



Mississippi Regulation of Charitable Solicitations

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DELBERT HOSEMANN
Secretary of State

MISSISSIPPI CODE REGULATION OF CHARITABLE SOLICITATIONS

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§ 79-11-501. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Any oral or written request.

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

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

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

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

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

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

§ 79-11-503. Registration statement; filing fee; forms; records; exceptions; final report upon expiration of registration of corporation opting not to renew registration; report contents.

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

(a) The name of the organization and the name or names under which it intends to solicit

contributions;

(b) The names and addresses of the officers, directors, trustees and chief executive officer of the organization;

(c) The addresses of the organization and any offices in this state. If the organization does not maintain a principal office, the name and address of the person having custody of its financial records;

(d) Where and when the organization was legally established, the form of its organization and its tax exempt status;

(e) The purpose for which the organization and the purpose or purposes for which the contributions to be solicited will be used;

(f) The date on which the fiscal year of the organization ends;

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

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

(i) Methods by which solicitation will be made;

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

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

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

(m) With the initial registration only, a copy of the current charter, articles of

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incorporation, agreement of association, instrument of trust, constitution, or other organizational instrument and a copy of the bylaws of the charitable organization; and

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

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

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

(4) (a) Such registration shall remain in effect until the time for annual renewal. A charitable organization shall renew registration by filing forms prescribed by the Secretary of State and paying the Fifty Dollar (\$50.00) renewal fee on or before the fifteenth day of the fifth month following the close of the charitable organization's taxable year.

(b) The Secretary of State pursuant to Section 79-11-509 may promulgate rules to provide for extensions of the due date for filing of the annual renewal required by this section and 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.

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

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

(7) If any local, county or area division of a charitable organization is supervised and controlled by a superior or parent organization, incorporated, qualified to do business, or doing business within this state, such local, county or area division shall not be required to register under this section if the superior or parent organization files a registration statement on behalf of the local, county or area division in addition to or as part of its own registration statement. If a registration

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statement has been filed by a superior or parent organization as provided in Section 79-11-503(1), it shall file the annual report required under Section 79-11-507 on behalf of the local, county or area division in addition to or as part of its own report, but the accounting information required under Section 79-11-507 shall be set forth separately and not in consolidated form with respect to every local, county or area division which raises or expends more than Twenty-five Thousand Dollars (\$25, 000.00).

(8) Any registered charitable organization which for any reason opts not to renew its registration must, upon the expiration of its registration, provide to the Secretary of State a final report including the following, in addition to such other information the Secretary of State may require by rule:

(a) For domestic charitable organizations which have dissolved pursuant to the Mississippi Nonprofit Corporation Act;

(i) All financial statements and reports required by Section 79-11-507;

(ii) Articles of dissolution and certified minutes reflecting the dissolution;

(iii) A list of officers and trustees of the corporation, including their addresses and telephone numbers; and

(iv) A statement signed by an officer of the corporation providing details of the final distribution of assets.

(b) For all other charitable organizations, foreign or domestic, which opt not to renew for any other reason:

(i) All financial statements and reports required by Section 79-11-507; and

(ii) A statement signed by an officer of the charitable organization certifying that the organization has ceased charitable solicitations within the state.

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

The Secretary of State shall have the authority to:

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

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(b) Honor written requests from interested persons for interpretive opinions regarding registration and exemptions from registration.

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

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

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

(1) The registration provisions of Sections 79-11-503 and the reporting provisions of Section 79-11-507 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 Twenty-five Thousand Dollars (\$25,000.00) during any twelve-month period ending June 30 of any year or on such other date as

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prescribed by rule, 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 or other date as prescribed by rule shall be in excess of Twenty-five Thousand Dollars (\$25,000.00) it shall, within thirty (30) days after the date it shall have received total contributions in excess of Twenty-five Thousand Dollars (\$25,000.00), 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 Twenty-five Thousand Dollars (\$25,000.00) during any twelve-month period ending June 30 of any year or such other date as prescribed by rule, 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 or on such other date as prescribed by rule shall be in excess of Twenty-five Thousand Dollars (\$25,000.00), it shall, within thirty (30) days after the date it shall have received such contributions in excess of Twenty-five Thousand Dollars (\$25,000.00), 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 receives not less than fifty percent (50%) of its annual funding from 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.

§ 79-11-507. Reports to Secretary of State; financial statements; extension of due date for filing financial statements; administrative penalties.

(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 or final report 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 or final report 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 or final report 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 promulgate rules to provide for extensions of the due date for filing of the financial statements required by this chapter and 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.

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

(1) The Secretary of State shall deny, suspend or revoke a registration or an exemption for the following reasons:

- (a) The application for registration or renewal is incomplete.
- (b) The application or renewal fee (where applicable) has not been paid.
- (c) A document filed with the Secretary of State contains one or more false or misleading 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) Any applicant, registrant, officer, director, or partner of the applicant or registrant, or any agent or employee thereof who has been convicted of a felony or a misdemeanor involving misrepresentation, misapplication or misuse of the money or property of another maintains a position where he or she has access to or control over the funds of the charitable organization.
- (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) Any applicant, registrant, officer, director, or partner of the applicant or registrant, or any agent, volunteer or employee thereof, who has been convicted under federal or state law of any criminal offense involving acts against children maintains a position where he or she is in close contact with children.
- (k) Any officer, director, partner, employee, agent or volunteer has accrued three (3) or more unremediated citations issued by the Secretary of State pursuant to this section.
- (l) The applicant or registrant has engaged in other forms of misconduct as may be

determined by the rules adopted by the Secretary of State.

(2) The Secretary of State shall notify the applicant or licensee of his intent to deny, suspend or revoke a license. The notification shall contain the reasons for the action and shall inform him of his right to request an administrative hearing within thirty (30) days of receipt of the notification. The denial, suspension or revocation shall become effective thirty (30) days after receipt of the notification unless a request for an administrative hearing is received by the Secretary of State before the expiration of the thirty (30) days. If a hearing is requested and the denial, suspension or revocation is upheld, the denial, suspension or revocation shall become effective upon the service of the final administrative decision on the applicant or licensee.

(3) Registration shall become effective no later than noon of the thirtieth day after a completed application is filed, if no denial order is in effect and no proceeding is pending under this chapter. 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 one or more of 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;

(b) Administratively dissolve or seek the judicial dissolution of a domestic corporation that is a charitable organization, or revoke the certificate of authority of a foreign corporation that is a charitable organization; or

(c) Issue an order 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;

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

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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) In addition to the above remedies, the Secretary of State may issue a citation to any person engaging in any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder. The Secretary of State shall establish rules providing remediation of certain citations, and the decision whether to allow such remediation will be within the Secretary of State's discretion.

(6) Whenever it appears to the Secretary of State or 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, either official may, in his discretion, take any or all of the following actions: bring an action in chancery court to obtain a temporary restraining order or injunction to enjoin the acts or practices and enforce compliance with Sections 79-11-501 through 79-11-529 or any rule or order thereunder; collect administrative penalties imposed under this section; or obtain on behalf of a charitable organization the return or repayment of any property or consideration received as private inurement or an excess benefit in violation of Section 79-11-519(3)(j). 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, 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. In addition 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 or Attorney General to post a bond.

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

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

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

No person shall act as a professional fund-raiser or fund-raising counsel for a charitable organization before he has registered with the Secretary of State or after the expiration or cancellation of such registration or any renewal thereof. Applications for registration and renewals shall be in writing sworn to under penalties of perjury in the form prescribed by the Secretary of State and accompanied by the filing of a fee of Two Hundred Fifty Dollars (\$250.00). The professional fund-raiser applicant, at the time of making application, shall file with the State Treasurer and have approved by the Secretary of State a bond in which the applicant shall be the principal obligor in the sum of Ten Thousand Dollars (\$10,000.00) with one or more corporate sureties licensed to do business in this state whose liability in the aggregate will at least equal such sum. The bond shall run to the Secretary of State for the use of the state and to any person who may have a cause of action against the obligor of the bond for any malfeasance or misfeasance in the conduct of such solicitation; provided, that the aggregate limit of liability of the surety to the state and to all such persons shall, in no event, exceed the sum of such bond. Such limitation of liability, as to the sum of the bond, as to the surety, shall not otherwise affect any liability to any person by any charitable organization, professional fund-raiser, professional solicitor or any other person for a violation of this chapter. Registration when effected shall be for a period of one (1) year, or a part thereof, expiring on June 30 or on such other date as prescribed by rule and may be renewed upon written application, under oath, in the form prescribed by the Secretary of State and upon the remittance of the renewal fee of Two Hundred Fifty Dollars (\$250.00) and the filing of the bond for additional one-year periods. Every professional fund-raiser and fund-raising counsel required to register pursuant to Sections 79-11-501 through 79-11-529 shall file an annual written report with the Secretary of State containing such information and documentation as he may require by rule.

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

- (1) All contracts entered into between professional fund-raisers or fund-raising counsel and charitable organizations shall be in writing and a true and correct copy of such contract shall be filed by the professional fund-raiser or fund-raising counsel who is a party thereto with the Secretary of State at least ten (10) days prior to the performance by the professional fund-raiser or fund-raising counsel of any service. The contract must be signed by two (2) authorized officials of the charitable organization, one (1) of whom must be a member of the organization's governing body, and the authorized contracting officer for the professional fund-raiser or fund-raising counsel. True and correct copies of such contracts shall be kept on file in the offices of the charitable organization and the professional fund-

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raiser or fund-raising counsel during the term thereof and until the expiration of a period of three (3) years subsequent to the date the solicitation of contributions provided for therein actually terminates. The contract shall contain all of the following provisions:

- (a) The legal name and address of the charitable organization as registered with the Secretary of State, unless that charitable organization is exempt from registration;
- (b) A statement of the charitable purpose for which the solicitation campaign is being conducted;
- (c) A statement of the respective obligations of the professional fund-raiser or fund-raising counsel and the charitable organization;
- (d) A clear statement of the fees or rate which will be paid to the professional fund-raiser or fund-raising counsel;
- (e) The effective and termination dates of the contract and the date services will commence with respect to the solicitation in this state of contributions for a charitable organization;
- (f) For fund-raising counsel, a statement that the fund-raising counsel will not at any time have custody or control of contributions;
- (g) A statement that the charitable organization exercises control and approval over the content and volume of any solicitation; and
- (h) Any other information required by the rules of the Secretary of State.

(2) Prior to the commencement of any solicitation, the professional fund-raiser shall file all of the following with the Secretary of State and such other information that the Secretary of State may, by rule, require a written report on forms prescribed by the Secretary of State containing information about the solicitation campaign, including, but not limited to, the following:

- (a) The fund-raising methods to be used;
- (b) The projected dates when the solicitation campaign will commence and

terminate;

(c) The location and telephone number from where the solicitation campaign will be conducted if it will be conducted by telephone;

(d) The name and residence address of each person responsible for directing and supervising the conduct of the solicitation campaign;

(e) A statement of whether the professional fund-raiser will at any time have custody of any contributions;

(f) The account number and location of each bank account where receipts from the campaign are to be deposited;

(g) A full and fair description of the charitable program for which the solicitation campaign is being carried out; and

(h) The written and signed consent of every charitable organization on whose behalf the professional fund-raiser will be soliciting contributions or whose name will be mentioned during the solicitation.

(3) Not later than ninety (90) days after a solicitation campaign has been completed and on the anniversary of the commencement of a solicitation campaign lasting more than one (1) year, the professional fund-raiser shall furnish an accounting of all contributions collected and expenses paid to the charitable organization with which the professional fund-raiser has contracted. The accounting shall be in writing and shall be retained by the professional fund-raiser and charitable organization for three (3) years. The professional fund-raiser shall file a final report of the accounting with the Secretary of State on forms prescribed by him and containing such information he may, by rule, require not later than seven (7) days after it is furnished to the charitable organization. This report shall be signed by the contracting agent with the professional fund-raiser and also by an authorized officer of the charitable organization.

(4) Not later than two (2) days after receipt of each contribution, the professional fund-raiser shall deposit the entire amount of the contribution in an account at a bank or other federally insured financial institution which shall be in the name of the charitable organization with which the professional fund-raiser has contracted. Each contribution collected by the professional fund-raiser shall be solely in the name of that charitable organization. The charitable organization shall have

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sole control of all withdrawals from the account and the professional fund-raiser shall not be given the authority to withdraw any deposited funds from the account.

(5) During each solicitation campaign and for not less than three (3) years after its completion, the professional fund-raiser shall maintain the following records that shall be made available to the Attorney General or the Secretary of State upon request:

(a) A record of each contribution that at any time is in the custody of the professional fund-raiser, including the name and address of each contributor and the date and amount of the contribution; and

(b) The location of each bank or financial institution in which the professional fund-raiser has deposited revenue from the solicitation campaign and the account number of each account into which the deposits were made.

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

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

No person shall act as a professional solicitor in the employ of a professional fund-raiser required to register pursuant to Section 79-11-513 before he has registered with the Secretary of State or after the expiration or cancellation of such registration or any renewal thereof. Application for registration or renewal shall be in writing sworn to under penalties of perjury in the form prescribed by the Secretary of State. Such registration when effected shall be for a period of one (1) year, or a part thereof, expiring on June 30 or such other date as prescribed by rule, and may be renewed upon written application, sworn to under penalties of perjury, in the form prescribed by the Secretary of State for additional one-year periods.

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

Every charitable organization, professional fund-raiser, professional solicitor, or fund-raising counsel, whether or not required to register pursuant to Sections 79-11-501 through 79-11-529, Mississippi Code of 1972, shall keep true and correct books and records of solicitation activities that are covered by Sections 79-11-501 through 79-11-529, Mississippi Code of 1972, or any rule or order adopted under Sections 79-11-501 through 79-11-529, Mississippi Code of 1972. All such

books and records shall be open to inspection at all reasonable times by the Secretary of State or the Attorney General, or their duly authorized representatives. The records shall be retained for a period of at least three (3) years.

§79-11-519. Powers and duties of district attorneys and county prosecuting attorneys; violations of Sections 79-11-501 through 79-11-529.

(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:

(i) The purpose or beneficiary of a solicitation;

(ii) The purpose or nature of a charitable organization; or

(iii) That any other person sponsors or endorses a solicitation.

(b) 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;

(c) 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;

(d) 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;

(e) To fail to comply with the requirements of Sections 79-11-501 through 79-11-529 or

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any rule or order thereunder;

(f) To commit any unfair or deceptive act or practice; to employ any device, scheme or artifice to defraud; to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or to obtain money or property by means of any false pretense, representation or promise;

(g) To fail to provide complete and timely payment to a charitable organization of the proceeds from a solicitation campaign or a charitable sales promotion;

(h) 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;

(i) 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;

(j) To benefit, directly or indirectly, from any transaction in which an economic benefit is provided by a charitable organization where the value of the benefit provided by the organization exceeds the fair market value of the consideration received by the organization.

(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 a charitable purpose, or which jeopardizes or interferes with the ability of the charitable organization to accomplish a charitable purpose;

(b) To expend an unreasonable amount of money for solicitation for 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;

(f) To fail to comply with any provisions of Sections 79-11-501 through 79-11-529 or any rule or order thereunder;

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(g) To employ as an officer, director, partner, employee, agent or volunteer, any person who has accrued three (3) or more unremediated citations issued by the Secretary of State pursuant to Section 79-11-509;

(h) To employ as an officer, director, partner, employee or agent any person who has been convicted of a felony or misdemeanor involving misrepresentation, misapplication or misuse of the money or property of another, in a capacity where that person has access to or control over the funds of the charitable organization;

(i) To employ as an officer, director, partner, employee, volunteer or agent any person who has been convicted under federal or state law of any criminal offense involving acts against children, where such position will bring the person into close contact with children; or

(j) To apply the charitable organization's funds or assets for private inurement or excess benefits which exceed the fair market value of the property or services received in return from directors, officers, or those persons who are deemed disqualified persons or insiders under applicable federal law for tax-exempt organizations.

(5) It shall be a violation of Sections 79-11-501 through 79-11-529 for any professional fundraiser, professional fund-raising counsel or any professional solicitor:

(a) To perform any services on behalf of an unregistered charitable organization; or

(b) To fail to comply with any provisions of Sections 79-11-501 through 79-11-529 or any rule or order thereunder.

(6) It shall be a violation of Sections 79-11-501 through 79-11-529 for any person, in connection with a public safety organization solicitation:

(a) To use any representation that implies that the contribution is for or on behalf of a public safety agency or a public safety organization, or using any emblem, device, or printed matter belonging to or associated with a public safety agency or organization, unless authorized in writing to do so by the agency or organization;

(b) Using a name, symbol, or statement that is similar to that used by a public safety agency or organization in a manner that is intended to confuse or mislead a person being solicited;

(c) Representing or implying that the solicitor is a peace officer or member of a public safety agency or public safety organization if the solicitor is not;

(d) Soliciting for a public safety organization, independent promoter, public safety publication, or cause by representing that those who respond affirmatively to the solicitation

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will receive favored treatment by public safety personnel; or

(e) To fail to comply with 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.

§ 79-11-521. Investigations of violations; written statements as to facts and circumstances; publication of information concerning violations; authority to administer oaths, subpoena witnesses, take evidence, require production of books, paper, etc.

Either the Secretary of State or Attorney General, in his discretion: (a) may make such public or private investigations within or outside of this state as deemed necessary by the Secretary of State or Attorney General to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of Sections 79-11-501 through 79-11-529 or in the prescribing of rules and forms hereunder; (b) may require or permit any person to file a statement in writing, under oath or otherwise, as to all the facts and circumstances concerning the matter to be investigated; and (c) may publish information concerning any violation of Sections 79-11-501 through 79-11-529 or any rule or order hereunder.

For the purpose of any investigation or proceeding under Sections 79-11-501 through 79-11-529, the Secretary of State or Attorney General, or any designated officer 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 or Attorney General deems relevant or material to the inquiry.

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

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

(1) The name of the professional fund-raiser as on file with the Secretary of State and that the solicitation is being conducted by a professional fund-raiser who is being paid for his services;

(2) If the professional solicitor acting on behalf of the professional fund-raiser identifies himself by name, the professional solicitor's legal name; and

(3) The name of the charitable organization as on file with the Secretary of State and a description of how the contributions raised by the solicitation will be utilized for a charitable purpose or, if no charitable organization exists, a description as to how the contributions raised by the solicitation will be utilized for a charitable purpose.

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

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

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

(3) In addition to the information required by subsection (1), any written confirmation, receipt and reminder of a contribution made pursuant to an oral solicitation and any written solicitation shall conspicuously state verbatim: The official registration and financial information of (insert the legal name of the charity as registered with the Secretary of State) may be obtained from the Mississippi Secretary of State's office by calling 1-888-236-6167. Registration by the Secretary of State does not imply endorsement by the Secretary of State.

(4) Prior to orally requesting or contemporaneously with written requests for advertising to appear in a for-profit publication which relates to, purports to relate to or which could reasonably be construed to relate to any charitable purpose, the professional fund-raiser or fund-raising counsel shall be responsible for clearly and conspicuously disclosing:

(a) That the publication is a for-profit, commercial enterprise;

(b) The true name of the solicitor and the fact that the solicitor is being paid for his services; and

(c) The publication is not directly affiliated or sponsored by any charitable organization.

(5) Every container, as defined in Section 79-11-501, shall have a printed or typed notice affixed to the container, in a conspicuous place and accessible to the public, that is easily readable and legible that informs the public of the following:

(a) The approximate annual percentage paid, if any, to any person to maintain, service or collect the contributions raised by the solicitation;

(b) The net percentage or sum annually paid for the most recent calendar year paid to the specific charitable purpose; and

(c) If the maintenance, service and collection from the container is done by volunteers or by paid individuals.

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

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

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

Any fund-raising counsel, professional fund-raiser, professional solicitor or employee of any of these who makes a telephone solicitation subject to the provisions of this chapter to a residential

telephone number shall make calls only between the hours of 9:00 a.m. and 9:00 p.m., Monday through Saturday. No calls shall be made on Sundays.

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

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

Every person who solicits, collects or expends contributions on behalf of a charitable organization or for a charitable purpose, or who conducts a charitable sales promotion, and every officer, director, trustee or employee of that person who is concerned with the solicitation,

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collection or expenditure of those contributions shall be considered a fiduciary and as acting in a fiduciary capacity. This section does not supersede or otherwise alter the standard of care or the limitations on the liability of volunteers.

SOURCES: Laws, 1991, ch. 515, Sec. 13; reenacted and amended, 1992, ch. 446, Sec. 13. Laws, 1997, ch. 444, Sec. 15, eff from and after July 1, 1997
Amendment Notes-
The 1997 amendment rewrote this section

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

(1) For purposes of this section, the following words and phrases shall have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "Sponsor" or "advertiser" means any person, corporation or legal entity who, for charitable purposes or for the promotion of the health, peace and welfare of the community, donates or contributes products, material, money or pays fees for advertising or displaying trademarks in order that an event may be held or conducted.

(b) "Event" means a concert, benefit, fundraiser, auction or other occasion at which entertainment, food or beverages are provided.

(2) A sponsor or advertiser of an event shall not be held vicariously liable for the negligence of another in connection with or as a consequence of his involvement as a sponsor or advertiser of an event if he does not exercise any control or supervision over any aspect of the event.

(3) This section shall not confer immunity on a sponsor or advertiser of an event for willful acts or gross negligence, and a sponsor or advertiser of an event shall not be considered to be a part of a joint venture or the principal of an agent, with regard to any other person, corporation or legal entity which is participating in the event in a capacity other than that of a sponsor or advertiser.

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

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

The Secretary of State may enter into reciprocal agreements with a like authority of any other state or states for the purpose of exchanging information made available to the Secretary of State or to such other like authority. The information contained in or filed with any registration application, renewal or report may be made available to the public under such rules as the Secretary of State prescribes. Information in the possession of, filed with or obtained by the Secretary of State in connection with any investigation or examination under Sections 79-11-501 through 79-11-529 shall be confidential and exempt from the requirements of the Mississippi Public Records Act of 1983. No such information may be disclosed by the Secretary of State or any of his officers or employees unless necessary or appropriate in connection with a particular investigation or proceeding under Sections 79-11-501 through 79-11-529 or for any law enforcement purpose.

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

The 1997 amendment added the second paragraph to this section

§ 79-11-529. Fines and penalties.

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

SOURCES: Laws, 1991, ch. 515, Sec. 15; reenacted, 1992, ch. 446, Sec. 15. Laws, 1997, ch. 444, Sec. 17, eff from and after July 1, 1997
Editor's Note- Amendment Notes-

The 1997 amendment added the last two sentences to this section

[Effective date] This act shall take effect and be in force from and after July 1, 2016.

APPROVED April 4, 2016

MS SB 2447 (2016)