

By: Representative Wilson

To: Accountability,
Efficiency, Transparency

HOUSE BILL NO. 1211

1 AN ACT TO REGULATE NONPROFIT ORGANIZATIONS WHOSE FUNDING
2 CONSISTS OF FIFTY PERCENT OR MORE OF PUBLIC MONIES ON AN ANNUAL
3 BASIS; TO REQUIRE CERTAIN REGISTRATION OF SUCH ORGANIZATIONS WITH
4 THE SECRETARY OF STATE; TO REQUIRE CERTAIN AUDITED FINANCIAL
5 STATEMENTS AND ANNUAL REPORTS; TO PROVIDE FOR ENFORCEMENT; TO
6 PROVIDE FOR PUNISHMENT OF KNOWING AND WILLFUL VIOLATIONS; AND FOR
7 RELATED PURPOSES.

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

9 **SECTION 1.** (1) Every nonprofit organization whose funding
10 consists of fifty percent (50%) or more of public monies on an
11 annual basis, whether federal, state or local, shall file a
12 registration statement with, and pay a filing fee of Fifty Dollars
13 (\$50.00), to the Secretary of State. A registration statement
14 that contains false, misleading, deceptive or incomplete
15 information or documentation shall not be considered sufficient.
16 The registration statement shall be on forms prescribed by the
17 Secretary of State and shall contain the following information and
18 such other information that the Secretary of State may require by
19 rule:



20 (a) The name of the organization and the name or names
21 under which it intends to operate;

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

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

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

31 (e) The purpose for which the organization and the
32 purpose or purposes for which the public monies will be used;

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

35 (g) Whether the organization or any of its present
36 officers, directors, executive personnel or trustees have ever had
37 a license or registration denied, suspended, revoked or enjoined
38 by any court or other governmental authority in this state or any
39 other state;

40 (h) Whether the organization has voluntarily entered
41 into an assurance or voluntary discontinuance or agreement with
42 any jurisdiction or federal agency or officer;



43 (i) The names and addresses of any professional
44 fundraisers or fund-raising counsel who are acting or have agreed
45 to act on behalf of the organization;

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

52 (k) The board, group or individual having final
53 authority over the distribution, custody and use of public monies
54 received;

55 (l) A financial report as required by Section 3 of this
56 act;

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

62 (n) With the initial registration or, if after
63 registration, within thirty (30) days after its receipt, a copy of
64 any federal tax exemption determination letter, any correspondence
65 rescinding the organization's tax-exempt status, or any
66 notification from the Internal Revenue Service of any challenge to



67 or investigation of the organization's continued entitlement to
68 federal tax exemption.

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

72 (3) The Secretary of State shall issue a certificate of
73 registration to an organization once the Secretary of State
74 determines that such organization has complied with all provisions
75 of this chapter. No organization required to be registered under
76 this section shall receive public monies without a valid
77 certificate of registration.

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

84 (b) The Secretary of State pursuant to Section 2 of
85 this act may promulgate rules to provide for extensions of the due
86 date for filing of the annual renewal required by this section and
87 may impose an administrative penalty against any organization
88 which fails to comply with this section within the time
89 prescribed, or fails to furnish such additional information as is
90 requested by the Secretary of State within the required time.



91 (5) Every registered organization shall notify the Secretary
92 of State within thirty (30) days of any change in the information
93 required to be furnished by such organization under this act.

94 (6) In no event shall a registered organization continue to
95 receive public monies after the date such organization should have
96 filed, but failed to file, a renewal and the financial report in
97 accordance with the requirements of this act.

98 (7) If any local, county or area division of an organization
99 is supervised and controlled by a superior or parent organization,
100 incorporated, qualified to do business, or doing business within
101 this state, such local, county or area division shall not be
102 required to register under this section if the superior or parent
103 organization files a registration statement on behalf of the
104 local, county or area division in addition to or as part of its
105 own registration statement. If a registration statement has been
106 filed by a superior or parent organization in accordance with this
107 act, it shall file the annual report required under Section 3 of
108 this act on behalf of the local, county or area division in
109 addition to or as part of its own report, but the accounting
110 information required under Section 3 of this act shall be set
111 forth separately and not in consolidated form with respect to
112 every local, county or area division which raises or expends more
113 than Twenty-five Thousand Dollars (\$25,000.00).

114 (8) Any registered organization which for any reason opts
115 not to renew its registration must, upon the expiration of its



116 registration, provide to the Secretary of State a final report
117 including the following, in addition to such other information the
118 Secretary of State may require by rule:

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

121 (i) All financial statements and reports required
122 by Section 3 of this act;

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

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

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

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

131 (i) All financial statements and reports required
132 by Section 3 of this act; and

133 (ii) A statement signed by an officer of the
134 organization certifying that the organization has ceased receiving
135 public monies within the state.

136 **SECTION 2.** The Secretary of State shall have the authority
137 to:

138 (a) Promulgate rules of procedure and regulations
139 necessary for the administration of this act, subject to the
140 provisions of the Mississippi Administrative Procedures Law.



141 (b) Honor written requests from an interested person
142 for interpretative opinions regarding registration and exemptions
143 from registration.

144 (c) Publish and disseminate information to the public
145 concerning persons subject to this act.

146 (d) Perform any other functions and duties which may be
147 necessary to carry out the provisions of this act.

148 **SECTION 3.** (1) Every nonprofit organization registered
149 pursuant to Section 1 of this act that shall receive in any fiscal
150 year contributions in excess of Twenty-five Thousand Dollars
151 (\$25,000.00) shall file a financial statement for its most
152 recently completed fiscal year with the Secretary of State. The
153 financial statement shall be filed along with the registration
154 statement required by Section 1 of this act and any renewals or
155 final report thereafter. The financial statement shall include a
156 balance sheet and statement of income and expense and shall be
157 consistent with forms furnished by the Secretary of State clearly
158 setting forth the following: gross receipts and gross income from
159 all sources, broken down into total receipts and income from each
160 separate project or source; cost of administration; cost of
161 solicitation; cost of programs designed to inform or educate the
162 public; total net amount disbursed or dedicated for each major
163 purpose, charitable or otherwise. The statement shall be signed
164 by the president or other authorized officer and the chief fiscal
165 officer of the organization, and shall be accompanied by an



166 opinion signed by an independent certified public accountant that
167 the financial statement therein fairly represents the financial
168 operations of the organization in sufficient detail to permit
169 public evaluation of its operations. The financial statement
170 shall be accompanied by any and all forms required to be filed by
171 a charitable organization with the United States Internal Revenue
172 Service.

173 (2) Every organization registered pursuant to Section 1 of
174 this act, regardless of the amount of the contributions received
175 in any fiscal year, shall file an annual report as required by the
176 Secretary of State.

177 (3) The Secretary of State pursuant to Section 2 of this
178 act may promulgate rules to provide for extensions of the due date
179 for filing of the financial statements required by this chapter
180 and may impose an administrative penalty against any organization
181 which fails to comply with this section within the time
182 prescribed, or fails to furnish such additional information as is
183 requested by the Secretary of State within the required time.

184 **SECTION 4.** (1) The Secretary of State shall deny, suspend
185 or revoke a registration or an exemption for the following
186 reasons:

187 (a) The application for registration or renewal is
188 incomplete.

189 (b) The application or renewal fee (where applicable)
190 has not been paid.



191 (c) A document filed with the Secretary of State
192 contains one or more false or misleading statements or omits
193 material facts.

194 (d) The applicant or registrant has violated or failed
195 to comply with any provisions of this chapter or any rule or order
196 thereunder.

197 (e) Any applicant, registrant, officer, director, or
198 partner of the applicant or registrant, or any agent or employee
199 thereof who has been convicted of a felony or a misdemeanor
200 involving misrepresentation, misapplication or misuse of the money
201 or property of another maintains a position where he or she has
202 access to or control over the funds of the nonprofit organization
203 registered pursuant to Section 1 of this act.

204 (f) The applicant or registrant has engaged in the use
205 or employment of dishonesty, fraud, deception, misrepresentation,
206 false promise or false pretense.

207 (g) The applicant or registrant has had the authority
208 to engage in charitable or fund-raising activities denied, revoked
209 or suspended by the Secretary of State or any other state or
210 jurisdiction.

211 (h) The applicant or registrant has been convicted of
212 any criminal offense committed in connection with the performance
213 of activities regulated under this act or any criminal offense
214 involving untruthfulness or dishonesty or any criminal offense
215 relating adversely to the registrant's or applicant's fitness to



216 perform activities regulated by this act. For the purposes of this
217 paragraph, a plea of guilty, non vult, nolo contendere or any
218 other similar disposition of alleged criminal activity shall be
219 deemed a conviction.

220 (i) Any applicant, registrant, officer, director, or
221 partner of the applicant or registrant, or any agent, volunteer or
222 employee thereof, who has been convicted under federal or state
223 law of any criminal offense involving acts against children
224 maintains a position where he or she is in close contact with
225 children.

226 (j) Any officer, director, partner, employee, agent or
227 volunteer has accrued three (3) or more unremediated citations
228 issued by the Secretary of State pursuant to this section.

229 (k) The applicant or registrant has engaged in other
230 forms of misconduct as may be determined by the rules adopted by
231 the Secretary of State.

232 (2) The Secretary of State shall notify the applicant or
233 licensee of his intent to deny, suspend or revoke a license. The
234 notification shall contain the reasons for the action and shall
235 inform him of his right to request an administrative hearing
236 within thirty (30) days of receipt of the notification. The
237 denial, suspension or revocation shall become effective thirty
238 (30) days after receipt of the notification unless a request for
239 an administrative hearing is received by the Secretary of State
240 before the expiration of the thirty (30) days. If a hearing is



241 requested and the denial, suspension or revocation is upheld, the
242 denial, suspension or revocation shall become effective upon the
243 service of the final administrative decision on the applicant or
244 licensee.

245 (3) Registration shall become effective no later than noon
246 of the thirtieth day after a completed application is filed, if no
247 denial order is in effect and no proceeding is pending under this
248 chapter. The Secretary of State may, by rule or order, specify an
249 earlier effective date, and the Secretary of State may, by order,
250 defer the effective date until noon of the thirtieth day after the
251 filing of any amendment.

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

258 (a) Issue a cease and desist order, with or without a
259 prior hearing against the person or persons engaged in the
260 prohibited activities, directing them to cease and desist from
261 further illegal activity;

262 (b) Administratively dissolve or seek the judicial
263 dissolution of a domestic corporation that is a nonprofit
264 organization registered pursuant to Section 1 of this act, or
265 revoke the certificate of authority of a foreign corporation that



266 is a nonprofit organization registered pursuant to Section 1 of
267 this act; or

268 (c) Issue an order imposing an administrative penalty
269 up to a maximum of Twenty-five Thousand Dollars (\$25,000.00) for
270 each offense, each violation to be considered as a separate
271 offense in a single proceeding or a series of related proceedings;

272 (d) For the purpose of determining the amount or extent
273 of a sanction, if any, to be imposed under paragraph (b) or (c) of
274 this subsection, the Secretary of State shall consider, among
275 other factors, the frequency, persistence and willfulness of the
276 conduct constituting a violation of this chapter or a rule
277 promulgated thereunder or an order of the Secretary of State, the
278 number of persons adversely affected by the conduct, and the
279 resources of the person committing the violation.

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

287 (6) Whenever it appears to the Secretary of State or
288 Attorney General that any person has engaged in or is about to
289 engage in any act or practice constituting a violation of any
290 provision of this act or any rule or order thereunder, either



291 official may, in his discretion, take any or all of the following
292 actions: bring an action in chancery court to obtain a temporary
293 restraining order or injunction to enjoin the acts or practices
294 and enforce compliance with this act or any rule or order
295 thereunder; collect administrative penalties imposed under this
296 section; or obtain on behalf of a nonprofit organization the
297 return or repayment of any property or consideration received as
298 public monies in violation of law. Upon a proper showing of a
299 permanent or temporary injunction, restraining order or writ of
300 mandamus shall be granted and a receiver or conservator may be
301 appointed for the defendant or the defendant's assets. In
302 addition, upon a proper showing, the court may enter an order of
303 rescission, restitution or disgorgement directed to any person who
304 has engaged in any act constituting a violation of any provision
305 of this act or any rule or order thereunder. In addition the
306 court may impose a civil penalty up to a maximum of Twenty-five
307 Thousand Dollars (\$25,000.00) for each offense, and each violation
308 shall be considered as a separate offense in a single proceeding
309 or a series of related proceedings. The court may not require the
310 Secretary of State or Attorney General to post a bond.

311 (7) Any person aggrieved by a final order of the Secretary
312 of State may obtain a review of the order in the Chancery Court of
313 the First Judicial District of Hinds County, Mississippi, by
314 filing in the court, within thirty (30) days after the entry of
315 the order, a written petition praying that the order be modified



316 or set aside, in whole or in part. A copy of the petition shall
317 be forthwith served upon the Secretary of State and thereupon the
318 Secretary of State shall certify and file in court a copy of the
319 filing and evidence upon which the order was entered. When these
320 have been filed, the court has exclusive jurisdiction to affirm,
321 modify, enforce or set aside the order, in whole or in part.

322 **SECTION 5.** Any nonprofit organization registered pursuant
323 to Section 1 of this act but does not maintain an office within
324 the state, shall be subject to service of process by designating a
325 registered agent pursuant to Section 79-35-1, et seq., upon which
326 process may be served in the State of Mississippi, or if no
327 designation has been made and service cannot be made on the
328 entity, then service of process shall be upon the Secretary of
329 State of Mississippi.

330 **SECTION 6.** Every nonprofit organization registered pursuant
331 to Section 1 of this act, shall keep true and correct books and
332 records of solicitation activities that are covered by this act,
333 or any rule or order adopted under this act. All such books and
334 records shall be open to inspection at all reasonable times by the
335 Secretary of State or the Attorney General, or their duly
336 authorized representatives. The records shall be retained for a
337 period of at least three (3) years.

338 **SECTION 7.** (1) It is the duty of the district attorneys and
339 county prosecuting attorneys of this state to prosecute all
340 violations of the provisions of this act. In addition, actions



341 for violations of this act may be prosecuted by the Attorney
342 General.

343 (2) This act shall not be construed to limit or restrict the
344 exercise of the powers or the performance of the duties of the
345 Attorney General which he otherwise is authorized to exercise or
346 perform under any other provision of law by statute or otherwise
347 except the rendering of interpretative opinions in accordance
348 with this act which shall be limited to the Secretary of State.

349 (3) It shall be a violation of this act for any person:

350 (a) To misrepresent:

351 (i) The purpose or beneficiary of any public
352 monies; or

353 (ii) The purpose or nature of a nonprofit
354 organization registered pursuant to Section 1 of this act.

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

358 (c) To use the name of a nonprofit organization
359 registered pursuant to Section 1 of this act, or to display any
360 emblem, device or printed matter belonging to or associated with a
361 nonprofit organization without the express written permission of
362 the nonprofit organization registered pursuant to Section 1 of
363 this act;

364 (d) To make any false or misleading statement on any
365 document required by this act or any rule or order thereunder;



366 (e) To fail to comply with the requirements of this
367 act or any rule or order thereunder;

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

374 (g) To refuse or fail, after notice, to produce any
375 records required to be kept under this act, or any rule or order
376 promulgated thereunder;

377 (h) To benefit, directly or indirectly, from any
378 transaction in which an economic benefit is provided by a
379 nonprofit organization registered pursuant to Section 1 of this
380 act where the value of the benefit provided by the organization
381 exceeds the fair market value of the consideration received by the
382 organization.

383 (4) It shall be a violation of this act for any nonprofit
384 organization registered pursuant to Section 1 of this act:

385 (a) To engage in any financial transaction which is not
386 related to the accomplishment of a nonprofit purpose, or which
387 jeopardizes or interferes with the ability of the nonprofit
388 organization registered pursuant to Section 1 of this act to
389 accomplish a nonprofit purpose;



390 (b) To expend an unreasonable amount of money for
391 solicitation or management;

392 (c) To use the name which is the same as or confusingly
393 similar to the name of another nonprofit organization unless the
394 latter organization shall consent in writing to its use;

395 (d) To represent itself as being associated with
396 another nonprofit organization without the express written
397 acknowledgment and endorsement of such other nonprofit
398 organization;

399 (e) To fail to comply with any provisions of this
400 act or any rule or order thereunder;

401 (f) To employ as an officer, director, partner,
402 employee, agent or volunteer, any person who has accrued three (3)
403 or more unremediated citations issued by the Secretary of State
404 pursuant to this act;

405 (g) To employ as an officer, director, partner,
406 employee or agent any person who has been convicted of a felony or
407 misdemeanor involving misrepresentation, misapplication or misuse
408 of the money or property of another, in a capacity where that
409 person has access to or control over the funds of the nonprofit
410 organization registered pursuant to Section 1 of this act;

411 (h) To employ as an officer, director, partner,
412 employee, volunteer or agent any person who has been convicted
413 under federal or state law of any criminal offense involving acts



414 against children, where such position will bring the person into
415 close contact with children; or

416 (i) To apply the nonprofit organization registered
417 pursuant to Section 1 of this act's funds or assets for private
418 inurement or excess benefits which exceed the fair market value of
419 the property or services received in return from directors,
420 officers, or those persons who are deemed disqualified persons or
421 insiders under applicable federal law for tax-exempt
422 organizations.

423 **SECTION 8.** Either the Secretary of State or Attorney
424 General, in his discretion: (a) may make such public or private
425 investigations within or outside of this state as deemed necessary
426 by the Secretary of State or Attorney General to determine whether
427 any person has violated or is about to violate any provision of
428 this chapter or any rule or order hereunder, or to aid in the
429 enforcement of this act or in the prescribing of rules and forms
430 hereunder; (b) may require or permit any person to file a
431 statement in writing, under oath or otherwise, as to all the facts
432 and circumstances concerning the matter to be investigated; and
433 (c) may publish information concerning any violation of this
434 act or any rule or order hereunder.

435 For the purpose of any investigation or proceeding under this
436 act, the Secretary of State or Attorney General, or any designated
437 officer may administer oaths and affirmations, subpoena witnesses,
438 compel their attendance, take evidence, and require the production



439 of any books, papers, correspondence, memoranda, agreements, or
440 other documents or records which the Secretary of State or
441 Attorney General deems relevant or material to the inquiry.

442 **SECTION 9.** The Secretary of State may enter into reciprocal
443 agreements with a like authority of any other state or states for
444 the purpose of exchanging information made available to the
445 Secretary of State or to such other like authority.

446 The information contained in or filed with any registration
447 application, renewal or report may be made available to the public
448 under such rules as the Secretary of State prescribes.

449 Information in the possession of, filed with or obtained by the
450 Secretary of State in connection with any investigation or
451 examination under this act shall be confidential and exempt from
452 the requirements of the Mississippi Public Records Act of 1983.
453 No such information may be disclosed by the Secretary of State or
454 any of his officers or employees unless necessary or appropriate
455 in connection with a particular investigation or proceeding
456 under this act or for any law enforcement purpose.

457 **SECTION 10.** Any person who knowingly and willingly violates
458 the provisions of this act shall be guilty of a misdemeanor and,
459 upon conviction, shall be punished by a fine not exceeding Two
460 Thousand Dollars (\$2,000.00) or by imprisonment in the county jail
461 for not more than one (1) year or both. In connection with any
462 solicitation, any person employing a device, scheme or artifice to
463 defraud; or engaging in any act, practice or course of business



464 which operates or would operate as a fraud or deceit upon any
465 person, or obtaining money or property by means of any false
466 pretense, representation or promise shall be guilty of a felony
467 and, upon conviction, shall be punished by a fine not exceeding
468 Twenty-five Thousand Dollars (\$25,000.00) or imprisoned not more
469 than five (5) years, or both. No indictment or information may be
470 returned under this act more than five (5) years after the alleged
471 violation.

472 **SECTION 11.** This act shall take effect and be in force from
473 and after July 1, 2018.

