

**Mississippi Secretary of State  
2008 Business Reform Study Groups  
Minutes of Nonprofits/Charities Laws Study Group Meeting # 4  
August 26, 2008**

The fourth and final meeting of the Nonprofits/Charities Laws Study Group was called to order on Tuesday, August 26, 2008, at 11:00 A.M. at the Office of the Secretary of State, 700 North Street, Jackson, Mississippi. A list of the persons who were present is attached at Exhibit A.

**Introduction of Meeting**

Chairman Mark McCrary welcomed everyone to the meeting. After the members introduced themselves, the minutes from the August 12, 2008, meeting were approved.

**Votes on Sub-Group Recommendations**

Greg Pirkle, Chair of the Enforcement Sub-Group, presented a written report of his group's recommendations to the full Study Group. The recommendations are attached at Exhibit B. After discussion of the recommendations and questions and answers, the Study Group voted unanimously to approve the recommendations of this sub-group.

Charles Lindsay, Chair of the Transparency/Compliance Sub-Group, next presented his sub-group's recommendations for approval by the Study Group. The following recommendations, all of which were unanimously approved by the Study Group, included:

1. Amending Miss. Code Ann. § 79-11-505(1)(d) to raise the charitable registration exemption amount from \$4,000/year to \$25,000/year;
2. Revising Miss. Code Ann. § 79-11-505(1) (the exemption statute) to clarify that exempt charities are exempt from registration and reporting, but are not exempt from all laws regarding charitable solicitation;
3. Creating a tiered fee schedule for annual registration of charities;
4. Conforming the Secretary of State's registration deadline with the IRS' deadline for filing Form 990, and allowing (but not requiring) the Secretary of State to grant extensions mirroring the IRS extension schedule;
5. Revising Miss. Code Ann. § 79-11-509(3) to remove language making registrations effective upon the 30<sup>th</sup> day after registration if no denial has been issued by the Secretary of State;
6. Requiring the Secretary of State to display IRS Form 990s of registered charities on its website; and
7. Encouraging the Secretary of State to adopt rules regarding registration requirements of charities located out of state which use the Internet to solicit donations in Mississippi.

In the absence of Carol Burger, the chair of the Certification/Education Sub-Group, Chairman McCrary asked for a consensus vote on whether to support that group's continuing efforts to design a voluntary certification program which would encourage charitable

organizations to adopt best practices for corporate governance. The Study Group unanimously voted in support of the program.

### **Other Business**

The Study Group voted in favor of adopting legislation which would (a) require charities that cease fund-raising activities in Mississippi to provide the Secretary of State with a final report. The final report would be required whether the charity ceased all of its activities (across multiple states) and dissolved or only ceased fund-raising activities in Mississippi. The Study Group also voted in favor of adopting legislation which would require dissolving non-profit corporations to provide the Secretary of State with an accounting of how their assets were distributed upon dissolution.

### **Conclusion**

Chairman McCrary reminded the group that this was the final meeting and thanked everyone for their participation. Secretary of State Delbert Hosemann commended the Study Group for the work that has been completed. Secretary Hosemann stated that the next goal was to have the legislation adopted by the legislature. With no further business, the meeting was adjourned at 1:00 P.M.

Respectfully Submitted,



Cheryn Baker  
Assistant Secretary of State  
Division of Policy and Research

**EXHIBIT A**

**to the August 26, 2008, minutes of the Nonprofits/Charities Laws Study Group Meeting**

Attending:

Chair – Mark McCrary  
Vice-Chair – Charles Lindsay  
Vice-Chair – Greg Pirkle  
Brian Aldridge  
Larry Christian  
Jan Eastman  
Marty Milstead  
Linda Montgomery  
Ann Neal  
Robert Paine  
Genie Thomas  
Dolphus Weary

By telephone:

Ivy Allen  
Chris Blount  
Briggs Hobson  
Bettie Ross  
Mike Wilbanks  
Warren Yoder

Secretary of State Personnel Attending:

Delbert Hosemann, Secretary of State  
Cory Wilson, Chief of Staff  
Cheryn Baker, Assistant Secretary of State, Division of Policy and Research  
Dave Scott, Assistant Secretary of State, Business Regulation and Enforcement  
Melanie Thomas, Senior Attorney, Business Regulation and Enforcement  
Kathy French, Special Projects Officer, Business Regulation and Enforcement  
Tricia Melvin, Senior Attorney, Business Regulation and Enforcement  
Tanya Webber, Senior Attorney, Business Regulation and Enforcement  
Doug Jennings, Senior Attorney, Division of Policy and Research  
Phillips Strickland, Division Coordinator, Division of Policy and Research  
Brian Bledsoe, Intern, Division of Policy and Research

**EXHIBIT B**  
**to the August 26, 2008, minutes of the Nonprofits/Charities Laws Study Group Meeting**

<b>MISSISSIPPI SECRETARY OF STATE</b>		
<b>Enforcement Provisions for Charities</b>		
<b>Privileges Granted to Charity Oversight for which SOS is Responsible</b>	<b>Requirements Imposed for Privilege</b>	<b>Enforcement for Violation of Requirement</b>
<b>Authority to do business</b>  Domestic - Existence  Foreign – qualify to do business	- File Articles of Incorporation	- Cannot sue or answer suit in Mississippi courts
	- File Certificate of Authority to do Business	- Cannot sue or answer suit in Mississippi court
		- Add a box to the articles of incorporation to require incorporator to select whether the corporation will solicit funds in the State; beside the “yes” box add language informing the incorporator that the charitable registration form (with form number or title of form) must be filed prior to solicitation

**Authority to Solicit Funds From the Public**

- File annual registration if raising funds

- Prohibited from raising funds for failure to register or renew

- Monetary penalties imposed, allow waiver of penalties for first violation by completing certification program from list approved by SOS

- SOS currently follows internal due process procedure for charities which do not register or fail to renew registration, leads to registration if charity complies or final order if charity does not comply.

- 30 days after issuance of final order, SOS will issue a citation to charity if charity fails to comply with final order, citation will be published on charity's page on SOS website; if charity does not correct the deficiencies in the final order, including penalties, within 30 days of the issuance of the citation, then SOS may revoke the charity's corporate existence if Mississippi charity (administrative dissolution) or revoke the foreign charity's authority to do business, may obtain an injunction to enjoin the charity from soliciting funds in the State and may bring legal action to recover penalties.

<p><b>Authority to Carry Out Charitable Activities in Mississippi</b></p>	<p>- Charities must act appropriately to promote public interest and individuals associated with charities must act appropriately to promote public interest</p>	<p>- District Attorneys have right to revoke charitable solicitation registration for violations of requirements in 79-11-519 (listed below)</p> <p>-Give SOS authority to issue citations for violations to the above listed infractions</p> <p>- Issue citation for each infraction, citations are linked/posted to the charity's page on SOS website for public information</p> <p>- Allow remediation of one citation per year by attending certification program from list approved by SOS</p> <p>- Remediated citations are expunged from records after five years if there are no other citations between the remediation and the end of the five year period</p> <p>- Provide administrative dissolution of MS charity or authority to do business for foreign charities for issuance of three consecutive unremediated citations</p> <p>- Give SOS subpoena power with reasonable cause to determine violations</p>
<p><b>Inform/Protect Public Regarding Charities Operating in Mississippi</b></p>		

<ul style="list-style-type: none"> <li>- Charities must not engage individuals convicted of certain crimes in positions of authority related to their criminal conviction</li> <li>- Charities must not engage individuals who repeatedly violate the charitable laws of the State of Mississippi</li> </ul>	<ul style="list-style-type: none"> <li>- Current law prohibits solicitation registration if any person convicted of a felony is an officer or employee of charity</li> <li>- Amend statute to delete broad prohibition of employment and use of persons convicted of a felony</li> <li>- Amend statute to prohibit individuals convicted (including no contest) of misdemeanor or felony involving misuse of money or property of another, from holding a position as a director, officer, or employee of a charity with access to funds of the charity</li> <li>- Amend statute to prohibit individuals convicted (including no contest) of misdemeanor or felony involving crimes against a child from holding a position as a director, officer, employee or volunteer of a charity in which children are present.</li> <li>- Give SOS authority to issue citations for charities which have as a director, officer, employee or volunteer, an individual having 3 or more citations issued by the SOS (see violations by insiders below)</li> <li>- Issue citation to charity in violation of prohibition, if individual remains associated with the charity 30 days after issuance of citation, SOS will revoke the</li> </ul>
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<p>charity's corporate existence if Mississippi charity (administrative dissolution) or revoke the foreign charity's authority to do business; charity may be fined up to \$25,000 for failure to correct violation</p>		
<p>- If a charity has had its charter or authority to do business revoked, it can be reinstated only by order of the Chancery Court of Hinds County, Mississippi, upon a finding that the grounds for the revocation have been eliminated</p>	<p>- Reinstatement of revoked charity</p>	



<p>- Insiders must not take advantage of charitable funds</p>	<p>- Prohibit insiders from receiving excess benefits from charity</p> <p>- Impose monetary penalties equal to the excess benefit on any insider involved in a transaction in which he/she receives an excess benefit if the excess benefit is not returned to the charity; SOS can impose additional penalties up to \$25,000</p> <p>- impose monetary penalty on charity, up to \$25,000</p> <p>- SOS to define excess benefit and insider by regulation</p> <p>- issue citation to individual receiving excess benefit, have citation posted on charity's SOS webpage (create field for input on site if possible)</p> <p>- SOS may bring legal action to recover penalties</p>
<p>- Prohibit corporate directors, officers, employees and volunteers from violating 79-11-519</p>	<p>- issue citation to individual violating prohibition of an action, have citation posted on charity's SOS webpage (create field for input on site if possible)</p> <p>- impose penalties up to \$25,000</p>

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

- (1) It is the duty of the district attorneys and county prosecuting attorneys of this state to prosecute all violations of the provisions of Sections 79-11-501 through 79-11-529. In addition, actions for violations of Sections 79-11-501 through 79-11-529 may be prosecuted by the Attorney General.
- (2) Sections 79-11-501 through 79-11-529 shall not be construed to limit or restrict the exercise of the powers or the performance of the duties of the Attorney General which he otherwise is authorized to exercise or perform under any other provision of law by statute or otherwise except the rendering of interpretative opinions in accordance with Section 79-11-503 which shall be limited to the Secretary of State.
- (3) It shall be a violation of Sections 79-11-501 through 79-11-529 for any person:
  - (a) To misrepresent the purpose or beneficiary of a solicitation;
  - (b) To misrepresent the purpose or nature of a charitable organization;
  - (c) To use or exploit the fact of registration so as to lead the public to believe that such registration constitutes an endorsement or approval by the state;
  - (d) To misrepresent that any other person sponsors or endorses a solicitation;
  - (e) To use the name of a charitable organization, or to display any emblem, device or printed matter belonging to or associated with a charitable organization without the express written permission of the charitable organization;
  - (f) To make any false or misleading statement on any document required by Sections 79-11-501 through 79-11-529 or any rule or order thereunder;
  - (g) To fail to comply with the requirements of Sections 79-11-501 through 79-11-529 or any rule or order thereunder;
  - (h) To commit any unfair or deceptive act or practice;
  - (i) To fail to provide complete and timely payment to a charitable organization of the proceeds from a solicitation campaign or a charitable sales promotion;
  - (j) To employ any device, scheme or artifice to defraud;

- (k) To make any false or misleading statements in the solicitations of contributions in this state or to omit to state any fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading;
- (l) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person;
- (m) To refuse or fail, after notice, to produce any records required to be kept under Sections 79-11-501 through 79-11-529, or any rule or order promulgated thereunder;
- (n) To obtain money or property by means of any false pretense, representation or promise; or
- (o) To violate any provisions of Sections 79-11-501 through 79-11-529 or any rule or order thereunder.
- (4) It shall be a violation of Sections 79-11-501 through 79-11-529 for any charitable organization:
- (a) To engage in any financial transaction which is not related to the accomplishment of its charitable purpose, or which jeopardizes or interferes with the ability of the charitable organization to accomplish its charitable purpose;
- (b) To expend an unreasonable amount of money for solicitation or management;
- (c) To use the name which is the same as or confusingly similar to the name of another charitable organization unless the latter organization shall consent in writing to its use;
- (d) To represent itself as being associated with another charitable organization without the express written acknowledgment and endorsement of such other charitable organization;
- (e) To use the services of an unregistered professional fund-raiser or fund-raising counsel or professional solicitor; or
- (f) To violate any provisions of Sections 79-11-501 through 79-11-529 or any rule or order thereunder.
- (5) It shall be a violation of Sections 79-11-501 through 79-11-529 for any professional fund-raiser, professional fund-raising counsel or any professional solicitor:
- (a) To perform any services on behalf of an unregistered charitable organization;
- (b) To violate any provisions of Sections 79-11-501 through 79-11-529; or
- (c) To violate any provisions of Sections 79-11-501 through 79-11-529 or any rule or order thereunder.

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