable organization's duty to register with the Secretary of State. Currently, Mississippi law does not require an organization which raises (or expects to raise) less than \$4,000 in a year to register (*see* Miss. Code Ann. § 79-11-505(1)(d)). Should this amount be raised?
- Hawaii's new charitable solicitations bill places this amount at \$25,000; Maryland has also adopted the \$25,000 figure.
  - New Hampshire requires all charitable organizations (other than religious organizations), regardless of the amount of contributions received, to register annually.
  - Similarly, California requires most types charitable organizations to file an annual registration statement. It has not set a minimum dollar amount under which a charity is not required to register.
- (4) Miss. Code Ann. § 79-11-505 states that the Charitable Solicitations laws do not apply at all to organizations which are considered exempt. Thus, under the current statute, the Secretary of State does not have the authority to audit or investigate an exempt organization to ensure that it is complying with the law. Additionally, those organizations which are exempt cannot be prosecuted by the Attorney General for misrepresentation, etc. Should then § 79-11-505 be revised to make it clear that exempt organizations are exempt only from the registration and reporting requirements?



West's Annotated Mississippi Code [Currentness](#)

Title 79. Corporations, Associations, and Partnerships

↳ Chapter 11. Nonprofit, Nonshare Corporations and Religious Societies

↳ Regulation of Charitable Solicitations

→ § 79-11-505. Exemptions; 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 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 Dol-



lars (\$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 organization 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.

#### CREDIT(S)

[Laws 1991, Ch. 515, § 3](#); [Laws 1992, Ch. 446, § 3](#); [Laws 1994, Ch. 393, § 1](#); [Laws 1997, Ch. 444, § 4](#), eff. July 1, 1997. Amended by [Laws 2007, Ch. 360, § 1](#), eff. from and after passage (approved March 15, 2007).

#### HISTORICAL AND STATUTORY NOTES

[Laws 1991, Ch. 515, § 16](#), provided for the repeal of this section on July 1, 1992. However, [Laws 1992, Ch. 446, § 16](#), effective July 1, 1992, repealed this repealer provision.

#### LIBRARY REFERENCES

Charities k41.5.  
WESTLAW Topic No. 75.  
[C.J.S. Charities §§ 47, 61](#).

Miss. Code Ann. § 79-11-505, **MS ST § 79-11-505**

Current through all 2007 Sessions and Chs. 302, 309, 312, 373 and 376 of the 2008 Reg. Sess.

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END OF DOCUMENT

MD Code, Business Regulation, § 6-102



West's Annotated Code of Maryland [Currentness](#)

Business Regulation ([Refs & Annos](#))

↳ [Title 6](#). Charitable Organizations and Charitable Representatives ([Refs & Annos](#))

↳ [Subtitle 1](#). Definitions; General Provisions

→ **§ 6-102. Scope of title**

(a)(1) In this section, "member" includes a student, former student, parent of a student or former student, present or former board member, and staff member of an accredited school, college, or university.

(2) In this section, "member" does not include an individual who is granted membership on making a charitable contribution as the result of a charitable solicitation.

(b)(1) Except as provided in paragraph (2) of this subsection, this title does not apply to fund-raising by a volunteer organization of firefighters or rescue or ambulance personnel for its ambulance, fire fighting, or rescue operations.

(2) This title applies to a public safety solicitor employed by a volunteer organization of firefighters or rescue or ambulance personnel.

(c)(1) Except as provided in paragraph (2) of this subsection, a charitable organization is exempt from the registration and disclosure requirements of this title if the charitable organization:

(i) does not employ a professional solicitor; and

(ii) 1. solicits charitable contributions for a named individual and the gross amount is delivered to the individual;

2. A. is a religious organization, a parent organization of a religious organization, or a school affiliated with a religious organization; and

B. has in effect a declaration of tax-exempt status from the government of the United States;

3. solicits charitable contributions only from its members;

4. does not receive more than \$25,000 in charitable contributions from the public during the year for which a registration statement and annual report otherwise would be required; or

5. only receives contributions from for-profit corporations and organizations determined to be private foundations by the government of the United States.

(2)(i) A charitable organization claiming exemption under paragraph (1) of this subsection shall submit evidence of its entitlement to an exemption upon request of the Secretary of State.

(ii) A charitable organization that fails to submit evidence satisfactory to the Secretary of State under subparagraph (i) of this paragraph is not exempt from the requirements of this title.

- (5) There has been some discussion about requiring charities to meet a certain operating costs to program expenditures ratio. While this could help to weed out dishonest charities, it has also been argued that requiring charities to meet a certain ratio is unduly burdensome. How should Mississippi law address the issue of ratios?
- Rather than setting a fixed ratio that a charity must meet, would it be helpful to adopt a ratio that is presumptively reasonable, above which an organization would have to justify itself?
  - For more information on the difficulties of looking at such ratios in a vacuum, read Guidestar.com's *Why Ratios Aren't the Last Word*, located at <http://www.guidestar.org/news/features/ratios.jsp>.
  - The issue of ratios also implicates the First Amendment. The United States Supreme Court has twice struck down state laws which forbade organizations from soliciting if they spent more than a specified percentage of donations on fundraising. See *Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1978), and *Maryland v. Munson*, 467 U.S. 947 (1984). The Court noted in *Munson* that "there is no necessary connection between fraud and high solicitation and administrative costs. A number of other factors may result in high costs; the most important of these is that charities often are combining solicitation with dissemination of information, discussion, and advocacy of public issues, an activity clearly protected by the First Amendment."
  - In a third decision, *Riley v. National Federation of the Blind of N.C.*, 487 U.S. 781 (1988), the Court noted that small or unpopular charities would tend to have higher fundraising cost ratios. In *Riley*, the Court held that a state could not compel charities or professional fundraisers to include a statement about their fundraising cost percentages in their solicitations.

Other transparency / compliance ideas:

- Simplify registration and reporting by providing online filing and forms.
- Allow the Secretary of State to charge a fee for issuing an interpretive opinion (see §79-11-504).

Mississippi Secretary of State, Division of Policy & Research  
July 1, 2008

# **Certification / Education / Information**

*Certification / education / information*

Ideas:

- (1) Would certification of best practices, corporate governance standards, etc., be in the state's interest? What benefits, if any, would certified organizations receive under state law? Should Mississippi law be changed to require charitable organizations to adopt certain best practices in order to become registered?
- (2) Are there other ways to encourage charities to adopt best practices, rather than explicitly requiring this by law? For example, should charities be required to earn education credits each year in order to maintain their registration?
- (3) What should the Secretary of State's role be in educating the public? Acting alone to create educational materials such as a model code of conduct, guide on starting a nonprofit,<sup>1</sup> etc.? Or working in partnership with other organizations?

*Iowa*

- The Iowa Nonprofit Resource Center has created "The Iowa Register of Accountability,"<sup>2</sup> a voluntary listing which charitable organizations may join by:
  - i. Adopting, via board resolution, the Iowa Principles & Practices for Charitable Nonprofit Excellence;<sup>3</sup>
  - ii. Having its representatives complete a Principles and Practices training program at the University of Iowa; or
  - iii. Receiving licensure or accreditation from a national organization or state agency.
- Being listed on the Iowa Register also entitles organizations to use a special certification mark on their stationery, brochures, etc.
- Is the Iowa model worth pursuing? Would a state-sanctioned listing carry more weight with potential donors?

*New Hampshire*

- New Hampshire imposes (to some extent) best practices upon its domestic charitable organizations. For example, New Hampshire requires all charitable organizations to adopt conflict-of-interest and pecuniary benefit policies. In addition, New Hampshire law prohibits charities from lending money to its directors, officers, and employees, and provides that certain pecuniary benefit transactions are voidable.
- Is New Hampshire's mandatory model a better fit for Mississippi?

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<sup>1</sup> For a good example of such a guide, see *Guidebook for New Hampshire Charitable Nonprofit Organizations*, available online at <http://doj.nh.gov/publications/guidebook.html>.

<sup>2</sup> Available online at <http://nonprofit.law.uiowa.edu/directory/community/search/BecomePnP.asp>.

<sup>3</sup> Available online at <http://www.sos.state.ia.us/pdfs/Nonprofits/IAPP4CNE.PDF>.

N.H. Rev. Stat. § 7:19-a

## C

Revised Statutes Annotated of the State of New Hampshire [Currentness](#)

Title I. The State and Its Government ([Refs & Annos](#))

▢ Chapter 7. Attorneys General, Director of Charitable Trusts, and County Attorneys ([Refs & Annos](#))

▢ Director of Charitable Trusts ([Refs & Annos](#))

### → 7:19-a Regulation of Certain Transactions Involving Directors, Officers, and Trustees of Charitable Trusts.

I. Definitions. In this section:

- (a) "Director, officer, or trustee" means a director, officer, or trustee of a charitable trust.
- (b) "Financial interest" means an interest in a transaction exceeding \$500 in value for any officer, director, or trustee, on an annual aggregate basis. An "indirect" financial interest arises where the transaction involves a person or entity of which a director, officer, or trustee, or a member of the immediate family of a director, officer, or trustee, is a proprietor, partner, employee, or officer.
- (c) "Pecuniary benefit transaction" means a transaction with a charitable trust in which a director, officer, or trustee of the charitable trust has a financial interest, direct or indirect. However, the following shall not be considered as pecuniary benefit transactions:
  - (1) Reasonable compensation for services of an executive director, and expenses incurred in connection with official duties of a director, officer, or trustee;
  - (2) A benefit provided to a director, officer, or trustee or member of the immediate family thereof if:
    - (A) The benefits are provided or paid as part of programs, benefits, or payments to members of the general public; and
    - (B) The charitable trust has adopted written eligibility criteria for such benefit in accordance with its bylaws or applicable laws; and
    - (C) The director, trustee, or family member meets all of the eligibility criteria for receiving such benefit;
  - (3) A continuing transaction entered into by a charitable trust, merely because a person with a financial interest therein subsequently becomes a director, officer, or trustee of the charitable trust.
- (d) "Charitable trust" does not include, for purposes of this section only, an organization qualified as a private foundation under the applicable provisions of the United States Internal Revenue Code.

II. A pecuniary benefit transaction shall be prohibited unless it is in the best interest of the charitable trust and unless all of the following conditions are met:

- (a) The transaction is for goods or services purchased or benefits provided in the ordinary course of the business of the charitable trust, for the actual or reasonable value of the goods or services or for a discounted

value, and the transaction is fair to the charitable trust;

(b) The transaction receives affirmative votes from at least a 2/3 majority of all the disinterested members of the governing board of the charitable trust, which majority shall also equal or exceed any quorum requirement specified in the bylaws of the charitable trust:

(1) After full and fair disclosure of the material facts of the transaction to the governing board and after notice and full discussion of the transaction by the board;

(2) Without participation, voting, or presence of any director, officer, or trustee with a financial interest in the transaction or who has had a pecuniary benefit transaction with the charitable trust in the same fiscal year, except as the board may require to answer questions regarding the transaction; and

(3) A record of the action on the matter is made and recorded in the minutes of the governing board;

(c) The charitable trust maintains a list disclosing each and every pecuniary benefit transaction, including the names of those to whom the benefit accrued and the amount of the benefit, and keeps such list available for inspection by members of the governing board and contributors to the charitable trust. The list shall also be reported to the director of charitable trusts each year as part of the charitable trust's annual report required under [RSA 7:28](#);

(d) If the transaction, or the aggregate of transactions with the same director, officer, or trustee within one fiscal year, is in the amount of \$5,000 or more, the charitable trust publishes notice thereof in a newspaper of general circulation in the community in which the charitable trust's principal New Hampshire office is located, (or if there is no such office, then in a newspaper of general circulation throughout the state), and gives written notice to the director of charitable trusts, before consummating the transaction. At a minimum, such notice shall state that it is given in compliance with this section and shall include the name of the charitable trust, the name of any director, officer, or trustee receiving pecuniary benefit from the transaction, the nature of the transaction, and the specific dollar amount of the transaction.

III. Every director, officer, or trustee, or member of the immediate family of such director, officer, or trustee, who engages in a pecuniary benefit transaction with a charitable trust shall provide copies of all contracts, payment records, vouchers, other financial records or other financial documents at the request of the director of charitable trusts in accordance with [RSA 7:24](#). All documents so provided may be disclosed to the public for inspection and copying, subject to applicable confidentiality laws.

IV. Every charitable trust shall adopt policies pertaining to pecuniary benefit transactions and **conflicts of interest**.

V. No charitable trust shall lend money or property to its directors, officers, or trustees. Any director, officer, or trustee who assents to or participates in the making of any such loan shall be jointly and severally liable to the charitable trust for the amount of such loan until it is repaid.

VI. No charitable trust shall sell, lease for a term of greater than 5 years, purchase, or convey any real estate or interest in real estate to or from an officer, director, or trustee without the prior approval of the probate court after a finding that the sale or lease is fair to the charitable trust. However, this paragraph shall not apply to a bona fide gift of an interest in real estate to a charitable trust by a director, officer, or trustee of the charitable

trust.

VII. A pecuniary benefit transaction undertaken in violation of this section is voidable. The director of charitable trusts may investigate complaints regarding pecuniary benefit transactions and if, after an investigation pursuant to [RSA 7:24](#), the director determines that a pecuniary benefit transaction is in violation of this section, the director may institute appropriate proceedings under [RSA 7:28-f](#) to enforce these provisions.

VIII. Any member of the governing board of a charitable trust shall have standing to petition, pursuant to [RSA 491:22](#), for a declaratory judgment that one or more pecuniary benefit transactions of the charitable trust are void.

IX. The provisions of this section shall not apply to transactions between a charitable trust and its incorporators, members, or other contributors who are not also directors, officers, or trustees of the charitable trust, provided that such transactions are fair to the charitable trust.

X. Notwithstanding subparagraph I(c) of this section, in the case of hospitals, "pecuniary benefit transaction" shall not include reasonable compensation for professional services of members of the hospital's professional medical or nursing staff who also serve as members of the governing board of the hospital, if persons receiving such compensation do not constitute more than 25 percent of the membership of such board or the governing board of the charitable trust which owns the hospital.

XI. Notwithstanding subparagraph I(c) of this section, in the case of educational organizations normally maintaining a regular faculty and curriculum and normally having a regularly enrolled body of pupils or students in attendance at the place where their educational activities are regularly carried on, "pecuniary benefit transaction" shall not include reasonable compensation for professional services of members of the organization's faculty and staff who also serve as members of the governing board of the educational organization if such persons do not constitute more than 25 percent of the membership of such board.

#### HISTORY

**Source.** 1996, 302:2. 1997, 184:2, 3, eff. Jan. 1, 1998.


**Amendments--1997.** Paragraph II: Rewrote the introductory paragraph of par. II(b) and added pars. X and XI.


Paragraphs X, XI: Added.

**References in text.** The United States Internal Revenue Code, referred to in par. I(d), is classified to [26 U.S.C. § 1 et seq.](#)

#### LIBRARY REFERENCES

##### West Key Number

Attorney General  5.

Charities  4 to 6, 9, 39 to 50.

##### Westlaw Topic

Westlaw Topic Nos. 46, 75.

##### CJS

[C.J.S. Charities §§ 3 to 4, 7, 17, 33 to 35, 46 to 57,](#)



- (4) How can the Secretary of State best help potential donors learn about charities which are soliciting contributions within the state?

Ideas:

- Create a database on the Secretary of State website which lists every registered charitable organization and which provides:
  - A description of the organization's mission and a link to its website;
  - Links to any final enforcement orders against the organization;
  - Links to the organization's other filings with the Secretary of State, such as its annual registration and financial statements, as well as its IRS Form 990;
  - What else should be included / linked?
- Link corporate filings database with charities registration database in order to eliminate confusion. Potential donors investigating a charitable nonprofit corporation might find the charity "in good standing" if it searches only the corporate filings database. Donors should also be pointed to records in the charities database, such as final enforcement orders, etc.
- Secretary Hosemann has discussed issuing a "Golden Fleece" award to a charity which spends an inordinate amount of its budget on its management costs and which uses little of its proceeds for its charitable purpose.



NEW HAMPSHIRE

Department of Justice

## DOJ &gt; Charitable Trusts Unit

<a href="#">DOJ Home</a>
<a href="#">Publications</a>
<a href="#">Consumer Protection</a>
<a href="#">Charitable Trust</a>
<a href="#">Victims' Assistance Commission</a>
<a href="#">Victim Services</a>
<a href="#">Grants</a>
<a href="#">Medicaid/Healthcare Fraud Unit</a>
<a href="#">Department Index</a>
<a href="#">Mission Statement</a>
<a href="#">Special Interest Items</a>

## New Additional List of Closed Charities

The Division of Charitable Trusts is a unit of the New Hampshire Department of Justice . The Attorney General, through the Director of Charitable Trusts, exercises all the common law and statutory rights, duties and powers of the attorney general in connection with the supervision, administration, and enforcement of charitable trusts, charitable solicitations, and charitable sales promotions under New Hampshire [RSA 7:19 through 7:32-I](#). The Attorney General is a necessary party to any litigation involving a charitable trust and represents the public interest in such cases.

The Attorney General also oversees the administration of charitable trusts held in the custody of the state treasurer, county governments, towns, and cities, all of which file annual reports with the Division of Charitable Trusts.

All charitable non-profit organizations, with the exception of churches, are required to register with and report to the Attorney General under [NH RSA chapter 7:28 I and II](#). Registration is a one-time event accomplished by filing form [NHCT-1](#) (Application for Registration) with the Attorney General. The application must be complete with all necessary documentation attached in order for a certificate of registration to be issued by the Attorney General. Once the organization is registered, it is required to file annual financial reports with the Attorney General. This filing requirement may be fulfilled by filing any one of the following documents: the [NHCT-2A](#) (Annual Report), [IRS Form 990](#), or [IRS Form 990-EZ](#). The financial report is due four months and fifteen days from the close of the organization's fiscal year. If a charitable non-profit organization fails to meet these statutory obligations, the Attorney General may, through the superior court process, request the imposition of civil penalties of up to \$10,000.

In 1996, [RSA 7:19-a](#) was adopted. Subsection IV requires that "Every charitable trust shall adopt policies pertaining to pecuniary benefit transactions and conflicts of interest." Subsection II details the requirements for these policies, including disclosure and publication requirements. Sample language for the policies is included with our Application for Registration form, [NHCT-1](#). Sample language for the public

**Quick Links**

[Board Training for Youth Sports and Nonprofit](#)  
[Organizations](#)  
[IRS on-line training for charities](#)  
[Sign up for Nonprofit Notes](#)  
[Games of Chance Publications](#)  
[Changes in Games of Chance Law](#)  
[New Requirements](#)  
[Other Resources](#)

**Community Benefit Plans**

[Community Benefit Plans](#)  
[Community Benefit Plans forms](#)

**Consumer Resources**

[Information for Consumers](#)  
[Charitable Funds Directory](#)  
[List of Charities](#)  
[Contact Our Staff](#)

**Charitable Organizations**


[Filing Forms](#)

**Municipalities**

[Cemetery Perpetual Care Trust Fund](#)  
[MS-9 and MS\\_10 Excel Spreadsheet\[Excel\]](#)  
[Handbook for Trustees of Trust Funds, Cemetery Trustees, Library Trustees](#)

notice required by [RSA 7:19-a, 11\(d\)](#) can be found here .

All fund raising counsel are required to register with the Attorney General under [NH RSA 7:28-b](#); all paid solicitors are required to register and file certain other documents under [NH RSA 7:28-c](#). Charitable sales promotions must be noticed to this office under [NH RSA 7:28-d](#). The [forms for registration and reporting](#).

 This symbol indicates the document is in Portable Document Format (PDF). To view PDF files, you will need the Adobe Acrobat Reader which is available for free from Adobe at <http://www.adobe.com/prodindex/acrobat/readstep.html>.



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# Matters List of Charities with closing info

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Since 1/1/2008, the following charities have been closed by the NH Attorney General's Office. Their authority to solicit donations from NH citizens has therefore been revoked. Please call the Charitable Trusts Unit if you have any questions. KEY TO REASON CLOSED: Failure to register and/or file annual reports is a violation of RSA 7:28. Dissolved = organization has dissolved its structured and turned its assets (if any) over to another charitable organization in accordance with plan. Merged = organization has merged with another charitable organization and is not the surviving organization. Dissolved by secretary of state = NH Secretary of State has dissolved the organization's corporate charter. Closed by request = Out of state charities are required to register and report if soliciting donations from NH citizens; if the organization is no longer soliciting, it can request its file be closed.

CHARITY/ADDRESS	DATE CLOSED	REASON CLOSED
Aidmatrix Foundation  11701 Luna Road Dallas TX 75234	4/14/2008	Closed as requested by charity
Amateur Athletic Union of the U.S., New England Association PO Box 398 Epping, NH 03042	2/13/2008	Closed failure to file annual reports, dissolved by secretary of state
America's Athletes With Disabilities, Inc.  8630 Fenton Street, Suite 920 Silver Spring MD 20910	2/6/2008	Closed as requested by charity/attorney
Animal Save International, Inc.  1050 Connecticut Ave., NW, 10th Fl Washington, DC 20036	1/14/2008	Closed as requested by charity/attorney
Association of Student Assistance Professionals of NH 56 S. State St. Concord, NH 03301	2/14/2008	Closed failure to file annual reports
Automotive Industry Education Foundation, Inc.  6613 N. Scottsdale Rd., Suite 100 Scottsdale, AZ 85250	2/6/2008	Closed as requested by charity/attorney
Barrington Firemen's Association Auxiliary  Route 9 Barrington NH 03825	2/13/2008	Closed failure to file annual reports
Beatrice S. Varney Trust  PO Box 2006 Rochester NH 03866-2006	2/28/2008	Merged with Burnham Varney Trust by probate court



**State of New Hampshire Department of Justice**  
**Electronic Document Management**  
Website Report

Run Date : 11-Jun-2008

<b>Regn. No</b>	<b>Charity Name</b>	<b>Contact Person</b>	<b>Address</b>
16452	13 Mile Woods Association, Inc.		P.O. Box 263 Errol NH 03579
16065	171 Watson Road of Dover Holding Corp.		100 Education Way Dover NH 03820
11321	20/20 Vision National Project		8403 Colesville Rd. # 860 Siver Spring MD 20910
10921	32nd Degree Masonic Learning Centers for		33 Marret Road Lexington MA 02421
10120	4 Lil Paws Ferret Shelter	Sue Kern	49 Prescott Road Brentwood NH 03833
4615	4-H Foundation of Merrimack County, Inc.	John Lyford	315 Daniel Webster Highway Boscawen NH 03303
16699	6:10 Services		8355 Aero Dr., Suite 200 San Diego CA 92123
4590	60/Plus Association, Inc.	Maureen E. Otis, Esquire	4850 Wright Rd., Suite 168 Stafford TX 77477
17014	7 Generations for Native Americans of Maine &		164 Lamplighter Park N. Conway NH 03860
16576	9/11 Families for a Secure America, Inc.		1747 Pennsylvania Ave., NW, Suite 1000 Washington DC 20006
17145	9/11 Rescue Workers Foundation, Inc.		2 Kiel Ave. Kinnelon NJ 07405
11764	A Better Chance, Inc		240 West 35th Street, 9th Floor New York NY 10001
16812	A Better Way of Life Foundation		33 Chester St. Chester NH 03036
15327	A Canine's Creed Rescue		PO Box 34 Windham NH 03087
17118	A Journey for 9/11	Cathy Kelleher	2711 Centerville Rd., Suite 400 Wilmington DE 19808
15828	A Leg To Stand On		267 Fifth Avenue, Suite 908 New York NY 10016
16976	A Light for Zimbabwe	Donald E. Leroux	176 Ledge Hill Rd. Tuftonboro NH 03816