

By: Representatives Aldridge, Bondurant,
Chism, Denny, Fillingane, Howell, Janus,
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To: Judiciary A

HOUSE BILL NO. 680

1 AN ACT TO REVISE CERTAIN NONPROFIT CORPORATION PROVISIONS; TO
2 CREATE SECTION 79-11-336, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
3 THE APPLICATION AND DISTRIBUTION OF THE ASSETS OF A NONPROFIT
4 CORPORATION; TO AMEND SECTION 79-11-337, MISSISSIPPI CODE OF 1972,
5 TO REVISE THE CONTENTS AND FILING OF ARTICLES OF DISSOLUTION; TO
6 AMEND SECTION 79-11-355, MISSISSIPPI CODE OF 1972, TO REVISE
7 CERTAIN DISSOLUTION PROVISIONS; TO AMEND SECTION 79-11-359,
8 MISSISSIPPI CODE OF 1972, TO REVISE THE APPOINTMENT OF RECEIVERS
9 OR CUSTODIANS; TO AMEND SECTION 79-11-503, MISSISSIPPI CODE OF
10 1972, TO PROVIDE FINAL REPORT REQUIREMENTS; TO AMEND SECTION
11 79-11-505, MISSISSIPPI CODE OF 1972, TO REVISE THE ANNUAL
12 CONTRIBUTION THRESHOLD; TO AMEND SECTION 79-11-507, MISSISSIPPI
13 CODE OF 1972, IN CONFORMITY; TO AMEND SECTION 79-11-509,
14 MISSISSIPPI CODE OF 1972, TO REVISE REGISTRATION SUSPENSION AND
15 REVOCATION PROVISIONS; TO AMEND SECTION 79-11-513, MISSISSIPPI
16 CODE OF 1972, TO REVISE REGISTRATION EXPIRATION PROVISIONS; TO
17 AMEND SECTION 79-11-517, MISSISSIPPI CODE OF 1972, IN CONFORMITY;
18 TO AMEND SECTION 79-11-519, MISSISSIPPI CODE OF 1972, TO REVISE
19 PROSECUTOR POWERS AND DUTIES; TO AMEND SECTION 79-11-521,
20 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR INVESTIGATIONS; AND FOR
21 RELATED PURPOSES.

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

23 **SECTION 1.** The following shall be codified as Section
24 79-11-336, Mississippi Code of 1972:

25 79-11-336. The assets of a corporation in the process of
26 voluntary dissolution pursuant to Section 79-11-333 or Section
27 79-11-335 shall be applied and distributed as follows:

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

34 (b) Assets held by the corporation upon condition
35 requiring return, transfer or conveyance, which condition occurs



36 by reason of the dissolution, shall be returned, transferred or
37 conveyed in accordance with such requirements.

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

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

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

62 79-11-337. (1) At any time after dissolution is authorized,
63 the corporation may dissolve by delivering to the Secretary of
64 State articles of dissolution setting forth:

65 (a) The name of the corporation;

66 (b) The date dissolution was authorized;

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



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

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

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

88 (g) If approval by members was required:

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

93 (ii) Either the total number of votes cast for and
94 against dissolution by each class entitled to vote separately on
95 dissolution or the total number of undisputed votes cast for
96 dissolution by each class and a statement that the number cast for
97 dissolution by each class was sufficient for approval by that
98 class.

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



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

103 79-11-355. (1) The chancery court of the county where the
104 corporation's principal office (or, if none in this state, its
105 registered office) is located may dissolve a corporation:

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

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

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

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

114 1. The corporate assets are being misapplied
115 or wasted;

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

118 3. The corporation has violated the laws
119 regulating the solicitation of charitable contributions, Section
120 79-11-501 et seq.

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

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

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

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



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

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

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

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

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

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

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

150 79-11-359. (1) A court in a judicial proceeding brought to
151 dissolve a corporation may appoint one or more receivers to wind
152 up and liquidate, or one or more custodians to manage, the affairs
153 of the corporation. The court shall hold a hearing, after
154 notifying all parties to the proceeding and any interested persons
155 designated by the court, before appointing a receiver or
156 custodian. The court appointing a receiver or custodian has
157 exclusive jurisdiction over the corporation and all of its
158 property wherever located.

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

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



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

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

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

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

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

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



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

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

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

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

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



232 79-11-503. (1) Except as otherwise provided in Section
233 79-11-505 and prior to any solicitation of contributions, every
234 charitable organization as defined in Section 79-11-501 which
235 solicits or intends to solicit contributions by any means
236 whatsoever shall file a registration statement with, and pay a
237 filing fee of Fifty Dollars (\$50.00) to, the Secretary of State.
238 A registration statement that contains false, misleading,
239 deceptive or incomplete information or documentation shall not be
240 considered sufficient. The registration statement shall be on
241 forms prescribed by the Secretary of State and shall contain the
242 following information and such other information that the
243 Secretary of State may require by rule:

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

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

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

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

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

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

260 (g) Whether the organization is authorized by any other
261 governmental authority to solicit contributions and a statement of

262 (i) whether the charitable organization or any of its present
263 officers, directors, executive personnel or trustees have ever had
264 a license or registration denied, suspended, revoked or enjoined



265 by any court or other governmental authority in this state or any
266 other state, or (ii) whether the charitable organization has
267 voluntarily entered into an assurance or voluntary discontinuance
268 or agreement with any jurisdiction or federal agency or officer;

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

272 (i) Methods by which solicitation will be made;

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

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

283 (l) A financial report as required by Section
284 79-11-507;

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

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



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

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

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

310 (5) Every registered organization shall notify the Secretary
311 of State within thirty (30) days of any change in the information
312 required to be furnished by such organization under Sections
313 79-11-501 through 79-11-529.

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

319 (7) If any local, county or area division of a charitable
320 organization is supervised and controlled by a superior or parent
321 organization, incorporated, qualified to do business, or doing
322 business within this state, such local, county or area division
323 shall not be required to register under this section if the
324 superior or parent organization files a registration statement on
325 behalf of the local, county or area division in addition to or as
326 part of its own registration statement. If a registration
327 statement has been filed by a superior or parent organization as
328 provided in Section 79-11-503(1), it shall file the annual report
329 required under Section 79-11-507 on behalf of the local, county or



330 area division in addition to or as part of its own report, but the
331 accounting information required under Section 79-11-507 shall be
332 set forth separately and not in consolidated form with respect to
333 every local, county or area division which raises or expends more
334 than Twenty-five Thousand Dollars (\$25,000.00).

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

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

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

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

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

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

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

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

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

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

359 79-11-505. (1) The registration provisions of Sections
360 79-11-503 and the reporting provisions of Section 79-11-507 shall
361 not apply to the following organizations:



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

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

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

388 (d) Any charitable organization which does not intend
389 to solicit and receive and does not actually receive contributions
390 in excess of Twenty-five Thousand Dollars (\$25,000.00) during any
391 twelve-month period ending June 30 of any year or on such other
392 date as prescribed by rule, provided all of its fund-raising
393 functions are carried on by persons who are unpaid for such
394 services. However, if the gross contributions received by such



395 charitable organization during any twelve-month period ending June
396 30 of any year or other date as prescribed by rule shall be in
397 excess of Twenty-five Thousand Dollars (\$25,000.00) it shall,
398 within thirty (30) days after the date it shall have received
399 total contributions in excess of Twenty-five Thousand Dollars
400 (\$25,000.00), register with and report to the Secretary of State
401 as required by this chapter.

402 (e) Any charitable organization receiving an allocation
403 from an incorporated community chest or united fund, provided such
404 chest or fund is complying with the provisions of Sections
405 79-11-501 through 79-11-529 relating to registration and filing of
406 annual reports with the Secretary of State, and provided such
407 organization does not actually receive, in addition to such
408 allocation, contributions in excess of Twenty-five Thousand
409 Dollars (\$25,000.00) during any twelve-month period ending June 30
410 of any year or such other date as prescribed by rule, and provided
411 further, that all the fund-raising functions of such organization
412 are carried on by persons who are unpaid for such services.
413 However, if the gross contributions other than such allocation
414 received by such charitable organization during any twelve-month
415 period ending June 30 of any year or on such other date as
416 prescribed by rule shall be in excess of Twenty-five Thousand
417 Dollars (\$25,000.00), it shall, within thirty (30) days after the
418 date it shall have received such contributions in excess of
419 Twenty-five Thousand Dollars (\$25,000.00), register with and
420 report to the Secretary of State as required by this chapter.

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

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



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

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

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

441 79-11-507. (1) Every charitable organization registered
442 pursuant to Section 79-11-503 that shall receive in any fiscal
443 year contributions in excess of Five Hundred Thousand Dollars
444 (\$500,000.00) and all of whose fund-raising functions are carried
445 on by persons who are unpaid for such services, and every
446 charitable organization registered pursuant to Section 79-11-503
447 whose fund-raising functions are not carried on solely by persons
448 who are unpaid for such services shall file a financial statement
449 for its most recently completed fiscal year with the Secretary of
450 State. The financial statement shall be filed along with the
451 registration statement required by Section 79-11-503 and any
452 renewals or final report thereafter. The financial statement
453 shall include a balance sheet and statement of income and expense
454 and shall be consistent with forms furnished by the Secretary of
455 State clearly setting forth the following: gross receipts and
456 gross income from all sources, broken down into total receipts and
457 income from each separate solicitation project or source; cost of
458 administration; cost of solicitation; cost of programs designed to
459 inform or educate the public; total net amount disbursed or



460 dedicated for each major purpose, charitable or otherwise. The
461 statement shall be signed by the president or other authorized
462 officer and the chief fiscal officer of the organization, and
463 shall be accompanied by an opinion signed by an independent
464 certified public accountant that the financial statement therein
465 fairly represents the financial operations of the organization in
466 sufficient detail to permit public evaluation of its operations.
467 The financial statement shall be accompanied by any and all forms
468 required to be filed by a charitable organization with the United
469 States Internal Revenue Service.

470 (2) Every organization registered pursuant to Section
471 79-11-503 that shall receive in any fiscal year contributions of
472 at least Two Hundred Fifty Thousand Dollars (\$250,000.00) but not
473 more than Five Hundred Thousand Dollars (\$500,000.00) and all of
474 whose fund-raising functions are carried on by persons who are
475 unpaid for their services shall file a financial statement
476 reviewed by an independent certified public accountant along with
477 the registration statement required by Section 79-11-503 and any
478 renewals or final report thereafter with the Secretary of State
479 upon forms prescribed by him. The reviewed financial statement
480 shall cover the most recently completed fiscal year and include
481 such information as required by the Secretary of State by rule or
482 otherwise, including, but not limited to, the gross receipts from
483 contributions and the use of the proceeds of such contributions.
484 The statement shall be signed by the president or other authorized
485 officer of the organization who shall certify under penalties of
486 perjury that the statements therein are true and correct to the
487 best of the signer's knowledge. The reviewed financial statement
488 shall be accompanied by any and all forms required to be filed by
489 a charitable organization with the United States Internal Revenue
490 Service.

491 (3) Every organization registered pursuant to Section
492 79-11-503 that shall receive in any fiscal year contributions not



493 in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) and
494 all of whose fund-raising functions are carried on by persons who
495 are unpaid for their services shall file a financial report along
496 with the registration statement required by Section 79-11-503 and
497 any renewals or final report thereafter with the Secretary of
498 State upon forms prescribed by him. Such financial report shall
499 cover the most recently completed fiscal year and include such
500 information as required by the Secretary of State by rule or
501 otherwise, including, but not limited to, the gross receipts from
502 contributions and the use of the proceeds of such contributions.
503 The report shall be signed by the president or other authorized
504 officer of the organization who shall certify under penalties of
505 perjury that the statements therein are true and correct to the
506 best of the signer's knowledge. Such financial report shall be
507 accompanied by any and all forms required to be filed by a
508 charitable organization with the United States Internal Revenue
509 Service.

510 (4) Any charitable organization receiving more than
511 Twenty-five Thousand Dollars (\$25,000.00) but less than Five
512 Hundred Thousand Dollars (\$500,000.00) shall, at the request of
513 the Secretary of State, submit additional financial information,
514 including, but not limited to, an audited financial statement
515 prepared in accordance with generally accepted accounting
516 principles and accompanied by an opinion signed by an independent
517 certified public accountant that the financial statement therein
518 fairly represents the financial operations of the organization in
519 sufficient detail to permit public evaluation of its operations.

520 (5) The Secretary of State pursuant to Section 79-11-509 may
521 promulgate rules to provide for extensions of the due date for
522 filing of the financial statements required by this chapter and
523 may impose an administrative penalty against any organization
524 which fails to comply with this section within the time



525 prescribed, or fails to furnish such additional information as is
526 requested by the Secretary of State within the required time.

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

529 79-11-509. (1) The Secretary of State shall deny, suspend
530 or revoke a registration or an exemption for the following
531 reasons:

532 (a) The application for registration or renewal is
533 incomplete.

534 (b) The application or renewal fee (where applicable)
535 has not been paid.

536 (c) A document filed with the Secretary of State
537 contains one or more false or misleading statements or omits
538 material facts.

539 (d) The charitable contributions have not been or are
540 not being applied for the purpose or purposes stated in the
541 documents filed with the Secretary of State.

542 (e) The applicant or registrant has violated or failed
543 to comply with any provisions of this chapter or any rule or order
544 thereunder.

545 (f) Any applicant, registrant, officers, directors, or
546 partners of the applicant or registrant, or any agent or employee
547 thereof who has been convicted of a felony or * * * a misdemeanor
548 involving misrepresentation, misapplication or misuse of the money
549 or property of another maintains a position where he or she has
550 access to or control over the funds of the charitable
551 organization.

552 (g) The applicant or registrant has engaged in the use
553 or employment of dishonesty, fraud, deception, misrepresentation,
554 false promise or false pretense.

555 (h) The applicant or registrant has had the authority
556 to engage in charitable or fund-raising activities denied, revoked



557 or suspended by the Secretary of State or any other state or
558 jurisdiction.

559 (i) The applicant or registrant has been convicted of
560 any criminal offense committed in connection with the performance
561 of activities regulated under Sections 79-11-501 through 79-11-529
562 or any criminal offense involving untruthfulness or dishonesty or
563 any criminal offense relating adversely to the registrant's or
564 applicant's fitness to perform activities regulated by Sections
565 79-11-501 through 79-11-529. For the purposes of this paragraph,
566 a plea of guilty, non vult, nolo contendere or any other similar
567 disposition of alleged criminal activity shall be deemed a
568 conviction.

569 (j) Any applicant, registrant, officer, director, or
570 partner of the applicant or registrant, or any agent or employee
571 thereof, who has been convicted under federal or state law of any
572 criminal offense involving acts against children and maintains a
573 position where he or she is in close contact with children.

574 (k) Any officer, director, partner, employee, agent or
575 volunteer has accrued three (3) or more unremediated citations
576 issued by the Secretary of State pursuant to this section.

577 (l) The applicant or registrant has engaged in other
578 forms of misconduct as may be determined by the rules adopted by
579 the Secretary of State.

580 (2) The Secretary of State shall notify the applicant or
581 licensee of his intent to deny, suspend or revoke a license. The
582 notification shall contain the reasons for the action and shall
583 inform him of his right to request an administrative hearing
584 within thirty (30) days of receipt of the notification. The
585 denial, suspension or revocation shall become effective thirty
586 (30) days after receipt of the notification unless a request for
587 an administrative hearing is received by the Secretary of State
588 before the expiration of the thirty (30) days. If a hearing is
589 requested and the denial, suspension or revocation is upheld, the



590 denial, suspension or revocation shall become effective upon the
591 service of the final administrative decision on the applicant or
592 licensee.

593 (3) Registration shall become effective * * * after a
594 completed application is filed at a time to be determined by the
595 Secretary of State, if no denial order is in effect and no
596 proceeding is pending under this chapter. * * *

597 (4) Whenever it appears to the Secretary of State that any
598 person has engaged in or is about to engage in any act or practice
599 constituting a violation of any provision of this chapter or any
600 rule or order hereunder, he may, in his discretion, seek one or
601 more of the following remedies in addition to other remedies
602 authorized by law:

603 (a) Issue a cease and desist order, with or without a
604 prior hearing against the person or persons engaged in the
605 prohibited activities, directing them to cease and desist from
606 further illegal activity; * * *

607 (b) Bar or suspend the person from association with a
608 professional fund-raiser or charitable organization;

609 (c) Administratively dissolve or seek the judicial
610 dissolution of a domestic corporation that is a charitable
611 organization, or revoke the certificate of authority of a foreign
612 corporation that is a charitable organization; or

613 (d) Issue an order in the case of a registered charity,
614 professional fund-raiser or solicitor, or other person who
615 violated this chapter, imposing an administrative penalty up to a
616 maximum of Twenty-five Thousand Dollars (\$25,000.00) for each
617 offense, each violation to be considered as a separate offense in
618 a single proceeding or a series of related proceedings;

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



623 conduct constituting a violation of this chapter or a rule
624 promulgated thereunder or an order of the Secretary of State, the
625 number of persons adversely affected by the conduct, and the
626 resources of the person committing the violation.

627 (5) In addition to the above remedies, the Secretary of
628 State may issue a citation, with or without a prior hearing, to
629 any person engaging in any act or practice constituting a
630 violation of any provision of this chapter or any rule or order
631 hereunder. The Secretary of State shall establish rules providing
632 remediation of certain citations, and the decision whether to
633 allow such remediation will be within the Secretary of State's
634 discretion.

635 (6) Whenever it appears to the Secretary of State or
636 Attorney General that any person has engaged in or is about to
637 engage in any act or practice constituting a violation of any
638 provision of Sections 79-11-501 through 79-11-529 or any rule or
639 order thereunder, either official may, in his discretion, bring an
640 action in chancery court to obtain a temporary restraining order
641 or injunction to enjoin the acts or practices and enforce
642 compliance with Sections 79-11-501 through 79-11-529 or any rule
643 or order thereunder; collect administrative penalties imposed
644 under this section; or obtain on behalf of a charitable
645 organization the return or repayment of any property or
646 consideration received as private inurement or an excess benefit
647 in violation of Section 79-11-519(3)(j). Upon a proper showing a
648 permanent or temporary injunction, restraining order or writ of
649 mandamus shall be granted and a receiver or conservator may be
650 appointed for the defendant or the defendant's assets. In
651 addition, upon a proper showing * * *, the court may enter an
652 order of rescission, restitution or disgorgement directed to any
653 person who has engaged in any act constituting a violation of any
654 provision of Sections 79-11-501 through 79-11-529 or any rule or
655 order thereunder. In addition the court may impose a civil



656 penalty up to a maximum of Twenty-five Thousand Dollars
657 (\$25,000.00) for each offense, and each violation shall be
658 considered as a separate offense in a single proceeding or a
659 series of related proceedings. The court may not require the
660 Secretary of State or Attorney General to post a bond.

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

663 79-11-513. No person shall act as a professional fund-raiser
664 or fund-raising counsel for a charitable organization before he
665 has registered with the Secretary of State or after the expiration
666 or cancellation of such registration or any renewal thereof.
667 Applications for registration and renewals shall be in writing
668 sworn to under penalties of perjury in the form prescribed by the
669 Secretary of State and accompanied by the filing of a fee of Two
670 Hundred Fifty Dollars (\$250.00). The professional fund-raiser
671 applicant, at the time of making application, shall file with the
672 State Treasurer and have approved by the Secretary of State a bond
673 in which the applicant shall be the principal obligor in the sum
674 of Ten Thousand Dollars (\$10,000.00) with one or more corporate
675 sureties licensed to do business in this state whose liability in
676 the aggregate will at least equal such sum. The bond shall run to
677 the Secretary of State for the use of the state and to any person
678 who may have a cause of action against the obligor of the bond for
679 any malfeasance or misfeasance in the conduct of such
680 solicitation; provided, that the aggregate limit of liability of
681 the surety to the state and to all such persons shall, in no
682 event, exceed the sum of such bond. Such limitation of liability,
683 as to the sum of the bond, as to the surety, shall not otherwise
684 affect any liability to any person by any charitable organization,
685 professional fund-raiser, professional solicitor or any other
686 person for a violation of this chapter. Registration when
687 effected shall be for a period of one (1) year, or a part thereof,
688 expiring on * * * June 30 or on such other date as prescribed by



689 rule and may be renewed upon written application, under oath, in
690 the form prescribed by the Secretary of State and upon the
691 remittance of the renewal fee of Two Hundred Fifty Dollars
692 (\$250.00) and the filing of the bond for additional one-year
693 periods. Every professional fund-raiser and fund-raising counsel
694 required to register pursuant to Sections 79-11-501 through
695 79-11-529 shall file an annual written report with the Secretary
696 of State containing such information and documentation as he may
697 require by rule.

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

700 79-11-517. No person shall act as a professional solicitor
701 in the employ of a professional fund-raiser required to register
702 pursuant to Section 79-11-513 before he has registered with the
703 Secretary of State or after the expiration or cancellation of such
704 registration or any renewal thereof. Application for registration
705 or renewal shall be in writing sworn to under penalties of perjury
706 in the form prescribed by the Secretary of State. Such
707 registration when effected shall be for a period of one (1) year,
708 or a part thereof, expiring on * * * June 30 or such other date as
709 prescribed by rule, and may be renewed upon written application,
710 sworn to under penalties of perjury, in the form prescribed by the
711 Secretary of State for additional one-year periods.

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

714 79-11-519. (1) It is the duty of the district attorneys and
715 county prosecuting attorneys of this state to prosecute all
716 violations of the provisions of Sections 79-11-501 through
717 79-11-529. In addition, actions for violations of Sections
718 79-11-501 through 79-11-529 may be prosecuted by the Attorney
719 General.

720 (2) Sections 79-11-501 through 79-11-529 shall not be
721 construed to limit or restrict the exercise of the powers or the



722 performance of the duties of the Attorney General which he
723 otherwise is authorized to exercise or perform under any other
724 provision of law by statute or otherwise except the rendering of
725 interpretative opinions in accordance with Section 79-11-503 which
726 shall be limited to the Secretary of State.

727 (3) It shall be a violation of Sections 79-11-501 through
728 79-11-529 for any person:

729 (a) To misrepresent:

730 (i) The purpose or beneficiary of a solicitation;

731 (ii) The purpose or nature of a charitable

732 organization; or

733 (iii) That any other person sponsors or endorses a

734 solicitation.

735 * * *

736 (b) To use or exploit the fact of registration so as to
737 lead the public to believe that such registration constitutes an
738 endorsement or approval by the state;

739 * * *

740 (c) To use the name of a charitable organization, or to
741 display any emblem, device or printed matter belonging to or
742 associated with a charitable organization without the express
743 written permission of the charitable organization;

744 (d) To make any false or misleading statement on any
745 document required by Sections 79-11-501 through 79-11-529 or any
746 rule or order thereunder;

747 (e) To fail to comply with the requirements of Sections
748 79-11-501 through 79-11-529 or any rule or order thereunder;

749 (f) To commit any unfair or deceptive act or practice;

750 to employ any device, scheme or artifice to defraud; to engage in

751 any act, practice or course of business which operates or would

752 operate as a fraud or deceit upon any person; or to obtain money

753 or property by means of any false pretense, representation or

754 promise;



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

758 * * *

759 (h) To make any false or misleading statements in the
760 solicitations of contributions in this state or to omit to state
761 any fact necessary in order to make the statements made, in light
762 of the circumstances under which they are made, not misleading;

763 * * *

764 (i) To refuse or fail, after notice, to produce any
765 records required to be kept under Sections 79-11-501 through
766 79-11-529, or any rule or order promulgated thereunder;

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

772 * * *

773 (4) It shall be a violation of Sections 79-11-501 through
774 79-11-529 for any charitable organization:

775 (a) To engage in any financial transaction which is not
776 related to the accomplishment of a charitable purpose, or which
777 jeopardizes or interferes with the ability of the charitable
778 organization to accomplish a charitable purpose;

779 (b) To expend an unreasonable amount of money for
780 solicitation or management;

781 (c) To use the name which is the same as or confusingly
782 similar to the name of another charitable organization unless the
783 latter organization shall consent in writing to its use;

784 (d) To represent itself as being associated with
785 another charitable organization without the express written
786 acknowledgment and endorsement of such other charitable
787 organization;



788 (e) To use the services of an unregistered professional
789 fund-raiser or fund-raising counsel or professional
790 solicitor; * * *

791 (f) To fail to comply with any provisions of Sections
792 79-11-501 through 79-11-529 or any rule or order thereunder;

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

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

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

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

814 (5) It shall be a violation of Sections 79-11-501 through
815 79-11-529 for any professional fund-raiser, professional
816 fund-raising counsel or any professional solicitor:

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

819 (b) To fail to comply with any provisions of Sections
820 79-11-501 through 79-11-529 or any rule or order thereunder.



821 * * *

822 (6) It shall be a violation of Sections 79-11-501 through
823 79-11-529 for any person, in connection with a public safety
824 organization solicitation:

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

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

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

837 (d) Soliciting for a public safety organization,
838 independent promoter, public safety publication, or cause by
839 representing that those who respond affirmatively to the
840 solicitation will receive favored treatment by public safety
841 personnel; or

842 (e) To fail to comply with any provisions of Sections
843 79-11-501 through 79-11-529 or any rule or order thereunder.

844 (7) A misrepresentation may be accomplished by words or
845 conduct or failure to disclose a material fact. Regardless of a
846 person's intent or the lack of injury, the above acts and
847 practices are prohibited in the planning, conduct or execution of
848 any solicitation or charitable sales promotion.

849 (8) The Secretary of State or the Attorney General may
850 exercise the authority granted in this section against any
851 charitable organization or person which or who operates under the
852 guise or pretense of being an organization exempted by the



853 provisions of Section 79-11-505, and is not in fact an
854 organization entitled to such an exemption.

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

857 79-11-521. Either the Secretary of State or Attorney
858 General, in his discretion: (a) may make such public or private
859 investigations within or outside of this state as deemed necessary
860 by the Secretary of State or Attorney General to determine whether
861 any person has violated or is about to violate any provision of
862 this chapter or any rule or order hereunder, or to aid in the
863 enforcement of Sections 79-11-501 through 79-11-521 or in the
864 prescribing of rules and forms hereunder; (b) may require or
865 permit any person to file a statement in writing, under oath or
866 otherwise, as to all the facts and circumstances concerning the
867 matter to be investigated; and (c) may publish information
868 concerning any violation of Sections 79-11-501 through 79-11-521
869 or any rule or order hereunder.

870 For the purpose of any investigation or proceeding under
871 Sections 79-11-501 through 79-11-521, the Secretary of State or
872 Attorney General, or any designated officer may administer oaths
873 and affirmations, subpoena witnesses, compel their attendance,
874 take evidence, and require the production of any books, papers,
875 correspondence, memoranda, agreements, or other documents or
876 records which the Secretary of State or Attorney General deems
877 relevant or material to the inquiry.

878 **SECTION 13.** This act shall take effect and be in force from
879 and after July 1, 2009.

