MISSISSIPPI LEGISLATURE REGULAR SESSION 2021

By: Representative Cockerham To: Judiciary A

HOUSE BILL NO. 1012

AN ACT TO AMEND SECTION 79-11-501, MISSISSIPPI CODE OF 1972, TO REMOVE CONDUCT OF RELIGIOUS INSTITUTIONS AND GROUPS OR CORPORATIONS WHICH FORM AN INTEGRAL PART OF RELIGIOUS INSTITUTIONS THAT IS PRIMARILY SUPPORTED BY PREVIOUS DONORS FROM WHAT THE TERM "CHARITABLE ORGANIZATION" DOES NOT INCLUDE; TO AMEND SECTION 79-11-511, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A CHARITABLE ORGANIZATION, PERSON, PROFESSIONAL FUND RAISER, FUND RAISING COUNSEL OR PROFESSIONAL SOLICITOR, THAT SOLICITS CONTRIBUTIONS IN THE STATE OF MISSISSIPPI, SHALL BE SUBJECT TO NOTICE OR DEMAND AS PROVIDED IN SECTION 79-35-13, AND SHALL BE SUBJECT TO SERVICE OF PROCESS AS PROVIDED BY THE MISSISSIPPI RULES OF CIVIL PROCEDURE; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 79-11-501, Mississippi Code of 1972, is amended as follows:

79-11-501. The following words and phrases as used in Sections 79-11-501 through 79-11-529 shall have the meanings as defined in this section *** * *** unless *** * *** the context clearly indicates otherwise:

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) "Contribution" means the promise or grant of any money or property of any kind or value, including the promise to pay, except payments by members of an organization for membership fees, dues, fines, assessments or for services rendered to

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

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

of the professional service or advice rendered, to be a fund-raising counsel.

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

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

or employee of a charitable organization shall not be deemed a professional fund-raiser unless his salary or other compensation is paid as a commission which is computed on the basis of funds to be raised or actually raised.

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

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

(j) "Solicitation" or "solicit" means the request, directly or indirectly, for money, credit, property, financial assistance, or any other thing of value on the plea or

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

(i) Any oral or written request.

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

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

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

from the sale will be used for any charitable purpose or will benefit any charitable organization.

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

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

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

SECTION 2. Section 79-11-511, Mississippi Code of 1972, is amended as follows:

79-11-511. *** * *** A charitable organization, person, professional fund raiser, fund raising counsel or professional solicitor, that solicits contributions in the State of Mississippi, shall be subject to notice or demand as provided in Section 79-35-13, and shall be subject to service of process as provided by the Mississippi Rules of Civil Procedure.

SECTION 3. This act shall take effect and be in force from and after July 1, 2021.