

## CHAPTER 309

## SOCIAL AND CHARITABLE ORGANIZATIONS

309.50	Solicitation of charitable funds; definitions.	309.582	Consultants.
309.515	Exemptions.	309.59	Construction; powers of attorney general.
309.52	Registration requirement.	309.591	Rule making power.
309.53	Annual report.	309.60	Reciprocal agreements, other states.
309.531	Licensing of professional fund raisers; bond required.	309.61	Severability.
309.532	Denial, suspension and revocation of licenses.	309.62	Uniform management of institutional funds act; definitions.
309.533	Investigations; proceedings.	309.63	Appropriation of appreciation.
309.534	Cease and desist orders; injunctions; receivers.	309.64	Rule of construction.
309.54	Public record.	309.65	Investment authority.
309.55	Use of names.	309.66	Delegation of investment management.
309.555	Limitations on charitable expenditures.	309.67	Standard of conduct.
309.556	Public disclosure requirements.	309.68	Release of restrictions on use or investment.
309.56	Service of process.	309.69	Severability.
309.57	District court jurisdiction.	309.70	Uniformity of application and construction.
309.58	Violations; witnesses; testimony.	309.71	Citation.
309.581	Violations; penalties.		

NOTE: For definitions, see section 300.02.

<b>309.01</b>	[ Repealed, 1951 c 550 s 78 ]
<b>309.02</b>	[ Repealed, 1951 c 550 s 78 ]
<b>309.023</b>	[ Repealed, 1951 c 550 s 78 ]
<b>309.03</b>	[ Repealed, 1951 c 550 s 78 ]
<b>309.04</b>	[ Repealed, 1951 c 550 s 78 ]
<b>309.05</b>	[ Repealed, 1951 c 550 s 78 ]
<b>309.06</b>	[ Repealed, 1951 c 550 s 78 ]
<b>309.07</b>	[ Repealed, 1951 c 550 s 78 ]
<b>309.08</b>	[ Repealed, 1951 c 550 s 78 ]
<b>309.09</b>	[ Repealed, 1951 c 550 s 78 ]
<b>309.10</b>	[ Repealed, 1971 c 568 s 27 ]
<b>309.11</b>	[ Repealed, 1971 c 568 s 27 ]
<b>309.12</b>	[ Repealed, 1971 c 568 s 27 ]
<b>309.13</b>	[ Repealed, 1971 c 568 s 27 ]
<b>309.14</b>	[ Repealed, 1971 c 568 s 27 ]
<b>309.15</b>	[ Repealed, 1971 c 568 s 27 ]
<b>309.16</b>	[ Repealed, 1971 c 568 s 27 ]
<b>309.17</b>	[ Repealed, 1971 c 568 s 27 ]
<b>309.171</b>	[ Repealed, 1971 c 568 s 27 ]
<b>309.175</b>	[ Repealed, 1971 c 568 s 27 ]
<b>309.176</b>	[ Repealed, 1973 c 494 s 6; 1973 c 651 s 4 ]
<b>309.18</b>	[ Repealed, 1951 c 550 s 78 ]
<b>309.19</b>	[ Repealed, 1951 c 550 s 78 ]
<b>309.20</b>	[ Repealed, 1951 c 550 s 78 ]

**309.50 SOLICITATION OF CHARITABLE FUNDS; DEFINITIONS.**

Subdivision 1. As used in sections 309.50 to 309.61 the words, terms and phrases, defined in this section have the meanings given them.

Subd. 2. "Person" means any individual, organization, group, firm, copartnership, association, partnership, corporation, company, trust or joint stock association, church, religious sect, religious denomination, society, or league,

and includes any trustee, receiver, assignee, agent or other similar representative thereof.

Subd. 3. "Charitable purpose" means any charitable, benevolent, philanthropic, patriotic, religious, social service, welfare, educational, eleemosynary, cultural, artistic, or public interest purpose, either actual or purported.

Subd. 4. "Charitable organization" means any person who engages in or purports to engage in solicitation for a charitable purpose and includes a chapter, branch, area office or similar affiliate or any person soliciting contributions within the state for a parent charitable organization, but does not include an organization whose primary purpose is supporting or opposing any candidate for elective office, or influencing the nomination for election or the election of any candidate for elective office.

Subd. 5. "Contribution" means the promise or grant of any money or property of any kind or value, including the promise to pay, or payment for merchandise or rights of any other description when representation is made by or on behalf of the seller or solicitor that the whole or any part of the price will be applied to a charitable purpose. "Contributions" shall not include any funds obtained by a charitable organization through grants from any governmental agency. "Contributions" shall include, in the case of a charitable organization offering goods and services to the public, the difference between the direct cost of the goods and services to the charitable organization and the price at which the charitable organization or any person acting on its behalf resells those goods or services to the public.

Subd. 6. "Professional fund raiser" means any person who for financial compensation or profit participates in public solicitation in this state of contributions for, or on behalf of any charitable organization. A bona fide officer or employee of a charitable organization is not a professional fund raiser unless his salary or other compensation is computed on the basis of funds to be raised, or actually raised.

Subd. 6a. "Accounting year" means the 12 month period on which a charitable organization keeps its financial records.

Subd. 7. [ Repealed, 1969 c 112 s 17 ]

Subd. 8. "Department" means the securities and real estate division of the department of commerce.

Subd. 9. "Parent organization" is that part of a charitable organization which coordinates, supervises or exercises control over policy, fund-raising, and expenditures, or assists or advises one or more chapters, branches or affiliates in the state.

Subd. 10. "Solicit" and "solicitation" mean the request directly or indirectly for any contribution, regardless of which party initiates communication, on the plea or representation that such contribution will or may be used for any charitable purpose, and include any of the following methods of securing contributions:

- (1) Oral or written request;
- (2) The distribution, circulation, mailing, posting, or publishing of any handbill, written advertisement, or publication;
- (3) The making of any announcement to the press, over the radio, by television, by telephone, or telegraph concerning an appeal, assemblage, athletic or sports event, bazaar, benefit, campaign, contest, dance, drive, entertainment, exhibition, exposition, party, performance, picnic, sale, or social gathering, which the public is requested to patronize or to which the public is requested to make a contribution;

(4) The sale of, offer, or attempt to sell, any advertisement, advertising space, book, card, magazine, merchandise, subscription, ticket of admission, or any other thing, or the use of the name of any charitable person in any offer or sale as an inducement or reason for purchasing any such item, or the making of any statement in connection with any such sale, that the whole or any part of the proceeds from any such sale will be used for any charitable purpose. A "solicitation" shall be deemed completed when made, whether or not the person making the same receives any contribution or makes any such sale.

Subd. 11. "Management and general costs" means costs determined to be management and general by generally accepted accounting principles.

Subd. 12. "Fund raising costs" means costs determined to be fund raising by generally accepted accounting principles.

**History:** 1961 c 309 s 1; 1969 c 112 s 1; 1973 c 762 s 1-4; 1978 c 601 s 1-4; 1980 c 516 s 2

**309.51** [ Repealed, 1973 c 762 s 18 ]

**309.515 EXEMPTIONS.**

Subdivision 1. Subject to the provisions of subdivisions 2 and 3, sections 309.52 and 309.53 shall not apply to any of the following:

(a) Charitable organizations:

(1) which did not receive total contributions in excess of \$10,000 from the public within or without this state during the accounting year last ended, and

(2) which do not plan to receive total contributions in excess of such amount from the public within or without this state during any accounting year, and

(3) whose functions and activities, including fund raising, are performed wholly by persons who are unpaid for their services, and

(4) none of whose assets or income inure to the benefit of or are paid to any officer.

For purposes of this chapter, a charitable organization shall be deemed to receive in addition to such contributions as are solicited from the public by it, such contributions as are solicited from the public by any other person and transferred to it. Any organization constituted for a charitable purpose receiving an allocation from a community chest, united fund or similar organization shall be deemed to have solicited that allocation from the public.

(b) A religious society or organization which received more than half of the contributions it received in the accounting year last ended (1) from persons who are members of the organization; or (2) from a parent organization or affiliated organization; or (3) from a combination of the sources listed in clauses (1) and (2). A religious society or organization which solicits from its religious affiliates who are qualified under this subdivision and who are represented in a body or convention is exempt from the requirements of sections 309.52 and 309.53. The term "member" shall not include those persons who are granted a membership upon making a contribution as a result of a solicitation.

(c) Any educational institution which is under the general supervision of the state board of education, the state university board, the state board for community colleges, or the university of Minnesota or any educational institution which is accredited by the university of Minnesota or the North Central association of colleges and secondary schools, or by any other national or regional accrediting association.

(d) A fraternal, patriotic, social, educational, alumni, professional, trade or learned society which limits solicitation of contributions to persons who have a right to vote as a member. The term "member" shall not include those persons

who are granted a membership upon making a contribution as the result of a solicitation.

(e) A charitable organization soliciting contributions for any person specified by name at the time of the solicitation if all of the contributions received are transferred to the person named with no restrictions on his expenditure of it and with no deductions whatsoever.

(f) A private foundation, as defined in section 509(a) of the Internal Revenue Code of 1954, which did not solicit contributions from more than 100 persons during the accounting year last ended.

Subd. 2. Where any such group or association or person soliciting for the benefit of such group or association described in subdivision 1, clauses (a), (b) and (d), employs a professional fund raiser to solicit or assist in the solicitation of contributions, sections 309.52 and 309.53 shall apply and such group or association or person shall file a registration statement as provided in section 309.52 and an annual report as provided in section 309.53.

Subd. 3. The department may, by written order or regulation, suspend or wholly revoke the exempt status of any charitable organization or any group of charitable organizations exempted by this section or may require, prior to a solicitation by a charitable organization exempt by the provisions hereof, such information with respect thereto as the department may deem necessary to protect the public interest.

**History:** 1973 c 349 s 2; 1973 c 762 s 5; 1975 c 321 s 2; 1978 c 601 s 5

### 309.52 REGISTRATION REQUIREMENT.

Subdivision 1. No charitable organization, except as otherwise provided in section 309.515, shall solicit contributions from persons in this state by any means whatsoever unless, prior to any solicitation, there shall be on file with the department upon forms provided by the department, a registration statement containing, without limitation, the following information:

- (a) Legally established name.
- (b) Name or names under which it solicits contributions.
- (c) Form of organization.
- (d) Date and place of organization.
- (e) Address of principal office in this state, or, if none, the name and address of the person having custody of books and records within this state.
- (f) Names and addresses of officers, directors, trustees, and chief executive officer.
- (g) Federal and state tax exempt status.
- (h) Denial at any time by any governmental agency or court of the right to solicit contributions.
- (i) Date on which accounting year of the charitable organization ends.
- (j) General purposes for which organized.
- (k) General purposes for which contributions to be solicited will be used.
- (l) Methods by which solicitation will be made.
- (m) Copies of contracts between charitable organization and professional fund raisers relating to financial compensation or profit to be derived by the professional fund raisers. Where any such contract is executed after filing of the registration statement, a copy thereof shall be filed within seven days of the date of execution.
- (n) Board, group or individual having final discretion as to the distribution and use of contributions received.

(o) The amount of total contributions received during the accounting year last ended.

(p) Such other information as the department may by rule or order require to promote fairness of the solicitation and to assure full and fair disclosure of all material information to the department.

Subd. 1a. A charitable organization whose total contributions received during any accounting year are in excess of \$10,000 shall file a registration statement with the department within 30 days after the date on which the organization's total contributions exceeded \$10,000. The registration shall exist unless revoked by a court of competent jurisdiction, or the department, or as provided in subdivision 7. This subdivision shall not apply to a charitable organization which had filed a registration statement pursuant to this section for the accounting year last ended or to organizations described in section 309.515, subdivision 1.

Subd. 2. The first registration statement filed by a charitable organization shall include a financial statement of its operation for its most recent 12 months period immediately preceding the filing of the first registration statement.

Subd. 3. The registration statement shall be executed by any two duly constituted officers of the charitable organization who shall acknowledge that it was executed pursuant to resolution of the board of directors or trustees, or if there be no such board, then by its managing group which has approved the content of the registration statement, and shall certify that the board of directors or trustees, or if there be no such board, its managing group, have assumed, and will continue to assume responsibility for determining matters of policy and have supervised, and will continue to supervise the finances of the charitable organization.

Subd. 4. Where any chapter, branch, area office or similar affiliate of a charitable organization is supervised and controlled by a parent organization located within or outside the state, the affiliate may file a registration statement on behalf of the parent organization in addition to or as part of its own registration statement, or the parent organization may file a registration statement on behalf of the affiliate in addition to or as part of its own registration statement.

Subd. 5. [ Repealed, 1978 c 601 s 29 ]

Subd. 6. [ Repealed, 1978 c 601 s 29 ]

Subd. 7. In no event shall the registration of a charitable organization continue in effect after the date such organization should have filed, but has failed to file an annual report in accordance with the requirements of section 309.53, and such organization, if in default under such section, shall not be eligible to file a new registration statement until it shall have filed the required annual report with the department.

Subd. 8. [ Repealed, 1978 c 601 s 29 ]

**History:** 1961 c 309 s 3; 1969 c 112 s 3-6; 1969 c 1129 art 4 s 4; 1973 c 762 s 6; 1976 c 239 s 90; 1978 c 601 s 6,7

### 309.53 ANNUAL REPORT.

Subdivision 1. Except as otherwise provided in subdivision 1a of this section, every charitable organization required to file a registration statement pursuant to section 309.52 shall file an annual report with the department of commerce upon forms provided by the department or on forms identical thereto on or before June 30 of each year if its books are kept on a calendar year basis, or within six months after the close of its fiscal year if its books are kept on a fiscal year basis. For cause shown the department may extend the time for filing the annual report for a period not to exceed three months.

Subd. 1a. A charitable organization may, but need not, file an annual report pursuant to this section if the organization:

- (a) Did not receive total contributions in excess of \$10,000 from the public within or without this state during the accounting year last ended.
- (b) Does not plan to receive total contributions in excess of \$10,000 from the public within or without this state during any accounting year, and
- (c) Does not employ a professional fund raiser.

Subd. 2. Such annual report shall include a financial statement covering the immediately preceding 12 months period of operation, and shall be executed by any two duly constituted officers of the charitable organization, who shall acknowledge that it was executed pursuant to resolution of the board of directors or trustees, or if there be no such board, then by its managing group which has approved the content of the annual report.

Subd. 3. The financial statement shall include a balance sheet, statement of income and expense, and statement of functional expenses, shall be consistent with forms furnished by the department, and shall be prepared in accordance with generally accepted accounting principles so as to make a full disclosure of the following, including necessary allocations between each item and the basis of such allocations:

- (a) Total receipts and total income from all sources;
- (b) Cost of management and general;
- (c) Cost of fund raising;
- (d) Cost of public education;
- (e) Funds or properties transferred out of state, with explanation as to recipient and purpose;
- (f) Total net amount disbursed or dedicated within this state, broken down into total amounts disbursed or dedicated for each major purpose, charitable or otherwise;
- (g) Names of professional fund raisers used during the accounting year and the financial compensation or profit resulting to each professional fund raiser. Unless otherwise required by this subdivision, the financial statement need not be certified.

A financial statement of a charitable organization which has solicited from the public within or outside this state total contributions in excess of \$25,000 for the 12 months of operation covered by the statement shall be accompanied by an opinion signed by a certified public accountant that such statement fairly represents the financial operations of the charitable organization in sufficient detail to permit public evaluation of its operations. In giving such opinion the certified public accountant shall take into consideration capital, endowment or other reserve funds, if any, controlled by the charitable organization. The opinion need not conform to the wording of the opinion form of the annual report forms provided by the department.

Subd. 4. Where a registration statement has been filed by a parent organization or affiliate as provided in section 309.52, subdivision 4, the registered parent organization may file the annual report required under this section on behalf of the chapter, branch, area office, similar affiliate or person in addition to or as part of its own report or the registered affiliate may file the annual report required under this section on behalf of the parent organization in addition to or as part of its own report. The accounting information required under this section shall be set forth separately and not in consolidated form with respect to every chapter, branch, area office, similar affiliate or person within the state which raises or expends more than \$10,000. The department of commerce may permit any chapter, branch, area office, similar affiliate or person to

file a consolidated statement with any other chapter, branch, area office, similar affiliate or person or parent organization if the attorney general determines that the interests of the charitable beneficiaries will not be prejudiced thereby and that separate accounting information is not required for proper supervision.

Subd. 5. [ Repealed, 1978 c 601 s 29 ]

**History:** 1961 c 309 s 4; Ex1967 c 49 s 2; 1969 c 112 s 7-10; 1969 c 1129 art 4 s 4; 1973 c 762 s 7; 1978 c 601 s 8-10

### **309.531 LICENSING OF PROFESSIONAL FUND RAISERS; BOND REQUIRED.**

Subdivision 1. No person shall act as a professional fund raiser unless licensed by the department. Applications for a license shall be in writing, under oath, in the form prescribed by the department and shall be accompanied by an application fee of \$25. Each license shall be effective for a period of not more than 12 months from the date of issuance, and in any event shall expire on July 30 next following the date of issuance.

Subd. 2. The department shall have the power, in connection with any application for license as a professional fund raiser, to require the applicant to file a surety bond in such amount, not exceeding \$20,000, and containing such terms and conditions as the department determines are necessary and appropriate for the protection of the public. The applicant may deposit cash in and with a depository acceptable to the department in such amount and in such a manner as may be prescribed and approved by the department in lieu of the bond.

Subd. 3. No professional fund raiser shall solicit in the name of or in behalf of any charitable organization unless such solicitor has written authorization from two officers of such organization, a copy of which shall be filed with the department. Such written authorization shall bear the signature of the solicitor and shall expressly state on its face the period for which it is valid, which shall not exceed one year from the date issued.

Subd. 4. The department may require that any licensed professional fund raiser submit financial reports, not more frequently than quarterly, in such form and containing such information as the department by rule or order requires.

**History:** 1973 c 762 s 8

### **309.532 DENIAL, SUSPENSION AND REVOCATION OF LICENSES.**

Subdivision 1. The department may by order deny any application, suspend or revoke any license or registration, or may censure a licensee or registrant if it finds (1) that the order is in the public interest, and (2) that the applicant, registrant or licensee:

(a) has filed an application for a license or registration which is incomplete in any material respect or contains any statement which, in light of the circumstances under which it is made, is false or misleading with respect to any material fact;

(b) has engaged in a fraudulent, deceptive or dishonest practice;

(c) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of charitable solicitations; or

(d) has violated or failed to comply with any provision of this chapter or any rule or order under this chapter.

Subd. 2. The commissioner of securities and real estate of the department of commerce may promulgate rules and regulations further specifying and defining those actions and omissions which constitute fraudulent, deceptive or dishonest practices, and establishing standards of conduct for professional fund raisers.

Subd. 3. The department may issue an order requiring a licensee or registrant or applicant for a license or registration to show cause why the license or registration should not be revoked or suspended or the application denied. The order shall be calculated to give reasonable notice of the time and place for hearing thereon, and shall state the reasons for the entry of the order. All hearings shall be conducted in accordance with the provisions of chapter 15. After the hearing, the department shall enter an order making such disposition of the matter as the facts require. If the licensee, registrant or applicant fails to appear at a hearing of which he has been duly notified, such person shall be deemed in default, and the proceeding may be determined against him upon consideration of the order to show cause, the allegations of which may be deemed to be true.

Subd. 4. The hearing may be conducted by a hearing examiner. The examiner shall make proposed findings of fact and submit them to the department. The department shall have the power to compel the attendance of witnesses, to examine them under oath, to require the production of books, papers and other evidence, and to issue subpoenas and cause the same to be served and executed in any part of the state.

Subd. 5. Orders of the department shall be subject to judicial review pursuant to chapter 15.

Subd. 6. The commissioner of securities and real estate of the department of commerce may promulgate rules of procedure concerning all hearings and other proceedings conducted pursuant to this chapter.

**History:** 1973 c 762 s 17; 1980 c 516 s 2

### **309.533 INVESTIGATIONS; PROCEEDINGS.**

Subdivision 1. The commissioner in his discretion:

(a) may make public or private investigations within or outside the state as he deems necessary to determine whether any person has violated or is about to violate any provision of sections 309.50 to 309.61 or any rule or order thereunder, or to aid in the enforcement of sections 309.50 to 309.61 in the prescribing of rules and forms thereunder, and may publish information, concerning the violation of sections 309.50 to 309.61 or any rule or order thereunder.

(b) may require or permit any person to file a statement in writing, under oath or otherwise as the commissioner determines, as to all facts and circumstances concerning the matter being investigated.

Subd. 2. For the purpose of any investigation or proceeding under sections 309.50 to 309.61, the commissioner or any person designated by him may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the commissioner deems relevant or material to the inquiry.

Subd. 3. No person is excused from attending and testifying or from producing any document or record before the commissioner, in obedience to the subpoena of the commissioner or any person designated by him in any proceedings instituted by the commissioner, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, but no individual may be prosecuted or subjected to any penalty or forfeiture for an account of any transaction, matter or thing concerning which he is compelled, after claiming his privilege against self incrimination, to testify or produce evidence, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

Subd. 4. In case of contumacy by, or refusal to obey a subpoena to, any person, the district court, upon application by the commissioner, may issue to the person an order directing him to appear before the commissioner or the offi-



cer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

**History:** 1978 c 601 s 11

### **309.534 CEASE AND DESIST ORDERS; INJUNCTIONS; RECEIVERS.**

Subdivision 1. Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule or order hereunder:

(a) He shall have the power to issue and cause to be served upon the person an order requiring him to cease and desist from violations of sections 309.50 to 309.61. The order shall be calculated to give reasonable notice of the rights of the person to request a hearing thereon and shall state the reason for the entry of the order. A hearing shall be held not later than seven days after the request for the hearing is received by the commissioner after which and within 20 days of the date of the hearing the commissioner shall issue a further order vacating the cease and desist order or making it permanent as the facts require. All hearings shall be conducted in accordance with the provisions of chapter 15. If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, the person shall be deemed in default, and the proceeding may be determined against him upon consideration of the cease and desist order, the allegations of which may be deemed to be true. The commissioner may adopt rules of procedure concerning all proceedings conducted pursuant to this subdivision.

(b) He may bring an action in the district court in the appropriate county to enjoin the acts or practices and to enforce compliance with sections 309.50 to 309.61 or any rule or order thereunder and he may refer the matter to the attorney general. This section shall in no way alter the authority of the attorney general to prosecute violations as set forth in sections 309.57 and 309.59. Upon a proper showing, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted and a receiver may be appointed for the defendant or the defendant's assets. The court may not require the commissioner to post a bond.

Subd. 2. In any proceeding under the provisions of sections 309.50 to 309.61 in relation to injunction or receivership, the same may be brought on for hearing and disposition upon an order to show cause returnable upon not more than eight days notice to the defendant therein. The cases shall have precedence over other cases upon the court calendar, and shall not be continued without the consent of the state, except upon good cause shown to the court, and then only for the reasonable length of time necessary in the opinion of the court to protect the rights of the defendant party.

**History:** 1978 c 601 s 12

### **309.54 PUBLIC RECORD.**

Subdivision 1. Registration statements, annual reports, and other documents required to be filed shall become public records in the office of the department.

Subd. 2. Every person subject to sections 309.50 to 309.61 shall maintain accurate and detailed books and records to provide the information required by sections 309.50 to 309.61. All such books and records shall be open to inspection at all reasonable times by the department or by the attorney general.

Subd. 3. Every charitable organization which is required to file an annual report under section 309.53 shall keep and maintain within Minnesota, at the

place designated in its registration statement, the original books and records, or true copies thereof, pertaining to all money or other property collected from residents of this state and to the disbursement of such money or property. Such books and records shall be preserved for a period of not less than 10 years from the date of preparation thereof.

**History:** 1961 c 309 s 5; 1969 c 112 s 11,12; 1969 c 1129 art 4 s 4; 1973 c 762 s 9

### 309.55 USE OF NAMES.

Subdivision 1. No charitable organization or person acting for a charitable organization shall use the name of any other person (except that of an officer, director or trustee of the charitable organization by or for which contributions are being solicited) in public solicitation literature without the written consent of such other person. Nothing herein contained shall prevent the publication of names of contributors, without their written consent, in an annual or other periodic report issued by a charitable organization for the purpose of reporting to its membership. Nothing in sections 309.52 or 309.53 shall require the disclosure in any registration statement or annual report of the names of individual contributors and the amount contributed by each one individually.

Subd. 2. No charitable organization soliciting contributions shall use a name, symbol or statement so closely related or similar to that used by another charitable organization or governmental agency that the use thereof would tend to confuse or mislead the public.

Subd. 3. Registration under sections 309.50 to 309.61 shall not be deemed to constitute an endorsement by the state of Minnesota of the charitable organizations so registered, and no person shall directly or indirectly misrepresent the registration hereunder to any donor or prospective donor.

Subd. 4. No charitable organization and no person acting on behalf of a charitable organization shall use any uniformed personnel of any local, state or federal agency or department to solicit contributions. This subdivision shall not apply to firefighters who solicit contributions in uniform.

Subd. 5. No charitable organization and no person acting on behalf of a charitable organization shall use or employ any fraud, false pretense, false promise, misrepresentation, misleading statement, misleading name, mark or identification, or deceptive practice, method or device, with the intent that others should rely thereon in connection with any charitable solicitation, including any such actions or omissions designed to confuse or mislead a person to believe that such organization is another organization having the same or like purposes; or to believe that the funds being solicited are or will be used for purposes and programs conducted within or for persons located within the state of Minnesota when such is not the case; or to otherwise present purposes and uses of the funds which are not as provided within the purposes and uses filed upon registration of said organization under this chapter, or if no such registration has been filed, then as provided under the exemption of said organization from federal and state income taxes as an organization formed and operating for charitable purposes as defined herein.

Subd. 6. No person shall, either in his own right or as agent, officer or employee of a charitable organization sell or otherwise furnish for a consideration to any other person any list of contributors.

Subd. 7. No moneys solicited within the state by any organization subject to this chapter shall be paid or contributed by the soliciting organization to any other charitable organization not registered under this chapter by which it is controlled or with which it is affiliated by contract, franchise or otherwise, whose purposes, policies, articles or bylaws are in conflict with those of the

soliciting organization upon any material matter unless such other organization to which such moneys are to be paid or delivered shall agree to be bound by the purposes, policies, articles and bylaws of the soliciting organization.

**History:** 1961 c 309 s 6; 1973 c 762 s 10; 1974 c 367 s 1; 1975 c 386 s 1,2; 1977 c 429 s 63

### **309.555 LIMITATIONS ON CHARITABLE EXPENDITURES.**

Subdivision 1a. Any charitable organization which is required to register pursuant to section 309.52 and which expends or agrees to expend an unreasonable amount for management and general costs and fund raising costs shall not be eligible to maintain registration with the department. An amount expended or agreed to be expended by a charitable organization for management and general costs and fund raising costs in excess of 30 percent of total income and revenue is presumed to be an unreasonable amount. An amount expended or agreed to be expended by a charitable organization for management and general costs and fund raising costs of 30 percent or less of total income and revenue may be challenged as unreasonable by the department or the attorney general. Any expenditures made in violation of this provision shall be recoverable from the charitable organization by the attorney general.

Subd. 1b. Any professional fund raiser who receives or agrees to receive an unreasonable amount for management and general costs and fund raising costs shall not be eligible to maintain a license with the department. An amount received or agreed to be received by a professional fund raiser for management and general costs and fund raising costs in excess of 30 percent of the total contributions raised or received by reason of any solicitation activities is an unreasonable amount. An amount received or agreed to be received by a professional fund raiser for management and general costs and fund raising costs of 30 percent or less of the total contribution raised or received by reason of any solicitation activities may be challenged as unreasonable by the department or the attorney general. Any expenditures made in violation of this provision shall be recoverable by the attorney general from the charitable organization or professional fund raiser or both.

Subd. 2. In the event that goods or services are provided to the public in connection with charitable solicitation, no charitable organization or professional fund raiser shall expend or agree to expend an unreasonable amount for management and general costs and fund raising costs, which is presumed to be an amount in excess of 30 percent of the difference between the cost to the charitable organization of all goods and services sold and the amount for which said goods and services are sold.

Subd. 3. Expenditures made or agreed to be made for management and general costs or fund raising costs shall include payments made or agreed to be made to professional fund raisers as compensation for services or reimbursement for expenses, or both. A charitable organization shall be deemed to have expended or agreed to expend any portion of contributions retained by the professional fund raiser pursuant to a contract with the charitable organization. Expenditures made or agreed to be made for management and general costs or fund raising costs shall also include payments made or agreed to be made to employees of the charitable organization and other persons.

Subd. 4. No person shall use the name of a charitable organization for financial compensation or profit unless the charitable organization has consented to the use of its name in a contract with the person. The contract shall:

(a) be in writing, and a copy thereof shall be filed with the department within seven days of the date of execution;

(b) disclose the amount of financial compensation or profit to be retained by the person;

(c) disclose the percentage of the total gross amount of moneys, funds, pledges or other property raised or received or to be raised or received in connection with the use of the name of the charitable organization which will be given to the charitable organization.

Subd. 5. In an action brought by the department or the attorney general pursuant to sections 309.532 or 309.57, a charitable organization may interpose as a defense to a violation of this section that fund raising costs and management and general costs in excess of 30 percent are reasonable because of extenuating or mitigating circumstances.

**History:** *Ex1967 c 49 s 3; 1969 c 112 s 13; 1973 c 762 s 11; 1978 c 601 s 13*

### 309.556 PUBLIC DISCLOSURE REQUIREMENTS.

In connection with any charitable solicitation, the following information shall be clearly disclosed:

(a) The name, address and telephone number of each charitable organization on behalf of which the solicitation is made;

(b) The percentage of the contribution which may be deducted as a charitable contribution under both federal and state income tax laws.

If the solicitation is made by direct contact, the required information shall be disclosed prominently on a card which shall be exhibited to the person solicited. If the solicitation is made by radio, television, letter, telephone or any other means not involving direct personal contact, the required information shall be clearly disclosed in the solicitation.

**History:** *1973 c 762 s 12*

### 309.56 SERVICE OF PROCESS.

Subdivision 1. Any charitable organization or professional fund raiser which solicits contributions in this state, but does not maintain an office within the state shall be subject to service of process, as follows:

(a) By service thereof on its registered agent within the state, or if there be no such registered agent, then upon the person who has been designated in the registration statement as having custody of books and records within this state; where service is effected upon the person so designated in the registration statement a copy of the process shall, in addition, be mailed to the charitable organization or professional fund raiser at its last known address;

(b) When a charitable organization or professional fund raiser has solicited contributions in this state, but maintains no office within the state, has no registered agent within the state, and no designated person having custody of its books and records within the state, or when a registered agent or person having custody of its books and records within the state cannot be found as shown by the return of the sheriff of the county in which such registered agent or person having custody of books and records has been represented by the charitable organization or professional fund raiser as maintaining an office, service may be made by leaving a copy of the process in the office of the commissioner. Service upon the commissioner is not effective unless (a) the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by certified mail to the defendant or respondent at his last known address or takes other steps which are reasonably calculated to give actual notice, and (b) the plaintiff's affidavit of compliance with this subdivision is filed in the case on or before the return day of the process, if any, or within a further time the court allows.

Subd. 2. The solicitation of any contribution within this state shall be deemed to be the agreement of the charitable organization or professional fund raiser that any process against it which is so served in accordance with the provisions of this section shall be of the same legal force and effect as if served personally within this state.

**History:** 1961 c 309 s 7; 1969 c 1129 art 4 s 4; 1973 c 762 s 13; 1978 c 601 s 14; 1978 c 674 s 60

### **309.57 DISTRICT COURT JURISDICTION.**

Upon the application of the attorney general the district court is vested with jurisdiction to restrain and enjoin violations of sections 309.50 to 309.61.

**History:** 1961 c 309 s 8

### **309.58 VIOLATIONS; WITNESSES; TESTIMONY.**

Whenever the department or the attorney general has reason to believe that a violation of sections 309.50 to 309.61 has been committed or may be committed by a charitable organization or professional fund raiser, or its officers, directors, trustees, agents or servants, either the department or the attorney general may request information relevant to the provisions of sections 309.50 to 309.61 from such charitable organization or professional fund raiser. If, in the opinion of the department or the attorney general, such charitable organization or professional fund raiser, through its managing group, fails to furnish the information requested, or fails to satisfy the department or the attorney general that the charitable organization or professional fund raiser or its officers, directors, trustees, agents or servant do not have or cannot acquire the information requested, the registration statement of such charitable organization or the license of the professional fund raiser may be suspended, revoked or censured by the department in accordance with the provisions of section 309.532.

**History:** 1961 c 309 s 9; 1971 c 24 s 33; 1973 c 762 s 14

### **309.581 VIOLATIONS; PENALTIES.**

Any person who wilfully and knowingly violates any provision of sections 309.50 to 309.61, or who wilfully and knowingly gives false information to the department or attorney general in statements, reports or contracts required to be filed with the department by sections 309.50 to 309.61 shall be guilty of a misdemeanor.

**History:** 1969 c 112 s 14; 1969 c 1129 art 4 s 4; 1976 c 2 s 123

### **309.582 CONSULTANTS.**

The attorney general may retain as consultants such accountants or other experts as the administration of this chapter may require.

**History:** 1969 c 112 s 15

### **309.583 [ Repealed, 1976 c 2 s 124 ]**

### **309.59 CONSTRUCTION; POWERS OF ATTORNEY GENERAL.**

Sections 309.50 to 309.61 shall not be construed to limit or to restrict the exercise of the powers or the performance of the duties of the attorney general which he otherwise is authorized to exercise or perform under any other provision of law.

**History:** 1961 c 309 s 10

**309.591 RULE MAKING POWER.**

The commissioner of securities and real estate of the department of commerce may promulgate such rules as are reasonably necessary to carry out and make effective the provisions and purposes of this chapter.

**History:** 1973 c 762 s 15; 1980 c 516 s 2

**309.60 RECIPROCAL AGREEMENTS, OTHER STATES.**

The department may enter into reciprocal agreements with a like authority of any other state or states for the purpose of exchanging information made available to the department or to such other like authority.

**History:** 1961 c 309 s 11; 1969 c 1129 art 4 s 4; 1973 c 762 s 16

**309.61 SEVERABILITY.**

If any provision of sections 309.50 to 309.61 or the application thereof to any person or circumstance is held invalid the invalidity shall not affect other provisions or application of said sections which can be given effect without the invalid provision or application, and to this end the provisions of said sections are severable.

**History:** 1961 c 309 s 12

**309.62 UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT; DEFINITIONS.**

Subdivision 1. For the purposes of sections 309.62 to 309.68, the following terms shall have the meanings here given them.

Subd. 2. "Institution" means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes, or a governmental organization to the extent that it holds funds exclusively for any of these purposes.

Subd. 3. "Institutional fund" means a fund held by an institution for its exclusive use, benefit, or purposes, but does not include (a) a fund held for an institution by a trustee that is not an institution or (b) a fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund.

Subd. 4. "Endowment fund" means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.

Subd. 5. "Historic dollar value" means the aggregate fair value in dollars of (a) an endowment fund at the time it became an endowment fund, (b) each subsequent donation to the fund at the time it is made, and (c) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund. The determination of historic dollar value made in good faith by the institution is conclusive.

Subd. 6. "Gift instrument" means a will, deed, grant, conveyance, agreement, memorandum, writing, or other governing document, including the terms of any institutional solicitations from which an institutional fund resulted, under which property is transferred to or held by an institution as an institutional fund.

**History:** 1973 c 313 s 1

**309.63 APPROPRIATION OF APPRECIATION.**

The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard

established by section 309.67. This section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument, or the charter of the institution.

**History:** 1973 c 313 s 2

### 309.64 RULE OF CONSTRUCTION.

Section 309.63 does not apply if the applicable gift instrument indicates the donor's intention that net appreciation shall not be expended. A restriction upon the expenditure of net appreciation may not be implied from a designation of a gift as an endowment, or from a direction or authorization in the applicable gift instrument to use only "income," "interest," "dividends," or "rents, issues or profits," or "to preserve the principal intact," or a direction which contains other words of similar import. This rule of construction applies to gift instruments executed or in effect before or after August 1, 1973.

**History:** 1973 c 313 s 3

### 309.65 INVESTMENT AUTHORITY.

In addition to an investment otherwise authorized by law or by the applicable gift instrument, and without restriction to investments a fiduciary may make, the governing board, subject to any specific limitations set forth in the applicable gift instrument or in the applicable law other than law relating to investments by a fiduciary, may:

(1) invest and reinvest an institutional fund in any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures, and other securities of profit or nonprofit corporations, shares in or obligations of associations, partnerships, or individuals, and obligations of any government or subdivision or instrumentality thereof;

(2) retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable;

(3) include all or any part of an institutional fund in any pooled or common fund maintained by the institution; and

(4) invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts, or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board.

**History:** 1973 c 313 s 4

### 309.66 DELEGATION OF INVESTMENT MANAGEMENT.

Except as otherwise provided by the applicable gift instrument or by applicable law relating to governmental institutions or funds, the governing board may (1) delegate to its committees, officers or employees of the institution or the fund, or agents, including investment counsel, the authority to act in place of the board in investment and reinvestment of institutional funds, (2) contract with independent investment advisors, investment counsel or managers, banks, or trust companies, so to act, and (3) authorize the payment of compensation for investment advisory or management services.

**History:** 1973 c 313 s 5

**309.67 STANDARD OF CONDUCT.**

In the administration of the powers to appropriate appreciation, to make and retain investments, and to delegate investment management of institutional funds, members of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. In so doing they shall consider long and short term needs of the institution in carrying out its educational, religious, charitable, or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions.

**History:** 1973 c 313 s 6

**309.68 RELEASE OF RESTRICTIONS ON USE OR INVESTMENT.**

Subdivision 1. With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

Subd. 2. If written consent of the donor cannot be obtained by reason of his death, disability, unavailability, or impossibility of identification, the governing board may apply in the name of the institution to the district court for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The attorney general shall be notified of the application and shall be given an opportunity to be heard. If the court finds that the restriction is obsolete, inappropriate, or impracticable, it may by order release the restriction in whole or in part. A release under this subsection may not change an endowment fund to a fund that is not an endowment fund.

Subd. 3. A release under this section may not allow a fund to be used for purposes other than the educational, religious, charitable, or other eleemosynary purposes of the institution affected.

Subd. 4. This section does not limit the application of the doctrine of cy pres.

**History:** 1973 c 313 s 7

**309.69 SEVERABILITY.**

If any provision of sections 309.62 to 309.71 or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of sections 309.62 to 309.71 which can be given effect without the invalid provision or application, and to this end the provisions of sections 309.62 to 309.71 are declared severable.

**History:** 1973 c 313 s 8

**309.70 UNIFORMITY OF APPLICATION AND CONSTRUCTION.**

Sections 309.62 to 309.71 shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of sections 309.62 to 309.71 among those states which enact it.

**History:** 1973 c 313 s 9

**309.71 CITATION.**

Sections 309.62 to 309.71 may be cited as the "uniform management of institutional funds act."

**History:** 1973 c 313 s 10