

**MISSISSIPPI 2009 SESSION LAWS
2009 REGULAR SESSION**

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. 547
H.B. No. 680
MISSISSIPPI NONPROFIT CORPORATION ACT--REVISION

AN ACT TO REVISE CERTAIN NONPROFIT CORPORATION PROVISIONS; TO CREATE SECTION 79-11-336, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE APPLICATION AND DISTRIBUTION OF THE ASSETS OF A NONPROFIT CORPORATION; TO AMEND SECTION 79- 11-337, MISSISSIPPI CODE OF 1972, TO REVISE THE CONTENTS AND FILING OF ARTICLES OF DISSOLUTION; TO AMEND SECTION 79-11-355, MISSISSIPPI CODE OF 1972, TO REVISE CERTAIN DISSOLUTION PROVISIONS; TO AMEND SECTION 79-11-359, MISSISSIPPI CODE OF 1972, TO REVISE THE APPOINTMENT OF RECEIVERS OR CUSTODIANS; TO AMEND SECTION 79-11-503, MISSISSIPPI CODE OF 1972, TO PROVIDE FINAL REPORT REQUIREMENTS; TO AMEND SECTION 79-11-505, MISSISSIPPI CODE OF 1972, TO REVISE THE ANNUAL CONTRIBUTION THRESHOLD; TO AMEND SECTION 79-11- 507, MISSISSIPPI CODE OF 1972, IN CONFORMITY; TO AMEND SECTION 79-11-509, MISSISSIPPI CODE OF 1972, TO REVISE REGISTRATION SUSPENSION AND REVOCATION PROVISIONS; TO AMEND SECTION 79-11-513, MISSISSIPPI CODE OF 1972, TO REVISE REGISTRATION EXPIRATION PROVISIONS; TO AMEND SECTION 79-11-517, MISSISSIPPI CODE OF 1972, IN CONFORMITY; TO AMEND SECTION 79-11-519, MISSISSIPPI CODE OF 1972, TO REVISE PROSECUTOR POWERS AND DUTIES; TO AMEND SECTION 79-11-521, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR INVESTIGATIONS; AND FOR RELATED PURPOSES.

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

SECTION 1. The following shall be codified as Section 79-11-336, Mississippi Code of 1972:

<< MS ST § 79-11-336 >>

79-11-336. The assets of a corporation in the process of voluntary dissolution pursuant to Section 79-11-333 or Section 79-11-335 shall be applied and distributed as follows:

(a) All liabilities and obligations of the corporation shall be paid, satisfied and discharged; in case its property and assets are not sufficient to satisfy or discharge all the corporation's liabilities and obligations, the corporation shall apply them so far as they will go to the just and equitable payment of the liabilities and obligations.

(b) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements.

(Publication page references are not available for this document.)

(c) If the corporation to be dissolved is a charitable organization, as defined in Section 79-11-501, the remaining assets shall be transferred to another charitable organization or other charitable organizations, as defined in Section 79-11-501, either domestic or foreign, engaged in activities substantially similar to those of the dissolving corporation, or to the federal government, or to a state or local government, for a public purpose. For all other nonprofit corporations, assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation.

(d) Other assets not described above, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive right of members, or any class or classes of members, or provide for distribution to others.

SECTION 2. Section 79-11-337, Mississippi Code of 1972, is amended as follows:

<< MS ST § 79-11-337 >>

79-11-337. (1) At any time after dissolution is authorized, the corporation may dissolve by delivering to the Secretary of State articles of dissolution setting forth:

(a) The name of the corporation;

(b) The date dissolution was authorized;

(c) A statement that dissolution was approved by a sufficient vote of the board;

(d) **That all debts, obligations and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;**

(e) **That all remaining property and assets of the corporation have been distributed among its members in accordance with their respective rights and interest, or have been otherwise distributed pursuant to the articles or bylaws of the corporation; or, in the case of a corporation which is also a charitable organization, as defined in Section 79-11-501, that the remaining property and assets of the corporation have been transferred to another charitable organization or other charitable organizations, as defined in Section 79-11-501, either domestic or foreign, engaged in activities substantially similar to those of the dissolving corporation, or to the federal government, or to a state or local government, for a public purpose;**

(f) If approval of members was not required, a statement to that effect and a statement that dissolution was approved by a sufficient vote of the board of directors or incorporators;

(g) If approval by members was required:

(i) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on dissolution, and number of votes of each class indisputably voting on dissolution; and

(ii) Either the total number of votes cast for and against dissolution by each class entitled to vote separately on

dissolution or the total number of undisputed votes cast for dissolution by each class and a statement that the number cast for dissolution by each class was sufficient for approval by that class.

(2) A corporation is dissolved upon the effective date of its articles of dissolution.

SECTION 3. Section 79-11-355, Mississippi Code of 1972, is amended as follows:

<< MS ST § 79-11-355 >>

79-11-355. (1) The chancery court of the county where the corporation's principal office (or, if none in this state, its registered office) is located may dissolve a corporation:

(a) In a proceeding by the Attorney General **or the Secretary of State** if it is established that:

(i) The corporation obtained its articles of incorporation through fraud; *******

(ii) The corporation has continued to exceed or abuse the authority conferred upon it by law; **or**

(iii) If the corporation is a charitable organization, as defined in Section 79-11-501, that:

1. The corporate assets are being misapplied or wasted;

2. The corporation is unable to carry out its purpose(s); or

3. The corporation has violated the laws regulating the solicitation of charitable contributions, Section 79-11-501 et seq.

(b) In a proceeding by fifty (50) members or members holding five percent (5%) of the voting power, whichever is less, or by a director if it is established that:

(i) The directors are deadlocked in the management of the corporate affairs, and the members, if any, are unable to breach the deadlock;

(ii) The directors or those in control of the corporation have acted, are acting or will act in a manner that is illegal, oppressive or fraudulent;

(iii) The members are deadlocked in voting power and have failed, for a period that includes at least two (2) consecutive annual meeting dates, to elect successors to directors whose terms have, or would otherwise have, expired; or

(iv) The corporate assets are being misapplied or wasted;

(c) In a proceeding by a creditor if it is established that:

(i) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied and the corporation is insolvent; or

(Publication page references are not available for this document.)

(ii) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(d) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

(2) Prior to dissolving a corporation, the court shall consider whether there are reasonable alternatives to dissolution.

SECTION 4. Section 79-11-359, Mississippi Code of 1972, is amended as follows:

<< MS ST § 79-11-359 >>

79-11-359. (1) A court in a judicial proceeding brought to dissolve a corporation **shall have the power to issue injunctions and** may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

(2) The court may appoint an individual or a domestic or foreign business or nonprofit corporation (authorized to transact business in this state) as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(a) The receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; provided, however, that the receiver's power to dispose of the assets of the corporation is subject to any trust and other restrictions that would be applicable to the corporation; and (ii) may sue and defend in the receiver's or custodian's name as receiver or custodian of the corporation in all courts of this state;

(b) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its members and creditors.

(4) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its members and creditors.

(5) **The assets of the corporation or the proceeds resulting from a sale, conveyance or other disposition thereof shall be applied and distributed as the court may order, after taking into account the following standards:**

(a) All costs and expenses of the court proceedings and all liabilities and obligations of the corporation shall, to the extent that unencumbered assets are available therefor, be paid first toward the payment of costs and expenses of the court proceedings, and then toward other liabilities and obligations of the corporation.

(b) All liabilities and obligations of the corporation shall be paid, satisfied and discharged; in case its property and assets are not sufficient to satisfy or discharge all the corporation's liabilities and obligations, the court shall apply them so far as they will go to the just and equitable payment of the liabilities and obligations.

(c) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred or conveyed in accordance with such requirements.

(d) If the corporation to be dissolved is a charitable organization, as defined in Section 79-11-501, the remaining assets shall be transferred to another charitable organization or other charitable organizations, as defined in Section 79-11-501, either domestic or foreign, engaged in activities substantially similar to those of the dissolving corporation, or to the federal government, or to a state or local government, for a public purpose. For all other nonprofit corporations, assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation as the court may direct.

(e) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive right of members, or any class or classes of members, or provide for distribution to others.

(f) Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or not for profit, specified in the plan of distribution adopted as provided in this chapter, or where no plan of distribution has been adopted, as the court may direct.

SECTION 5. Section 79-11-503, Mississippi Code of 1972, is amended as follows:

<< MS ST § 79-11-503 >>

79-11-503. (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;

(Publication page references are not available for this document.)

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

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

(i) Methods by which solicitation will be made;

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

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

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

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

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

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

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

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

(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.

(Publication page references are not available for this document.)

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

SECTION 6. Section 79-11-505, Mississippi Code of 1972, is amended as follows:

<< MS ST § 79-11-505 >>

79-11-505. (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

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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 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 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.

SECTION 7. Section 79-11-507, Mississippi Code of 1972, is amended as follows:

<< MS ST § 79-11-507 >>

(Publication page references are not available for this document.)

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 **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.

SECTION 8. Section 79-11-509, Mississippi Code of 1972, is amended as follows:

<< MS ST § 79-11-509 >>

79-11-509. (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.

(1) 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 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 adminis-**

(Publication page references are not available for this document.)

trative 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.

SECTION 9. Section 79-11-513, Mississippi Code of 1972, is amended as follows:

<< MS ST § 79-11-513 >>

79-11-513. 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.

SECTION 10. Section 79-11-517, Mississippi Code of 1972, is amended as follows:

<< MS ST § 79-11-517 >>

79-11-517. 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.

SECTION 11. Section 79-11-519, Mississippi Code of 1972, is amended as follows:

<< MS ST § 79-11-519 >>

79-11-519. (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 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 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; * * *

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

(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 fund-raiser, 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 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.

SECTION 12. Section 79-11-521, Mississippi Code of 1972, is amended as follows:

<< MS ST § 79-11-521 >>

79-11-521. **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.

SECTION 13. [Effective date] This act shall take effect and be in force from and after July 1, 2009.

APPROVED April 17, 2009

MS LEGIS 547 (2009)

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