

## CHAPTER 309

### SOCIAL AND CHARITABLE ORGANIZATIONS

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**309.01** [Repealed, 1951 c 550 s 78]

**309.02** [Repealed, 1951 c 550 s 78]

**309.023** [Repealed, 1951 c 550 s 78]

**309.03** [Repealed, 1951 c 550 s 78]

**309.04** [Repealed, 1951 c 550 s 78]

**309.05** [Repealed, 1951 c 550 s 78]

**309.06** [Repealed, 1951 c 550 s 78]

**309.07** [Repealed, 1951 c 550 s 78]

**309.08** [Repealed, 1951 c 550 s 78]

**309.09** [Repealed, 1951 c 550 s 78]

**309.10** [Repealed, 1971 c 568 s 27]

**309.11** [Repealed, 1971 c 568 s 27]

**309.12** [Repealed, 1971 c 568 s 27]

**309.13** [Repealed, 1971 c 568 s 27]

**309.14** [Repealed, 1971 c 568 s 27]

**309.15** [Repealed, 1971 c 568 s 27]

**309.16** [Repealed, 1971 c 568 s 27]

**309.17** [Repealed, 1971 c 568 s 27]

**309.171** [Repealed, 1971 c 568 s 27]

**309.175** [Repealed, 1971 c 568 s 27]

**309.176** [Repealed, 1973 c 494 s 6; 1973 c 651 s 4]

**309.18** [Repealed, 1951 c 550 s 78]

**309.19** [Repealed, 1951 c 550 s 78]

**309.20** [Repealed, 1951 c 550 s 78]

## REGULATION OF CHARITABLE SOLICITATIONS

### 309.50 SOLICITATION OF CHARITABLE FUNDS; DEFINITIONS.

Subdivision 1. **Scope.** 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.** "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.** "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.** "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.** "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.** "Professional fund-raiser" means any person who for financial compensation or profit performs for a charitable organization any service in connection with which contributions are, or will be, solicited in this state by the compensated person or by any compensated person the person employs, procures, or engages to solicit; or any person who for compensation or profit plans,

manages, advises, consults, or prepares material for, or with respect to, the solicitation in this state of contributions for a charitable organization. No investment adviser, investment adviser representative, broker-dealer, or agent licensed pursuant to chapter 80A, or lawyer, accountant, or banker who advises a person to make a charitable contribution or who provides legal, accounting, or financial advice in the ordinary course of a profession or business shall be deemed, as a result of the advice, to be a professional fund-raiser. A bona fide salaried officer, employee, or volunteer of a charitable organization is not a professional fund-raiser.

Subd. 6a. **Accounting year.** "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. [Repealed, 2006 c 212 art 1 s 26]

Subd. 9. **Parent organization.** "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; solicitation.** "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.** "Management and general costs" means costs determined to be management and general by generally accepted accounting principles.

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

Expenses incurred in planning or developing a fund-raising campaign, regardless of whether the expenses are incurred before, during, or after that campaign, constitute fund-raising costs.

**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; 1983 c 75 s 1; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 1987 c 336 s 27

**309.501** [Repealed, 2007 c 101 s 4]

**309.502** [Repealed, 1993 c 192 s 110]

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

**309.515 EXEMPTIONS.**

Subdivision 1. **Registration and reporting exemption.** 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 \$25,000, exclusive of the direct cost of prizes given to the public by the charitable organization in connection with lawful gambling conducted in compliance with chapter 349, 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 contributions solicited from the public by it, the contributions 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 is exempt from filing a federal annual information return pursuant to Internal Revenue Code, section 6033(a)(2)(A)(i) and (iii), and Internal Revenue Code, section 6033(a)(2)(C)(i).

(c) Any educational institution which is under the general supervision of the commissioner of education, the Board of Trustees of the Minnesota State Colleges and Universities, 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 the person's 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.

(g) An auctioneer licensed and bonded under chapter 330 who is conducting a live auction who has no access to the proceeds of the auction is not subject to the registration and reporting requirements of this chapter, and is not considered a professional fund-raiser for the purposes of subdivision 2.

Subd. 2. **Limitation.** Where any such group or association or person soliciting for the benefit of such group or association described in subdivision 1, clauses (a) 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. [Repealed, 1987 c 336 s 47]

**History:** 1973 c 349 s 2; 1973 c 762 s 5; 1975 c 321 s 2; 1978 c 601 s 5; 1983 c 284 s 17; 1985 c 248 s 70; 1986 c 444; 1987 c 336 s 28; 1989 c 151 s 1; 1996 c 395 s 18; 1998 c 398 art 5 s 55; 2003 c 130 s 12; 2008 c 181 s 1

### **309.52 STATEMENT REQUIREMENT.**

Subdivision 1. **Filing; contents.** 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 attorney general upon forms provided by the attorney general, 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, and total annual compensation paid to, 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 attorney general 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 attorney general.

Subd. 1a. **Certain charitable organizations.** A charitable organization whose total contributions received during any accounting year are in excess of \$25,000, exclusive of the direct cost of prizes given to the public by the charitable organization in connection with lawful gambling conducted in compliance with chapter 349, shall file a registration statement with the attorney general within 30 days after the date on which the organization's total contributions exceeded \$25,000, exclusive of the direct cost of prizes given to the public by the charitable organization in connection with lawful gambling conducted in compliance with chapter 349. The registration shall exist unless revoked by a court of competent jurisdiction, or the attorney general, 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. **Registration fee and financial statement.** The registration statement filed by a charitable organization shall include a registration fee of \$25 and a financial statement of the organization's operation for its most recent 12 months period immediately preceding the filing of the first registration statement.

Subd. 3. **How executed.** 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. **Affiliate filing on behalf of parent.** 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. **Failure to file.** 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, including the payment of all required fees, 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 attorney general.

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

Subd. 9. **Special purpose organization.** A charitable organization that is organized and operated primarily for the purpose of offering and paying rewards for information leading to the apprehension or conviction of criminal suspects and that satisfies subdivision 10 shall not be required to include in its registration statement the information described in subdivision 1, clauses (f) and (o), or the financial statement described in subdivision 2, and notwithstanding subdivision 3, its registration statement may be executed by the mayor, city manager, or chief of police of the municipality, if any, with which the organization is primarily associated.

Subd. 10. **Application of subdivision 9 to certain organizations.** Subdivision 9 applies to an organization whose financial statement described in subdivision 2 has been audited and reported on by a certified public accountant and made available with the accountant's report for inspection by its members and by the mayor, city manager, or chief of police of the municipality, if any, with which the organization is primarily associated, and whose registration statement contains a certificate of compliance with this subdivision.

**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; 1982 c 585 s 1,2; 1987 c 336 s 29,30,46; 1992 c 503 s 1; 1995 c 235 s 2,3

### 309.53 ANNUAL REPORT.

Subdivision 1. **Required filing.** Every charitable organization that is required to file or that files a registration statement pursuant to section 309.52 shall file an annual report with the attorney general upon forms provided by the attorney general or on forms identical thereto on or before July 15 of each year if its books are kept on a calendar year basis, or on or before the 15th day of the seventh month following the close of its fiscal year if its books are kept on a fiscal year basis. For cause shown the attorney general may extend the time for filing the annual report for a period not to exceed four months.

Subd. 1a. [Repealed, 1995 c 235 s 17]

Subd. 2. **Contents; effect of filing and failure to file.** Such annual report shall include a financial statement covering the immediately preceding 12-month period of operation, shall be executed by any two duly constituted officers of the charitable organization, and shall be 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. Except as provided in section 309.55, subdivision 1, the annual report shall also include a copy of all tax or information returns, including all schedules and amendments, submitted by the charitable organization to the Internal Revenue Service for the period covered by the annual report except any schedules of contributors to the organization.

A charitable organization which files the annual report required under this subdivision with the attorney general is not required to file the tax return with the commissioner of revenue. An organization which fails to file the annual report on or before the date required or allowed under this section shall pay a late fee of \$50. This late fee shall be in addition to all other fees, costs, and penalties which may be imposed pursuant to this section or section 309.57.

Subd. 3. **Financial statement requirements.** 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 attorney general, 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) program services;
- (d) cost of fund-raising;
- (e) cost of public education;
- (f) funds or properties transferred out of state, with explanation as to recipient and purpose;

(g) total net amount disbursed or dedicated within this state, broken down into total amounts disbursed or dedicated for each major purpose, charitable or otherwise;

(h) names of professional fund-raisers used during the accounting year and the financial compensation and profit resulting to each professional fund-raiser; and

(i) a list of the five highest paid directors, officers, and employees of the organization and its related organizations, as that term is defined by section 317A.011, subdivision 18, that receive total compensation of more than \$100,000, together with the compensation paid to each. For purposes of this subdivision, "compensation" is defined as the total amount reported on Form W-2 (Box 5) or Form 1099-MISC (Box 7) issued by the organization and its related organizations to the individual. The value of fringe benefits and deferred compensation paid by the charitable organization and all related organizations as that term is defined by section 317A.011, subdivision 18, shall also be reported as a separate item for each person whose compensation is required to be reported pursuant to this subdivision.

Unless otherwise required by this subdivision, the financial statement need not be certified.

A financial statement of a charitable organization which has received total revenue in excess of \$750,000 for the 12 months of operation covered by the statement shall be accompanied by an audited financial statement prepared in accordance with generally accepted accounting principles that has been examined by an independent certified public accountant for the purpose of expressing an opinion. In preparing the audit the certified public accountant shall take into consideration capital, endowment or other reserve funds, if any, controlled by the charitable organization. For purposes of calculating the \$750,000 total revenue threshold provided by this subdivision, the value of donated food to a nonprofit food shelf may not be included if the food is donated for subsequent distribution at no charge, and not for resale.

**Subd. 3a. Filing of federal tax return.** The federal tax return may be filed in lieu of other financial statements if it is prepared in accordance with generally accepted accounting principles and meets the requirements for financial statements set forth in subdivisions 2, 3, and 4.

**Subd. 4. Registered parent organization.** 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 \$25,000, exclusive of the direct cost of prizes given to the public by the charitable organization in connection with lawful gambling conducted in compliance with chapter 349. The attorney general 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 interests of the charitable beneficiaries will not be prejudiced thereby and separate accounting information is not required for proper supervision.

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

**Subd. 6. Special purpose organization.** A charitable organization that is organized and operated primarily for the purpose of offering and paying rewards for information leading to the apprehension or conviction of criminal suspects and that satisfies subdivision 7 shall not be required to include in its annual report the financial statement described in subdivisions 2 and 3, and notwithstanding subdivision 2, its annual



report may be executed by the mayor, city manager, or chief of police of the municipality, if any, with which the organization is primarily associated.

**Subd. 7. Application of subdivision 6 to certain organizations.** Subdivision 6 applies to an organization whose financial statement described in subdivisions 2 and 3 has been audited and reported on by a certified public accountant and made available with the accountant's report for inspection by its members and by the mayor, city manager, or chief of police of the municipality, if any, with which the organization is primarily associated, and whose annual report contains a certificate of compliance with this subdivision.

**Subd. 8. Reregistration fee.** A reregistration fee of \$25 shall be paid by every charitable organization submitting the annual report required by this section.

**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; 1981 c 148 s 1; 1982 c 585 s 3,4; 1983 c 284 s 18,19; 1983 c 289 s 114 subd 1; 1983 c 301 s 184,185; 1984 c 655 art 1 s 92; 1987 c 336 s 31-34,46; 1994 c 465 art 1 s 37; 1995 c 235 s 4-7; 1996 c 384 s 3; 2000 c 302 s 1; 2001 c 45 s 1,2; 2008 c 318 art 1 s 13; 2009 c 88 art 12 s 11; 2011 c 25 s 1

### **309.531 REGISTRATION OF PROFESSIONAL FUND-RAISERS.**

**Subdivision 1. General requirements.** No person shall act as a professional fund-raiser unless registered with the attorney general. The registration statement must be in writing, under oath, in the form prescribed by the attorney general and must be accompanied by a registration fee of \$200. Each registration is effective for a period of not more than 12 months and in any event expires on April 30 next following the date of registration. The registration may be renewed for additional one-year periods on application and payment of all required fees. A professional fund-raiser failing to register on the date required by this section or failing to file the financial report required by this section on or before the date provided shall pay a late fee of \$300. This late fee shall be in addition to all other fees, costs, and penalties which may be imposed pursuant to this section or section 309.57.

**Subd. 2. Required registration statement.** The registration statement of the professional fund-raiser shall consist of the following:

(a) If the professional fund-raiser at any time has custody of or access to contributions from a solicitation, or if any person the professional fund-raiser employs, obtains, or engages has custody of or access to contributions from a solicitation, the registration statement shall include a bond, in which the professional fund-raiser shall be the principal obligor. The bond shall be in the sum of \$20,000, with one or more responsible sureties whose liability in the aggregate as the sureties will at least equal that sum. In order to maintain the registration, the bond shall be in effect for the full term of the registration. The bond, which may be in the form of a rider to a larger blanket liability bond, shall run to the state and to any person who may have a cause of action against the principal obligor of the bond for any liabilities resulting from the obligor's conduct of any activities subject to sections 309.50 to 309.61 or arising out of a violation of the statutes or a rule adopted under the statutes.

(b) If the professional fund-raiser, or any person the professional fund-raiser employs, procures, or engages, solicits in this state, the registration statement shall include a completed "solicitation notice" on a form provided by the attorney general. The solicitation notice shall include a copy of the contract described in paragraph (c), the projected dates when soliciting will commence and terminate, the location and telephone number from where the solicitation will be conducted, the name and residence address of each person responsible for directing and supervising the conduct of the campaign, a statement as to whether the professional fund-raiser will at any time have custody of contributions, and a description of the charitable program for which the solicitation campaign is being carried out. The charitable organization on whose

behalf the professional fund-raiser is acting shall certify that the solicitation notice and accompanying material are true and complete to the best of its knowledge.

(c) The professional fund-raiser shall also include, as part of the registration statement, a copy of the contract between the charitable organization and the professional fund-raiser. The contract shall:

(1) be in writing;

(2) contain information as will enable the attorney general to identify the services the professional fund-raiser is to provide, including whether the professional fund-raiser will at any time have custody of contributions; and

(3) if the professional fund-raiser or any person the professional fund-raiser employs, procures, or engages, directly or indirectly, solicits in this state, the contract shall disclose the percentage or a reasonable estimate of the percentage of the total amount solicited from each person which shall be received by the charitable organization for charitable purposes.

The stated percentages required by this section and section 309.556, subdivision 2, shall exclude any amount which the charitable organization is to pay as expenses of the solicitation campaign, including the cost of merchandise or services sold or events staged.

(d) The registration statement shall also include the financial report for previous campaigns conducted by the professional fund-raiser in this state as set forth in subdivision 4.

**Subd. 3. Solicitations on behalf of charity; written authorization.** No professional fund-raiser shall use the name of or solicit on 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 attorney general. Such written authorization shall conform to the requirements of the contract described in subdivision 2, clause (c).

**Subd. 4. Solicitation campaign; financial report.** Within 90 days after a solicitation campaign has been completed, and 90 days following the anniversary of the commencement of a solicitation campaign lasting more than one year, the professional fund-raiser who solicited contributions in this state in conjunction with a charitable organization shall file with the attorney general a financial report for the campaign, including gross revenue and an itemization of all expenses incurred. The report shall be completed on a form prescribed by the attorney general. The report shall be signed by an authorized official of the professional fund-raiser and an authorized official from the charitable organization and they shall certify, under oath, that it is true to the best of their knowledge.

**History:** 1973 c 762 s 8; 1987 c 336 s 35; 1987 c 358 s 115; 1989 c 151 s 2; 1994 c 465 art 3 s 10; 1995 c 235 s 8,9

**309.532** [Repealed, 1987 c 336 s 47]

### **309.533 INVESTIGATIONS.**

Subdivision 1. **Attorney general investigation powers.** The attorney general:

(a) may make public or private investigations within or outside the state as deemed necessary by the attorney general 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 attorney general determines, as to all facts and circumstances concerning the matter being investigated.

Subd. 2. [Repealed, 1987 c 336 s 47]

Subd. 3. [Repealed, 1987 c 336 s 47]

Subd. 4. [Repealed, 1987 c 336 s 47]

Subd. 5. **Attorney general discovery powers.** In connection with an investigation under this section, the attorney general may obtain discovery from any person regarding any matter, fact, or circumstance, not privileged, that is relevant to the subject matter involved in the investigation, in accordance with the provisions of section 8.31.

**History:** 1978 c 601 s 11; 1986 c 444; 1987 c 336 s 36,46

**309.534** [Repealed, 1987 c 336 s 47]

### **309.54 RECORDS.**

Subdivision 1. **Filed documents are public records.** Registration statements, annual reports, and other documents required to be filed shall become public records in the Office of the Attorney General.

Subd. 2. **Inspection by attorney general.** Every person subject to sections 309.50 to 309.61 shall maintain, for not less than three years from the date of preparation, 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 attorney general.

Subd. 3. **Retention of books and records.** Every charitable organization which is required to file an annual report under section 309.53 shall keep and maintain, 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 three 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; 1987 c 336 s 37; 1995 c 235 s 10

### **309.55 PROHIBITED PRACTICES.**

Subdivision 1. **Use of names.** 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 section 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. **Confusing or misleading names, symbols, or statements.** 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. **Misrepresentation of registration.** 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. **Use of uniformed state or local personnel.** 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. **False or deceptive practices.** 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. **Sale of contributor list.** No person shall, either as an individual 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 unless the contributor has consented to the transaction.

Subd. 7. **Soliciting organization payments to unregistered organization.** 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; 1986 c 444; 1987 c 336 s 38

**309.555** [Repealed, 1987 c 336 s 47]

### **309.556 PUBLIC DISCLOSURE REQUIREMENTS.**

Subdivision 1. **Identity of organization; percentage of deductibility; description of program.** Prior to orally requesting a contribution or contemporaneously with a written request for a contribution, the following information shall be clearly disclosed:

(a) the name and location by city and state of each charitable organization on behalf of which the solicitation is made;

(b) the tax deductibility of the contribution; and

(c) a description of the charitable program for which the solicitation campaign is being carried out; and, if different, a description of the programs and activities of the organization on whose behalf the solicitation campaign is being carried out.

If the solicitation is made by direct personal contact, the required information shall also be disclosed prominently on a written document 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.

**Subd. 2. Identity of professional fund-raiser.** In addition to the disclosures required by subdivision 1, any professional fund-raiser soliciting contributions in this state shall also disclose the name of the professional fund-raiser as on file with the attorney general and that the solicitation is being conducted by a "professional fund-raiser." The disclosures required by this subdivision shall be given in the same manner as the disclosures required by subdivision 1.

**History:** 1973 c 762 s 12; 1984 c 527 s 1; 1987 c 336 s 39; 1989 c 151 s 3; 1995 c 235 s 11

### **309.56 SERVICE OF PROCESS.**

Subdivision 1. **Manner.** 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, if any, 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 as in any other civil suit, or in the manner provided by section 5.25, or in a manner as the court may direct.

**Subd. 2. Consent to service.** 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; 1986 c 444; 1987 c 336 s 40; 1995 c 128 art 1 s 10

### **309.57 DISTRICT COURT JURISDICTION, PENALTIES, ENFORCEMENT.**

Subdivision 1. **General.** Upon the application of the attorney general the district court is vested with jurisdiction to restrain, enjoin, and redress violations of sections 309.50 to 309.61. The court may make any necessary order or judgment including, but not limited to, injunctions, restitution, appointment of a receiver for the defendant or the defendant's assets, suspension of the defendant's registration, awards of reasonable attorney fees, and costs of investigation and litigation, and may award to the state civil penalties up to \$25,000

for each violation of sections 309.50 to 309.61. In ordering injunctive relief, the attorney general shall not be required to establish irreparable harm but only a violation of statute or that the requested order promotes the public interest. The court may, as appropriate, enter a consent judgment or decree without the finding of illegality.

Subd. 2. **Assurance of discontinuance.** The attorney general may accept an assurance of discontinuance of any method, act, or practice in violation of sections 309.50 to 309.61 from any person alleged to be engaged or to have been engaged in the method, act, or practice. The assurance may, among other terms, include a stipulation for the voluntary payment by the person of the costs of investigation, or of an amount to be held in escrow pending the outcome of an action or as restitution to aggrieved persons, or both. Any assurance of discontinuance shall be in writing and be filed with the district court of the county of the violator's residence or principal place of business or in Ramsey County. An assurance shall not be considered an admission of a violation for any purpose. Failure to comply with the assurance of discontinuance shall be punishable as contempt.

**History:** 1961 c 309 s 8; 1987 c 336 s 41; 1989 c 151 s 4

**309.58** [Repealed, 1987 c 336 s 47]

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

Any person who willfully and knowingly violates any provision of sections 309.50 to 309.61, or who willfully and knowingly gives false information to the attorney general in statements, reports, or contracts required to be filed 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; 1987 c 336 s 46

### **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 the attorney general otherwise is authorized to exercise or perform under any other provision of law.

**History:** 1961 c 309 s 10; 1986 c 444

### **309.591 RULEMAKING POWER.**

The attorney general 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; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1987 c 336 s 46

**309.60 RECIPROCAL AGREEMENTS, OTHER STATES.**

The attorney general 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 attorney general or to such other like authority.

**History:** *1961 c 309 s 11; 1969 c 1129 art 4 s 4; 1973 c 762 s 16; 1987 c 336 s 46*

**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** [Repealed, 2008 c 188 s 10]

**309.63** [Repealed, 2008 c 188 s 10]

**309.64** [Repealed, 2008 c 188 s 10]

**309.65** [Repealed, 2008 c 188 s 10]

**309.66** [Repealed, 2008 c 188 s 10]

**309.67** [Repealed, 2008 c 188 s 10]

**309.68** [Repealed, 2008 c 188 s 10]

**309.69** [Repealed, 2008 c 188 s 10]

**309.70** [Repealed, 2008 c 188 s 10]

**309.71** [Repealed, 2008 c 188 s 10]

**ACQUIRING INTERESTS IN INSURANCE****309.72 ACQUISITION OF INTERESTS IN INSURANCE.**

An organization described in section 170(c) of the Internal Revenue Code of 1986, as amended through December 31, 1991, may purchase, accept, or otherwise acquire an interest in a life insurance policy as beneficiary or owner, as provided in section 60A.0783, subdivision 2, paragraph (f).

**History:** *1992 c 483 s 3; 2010 c 382 s 63*

**PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS****309.73 SHORT TITLE.**

Sections 309.73 to 309.77 may be cited as the "Uniform Prudent Management of Institutional Funds Act."

**History:** *2008 c 188 s 1*

**309.735 DEFINITIONS.**

In sections 309.735 to 309.77:

(1) "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, or any other eleemosynary purpose.

(2) "Endowment fund" means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates as an endowment fund for its own use.

(3) "Gift instrument" means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

(4) "Institution" means:

(A) a person, other than an individual, organized and operated exclusively for charitable purposes;

(B) a government or governmental subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; and

(C) a trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.

(5) "Institutional fund" means a fund held by an institution exclusively for charitable purposes. The term does not include:

(A) program-related assets;

(B) a fund held for an institution by a trustee that is not an institution; or

(C) a fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(7) "Program-related asset" means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

**History:** 2008 c 188 s 2

**309.74 STANDARD OF CONDUCT IN MANAGING AND INVESTING INSTITUTIONAL FUND.**

(a) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(b) In addition to complying with the duty of loyalty imposed by law other than sections 309.73 to 309.77, each person responsible for managing and investing an institutional fund shall manage and invest



the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(c) In managing and investing an institutional fund, an institution:

(1) may incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and

(2) shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(d) An institution may pool two or more institutional funds for purposes of management and investment.

(e) Except as otherwise provided by a gift instrument, the following rules apply:

(1) In managing and investing an institutional fund, the following factors, if relevant, must be considered:

(A) general economic conditions;

(B) the possible effect of inflation or deflation;

(C) the expected tax consequences, if any, of investment decisions or strategies;

(D) the role that each investment or course of action plays within the overall investment portfolio of the fund;

(E) the expected total return from income and the appreciation of investments;

(F) other resources of the institution;

(G) the needs of the institution and the fund to make distributions and to preserve capital; and

(H) the asset's special relationship or special value, if any, to the charitable purposes of the institution.

(2) Management and investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.

(3) Except as otherwise provided by law other than sections 309.73 to 309.77, an institution may invest in any kind of property or type of investment consistent with this section.

(4) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.

(5) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of sections 309.73 to 309.77.

(6) A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

**History:** 2008 c 188 s 3

**309.745 APPROPRIATION FOR EXPENDITURE OR ACCUMULATION OF ENDOWMENT FUND; RULES OF CONSTRUCTION.**

(a) Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

- (1) the duration and preservation of the endowment fund;
- (2) the purposes of the institution and the endowment fund;
- (3) general economic conditions;
- (4) the possible effect of inflation or deflation;
- (5) the expected total return from income and the appreciation of investments;
- (6) other resources of the institution; and
- (7) the investment policy of the institution.

(b) To limit the authority to appropriate for expenditure or accumulate under paragraph (a), a gift instrument must specifically state the limitation.

(c) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or words of similar import:

- (1) create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and
- (2) do not otherwise limit the authority to appropriate for expenditure or accumulate under paragraph (a).

**History:** 2008 c 188 s 4; 2009 c 86 art 1 s 56

**309.75 DELEGATION OF MANAGEMENT AND INVESTMENT FUNCTIONS.**

(a) Subject to any specific limitation set forth in a gift instrument or in law other than sections 309.73 to 309.77, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

- (1) selecting an agent;
- (2) establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and
- (3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(c) An institution that complies with subsection (a) is not liable for the decisions or actions of an agent to which the function was delegated.

(d) By accepting delegation of a management or investment function from an institution that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

(e) An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law of this state other than sections 309.73 to 309.77.

**History:** 2008 c 188 s 5

### **309.755 RELEASE OR MODIFICATION OF RESTRICTIONS ON MANAGEMENT, INVESTMENT, OR PURPOSE.**

(a) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(b) The court, upon application of an institution, may modify a restriction contained in the gift instrument of an institutional fund pursuant to the procedure, and in accordance with the standards, set forth in section 501B.31, subdivision 2 or 4, whichever is applicable.

(c) If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, 60 days after notification to the attorney general, may release or modify the restriction, in whole or part, if:

(1) the institutional fund subject to the restriction has a total value of less than \$50,000;

(2) more than 20 years have elapsed since the fund was established; and

(3) the institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

**History:** 2008 c 188 s 6

### **309.76 REVIEWING COMPLIANCE.**

Compliance with sections 309.73 to 309.77 is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight.

**History:** 2008 c 188 s 7

### **309.765 APPLICATION TO EXISTING INSTITUTIONAL FUNDS.**

Sections 309.73 to 309.77 apply to institutional funds existing on or established after August 1, 2008. As applied to institutional funds existing on August 1, 2008, sections 309.73 to 309.77 govern only decisions made or actions taken on or after that date.

**History:** 2008 c 188 s 8

**309.77 RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.**

Sections 309.73 to 309.77 modify, limit, and supersede the Electronic Signatures in Global and National Commerce Act, United States Code, title 15, section 7001 et seq., but do not modify, limit, or supersede section 101 of that act, United States Code, title 15, section 7001(a), or authorize electronic delivery of any of the notices described in section 103 of that act, United States Code, title 15, section 7003(b).

**History:** 2008 c 188 s 9