

Presented to the governor May 23, 1995

Signed by the governor May 25, 1995, 2:32 p.m.

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CHAPTER 235—S.F.No. 579

*An act relating to commerce; regulating charitable organizations; regulating filing statement; appropriating money; amending Minnesota Statutes 1994, sections 309.501, subdivision 1; 309.52, subdivisions 2 and 7; 309.53, subdivisions 1, 2, 3, and 8; 309.531, subdivisions 1 and 4; 309.54, subdivision 1; 309.556, subdivision 1; 501B.36; 501B.37, subdivision 2, and by adding a subdivision; and 501B.38; repealing Minnesota Statutes 1994, section 309.53, subdivision 1a.*

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

Section 1. Minnesota Statutes 1994, section 309.501, subdivision 1, is amended to read:

Subdivision 1. **DEFINITIONS.** (a) As used in this section, the following terms have the meanings given them.

(b) "Registered combined charitable organization" means a federated funding organization:

(1) which is tax exempt under section 501(c)3 of the Internal Revenue Code of 1986, as amended through December 31, 1992 (hereinafter "Internal Revenue Code"), and to which contributions are deductible under section 170 of the Internal Revenue Code;

(2) which exists for purposes other than solely fundraising;

(3) which secures funds for distribution to 14 or more affiliated agencies in a single, annual consolidated effort;

(4) which is governed either by a local, independent, voluntary board of directors which represents the broad interests of the public and 90 percent of the directors of the governing board live or work in the community or surrounding area or, if the charitable agencies are solely educational institutions which meet the requirements of paragraph (c), by a national board of directors that has a local advisory board composed of members who live or work in the community or surrounding area;

(5) which distributes at least 70 percent of its total campaign income and revenue, plus donor designated amounts raised to its affiliated agencies and to the designated agencies it supports and expends no more than 30 percent of its total income and revenue, plus donor designated amounts raised for management and general costs and fund raising costs;

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(6) which distributes at least 70 percent of its total campaign income and revenue to affiliated agencies and designated agencies that are incorporated in Minnesota or headquartered in the service area in which the state employee combined charitable campaign takes place or, if the charitable agencies are solely educational institutions which meet the requirements of paragraph (c), distributes at least 70 percent of the state employee combined charitable campaign income and revenue directly to Minnesota residents using established eligibility criteria;

(7) and each designated or affiliated agency supported by the recipient institution devotes substantially all of its activities directly to providing health, welfare, social, or other human services to individuals;

(8) and each designated or affiliated agency supported by the recipient institution with funds contributed by state employees through the combined charitable campaign provides all or substantially all of its health, welfare, social, or other human services, in the community and surrounding area in which the state employee combined charitable campaign takes place;

(9) and each charitable agency is affiliated with no more than one registered combined charitable organization within the registered combined charitable organization's service area in the state's employee combined charitable campaign; and

(10) which has been registered with the commissioner of employee relations in accordance with this section.

Registered combined charitable organization includes a charitable organization organized by Minnesota state employees and their exclusive representatives for the purpose of providing grants to nonprofit agencies providing Minnesota residents with food or shelter if the charitable organization meets the requirements of clauses (1), (4), and (5).

(c) "Affiliated agency" means a charitable agency that is represented by a federation and has an ongoing relationship with that federation which involves a review and monitoring process to ensure financial, managerial, and programmatic responsibility.

(d) "Charitable agency" means a governmental agency or an organization (1) which is tax exempt under section 501(c)3 of the Internal Revenue Code; (2) to which contributions are deductible under section 170 of the Internal Revenue Code; and (3) which is in compliance with the provisions of this chapter.

(e) "State employees combined charitable campaign" means the annual state campaign whereby a state employee may designate that the employee's contribution to a registered combined charitable organization may be deducted from the pay of the employee for each pay period.

Sec. 2. Minnesota Statutes 1994, section 309.52, subdivision 2, is amended to read:

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Subd. 2. The ~~first~~ registration statement filed by a charitable organization shall include a registration fee of \$25 if the ~~organization raised or expended, 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, more than \$25,000 during the previous 12-month period,~~ 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.

Sec. 3. Minnesota Statutes 1994, section 309.52, subdivision 7, is amended to read:

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, 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.

Sec. 4. Minnesota Statutes 1994, section 309.53, subdivision 1, is amended to read:

Subdivision 1. ~~Except as otherwise provided in subdivision 1a,~~ 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 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 attorney general may extend the time for filing the annual report for a period not to exceed three months.

Sec. 5. Minnesota Statutes 1994, section 309.53, subdivision 2, is amended to read:

Subd. 2. Such annual report shall include a financial statement covering the immediately preceding 12-month period of operation, ~~and~~ shall be executed by any two duly constituted officers of the charitable organization, ~~who~~ and shall ~~acknowledge that it was~~ 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. ~~This~~ Except as provided in section 309.55, subdivision 1, the annual report shall also include a copy of ~~any~~ all tax ~~return~~ 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 ~~tax return~~

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annual report on or before the date required or allowed under this section is subject to the penalties imposed by the commissioner of revenue as set forth in sections 289A.60, subdivision 9, and 289A.63, subdivision 1 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.

Sec. 6. Minnesota Statutes 1994, section 309.53, subdivision 3, is amended to read:

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 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) 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; and

(h) a list of the five highest paid directors, officers, and employees of the organization that receive total compensation of more than \$50,000, together with the total compensation paid to each. Total compensation shall include salaries, fees, bonuses, fringe benefits, severance payments, and deferred compensation paid by the charitable organization and all related organizations as that term is defined by section 317A.011, subdivision 18. On July 1, 1997, and thereafter, the charitable organization shall begin disclosure of the total compensation of the five highest paid directors, officers, and employees of any related organization if the related organization receives funds from the charitable organization.

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 received total revenue~~

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in excess of ~~\$100,000~~ \$350,000 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.

Sec. 7. Minnesota Statutes 1994, section 309.53, subdivision 8, is amended to read:

Subd. 8. A reregistration fee of \$25 shall be paid by every charitable organization submitting the annual report required by this section ~~if the organization raised or expended, 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, more than \$25,000 during the previous 12-month period.~~

Sec. 8. Minnesota Statutes 1994, section 309.531, subdivision 1, is amended to read:

Subdivision 1. 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 ~~an application~~ a registration fee of \$200. Each registration is effective for a period of not more than 12 months ~~from the date of issuance~~, and in any event expires on ~~July~~ April 30 next following the date of ~~issuance~~ registration. The registration may be renewed for additional one-year periods on application and payment of ~~the fee~~ 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.

Sec. 9. Minnesota Statutes 1994, section 309.531, subdivision 4, is amended to read:

Subd. 4. Within 90 days after a solicitation campaign has been completed, ~~and on 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.

Sec. 10. Minnesota Statutes 1994, section 309.54, subdivision 1, is amended to read:

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Subdivision 1. Registration statements, annual reports, and other documents required to be filed shall become public records in the office of the attorney general. ~~Investigative data obtained by the attorney general in anticipation of or in connection with litigation or an administration proceeding are nonpublic data under section 13.02, subdivision 9.~~

Sec. 11. Minnesota Statutes 1994, section 309.556, subdivision 1, is amended to read:

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

Sec. 12. Minnesota Statutes 1994, section 501B.36, is amended to read:

**501B.36 REGISTRATION AND REPORTING.**

The registration and reporting provisions of sections 501B.37 and 501B.38 apply to a charitable trust, ~~or~~ including an organization with a charitable purpose, that has gross assets of \$25,000 or more at any time during the year, except that the provisions do not apply to:

(1) a charitable trust administered by the United States or a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any of their agencies or subdivisions;

(2) a religious association organized under chapter 315 or chapter 317A;

(3) a charitable trust organized and operated exclusively for religious purposes and administered by a religious association organized under chapter 315 or 317A;

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(4) an organization described in section 509(a)(3) of the Internal Revenue Code of 1986 and operated, supervised, or controlled by or in connection with one or more organizations described in clauses (2) to (5); a pooled income fund as defined in section 642(c)(5) of the Internal Revenue Code of 1986 maintained by an organization described in clauses (2) to (5); or a charitable remainder annuity trust or unitrust, as defined in section 664 of the Internal Revenue Code of 1986;

(5) a trust in which the only charitable interest is a contingent interest for which no charitable deduction has been allowed for Minnesota income, inheritance, or gift tax purposes or a trust in which not all of the unexpired interests are devoted to one or more charitable purposes and in which the only charitable interest is an annuity or an income interest with respect to which a charitable deduction is allowed the trust under applicable Minnesota income tax laws;

(6) an organization subject registered with the attorney general pursuant to sections ~~309.50 to 309.64~~ 309.52 and 309.53;

(7) a trust for individual and charitable beneficiaries that is described in section 4947(a)(2) of the Internal Revenue Code of 1986, also known as a split-interest trust; or

(8) a charitable gift, bequest, or devise not held and continued by a private express trust or corporation even though the gift, bequest, or devise creates a fiduciary relationship, unless there is no named charitable beneficiary in existence or unless a named charitable beneficiary elects in a writing filed with the attorney general and with the fiduciary to come within the provisions of sections 501B.37 and 501B.38.

Sec. 13. Minnesota Statutes 1994, section 501B.37, subdivision 2, is amended to read:

Subd. 2. **FILING OF INSTRUMENTS.** ~~A charitable trust subject to sections 501B.33 to 501B.45 must~~ Except as otherwise provided in section 501B.36, a charitable trust shall register and file with the attorney general a copy of its articles of incorporation or the instrument that created the charitable trust, including any amendments, within three months after the charitable trust first receives possession or control of property authorized or required to be applied, either at present or in the future, for charitable purposes.

Sec. 14. Minnesota Statutes 1994, section 501B.37, is amended by adding a subdivision to read:

Subd. 3. REGISTRATION FEE. A \$25 registration fee shall be paid by every charitable trust filing the information required by this section.

Sec. 15. Minnesota Statutes 1994, section 501B.38, is amended to read:

501B.38 INFORMATION FILING OF ANNUAL REPORTS.

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Subdivision 1. **REPORTS REQUIRED; DEADLINES; EXTENSIONS.** A charitable trust subject to sections 501B.33 to 501B.45 must file with the attorney general ~~written reports containing any information the trust is required to report under sections 6056(b), 6033, 6034, and 6056 of the Internal Revenue Code of 1986.~~ a copy of its federal tax or information return, including all schedules and amendments, submitted by the charitable trust to the Internal Revenue Service for the period covered in the trust's accounting year last completed. If the charitable trust does not file a federal tax or information return, it shall file a balance sheet and a statement of income and expenses for the accounting year last completed.

Subd. 1a. EXTENSIONS. ~~The reports information required by this section~~ must be filed annually on or before the 15th day of the fifth month following the close of the charitable trust's taxable year as established for federal tax purposes. The time for filing may be extended by application to the attorney general, but no extension may be for more than ~~six~~ three months. A charitable trust that files the information required under this subdivision with the attorney general is not required to file the same information with the commissioner of revenue.

Subd. 2. **SUSPENSION OF FILING.** The attorney general may suspend the filing requirements under subdivision 1 for a particular charitable trust for a reasonable, specifically designated time on written application of the trustee filed with the attorney general. If the filing requirements are suspended, the attorney general shall file in the register of charitable trusts a written statement that the interests of the beneficiaries will not be prejudiced by the suspension and that ~~annual reports are~~ the information required by this section is not required for proper supervision by the attorney general's office.

Subd. 3. FILING FEE. A \$25 filing fee shall be paid by every charitable trust filing the information required by this section.

Sec. 16. **APPROPRIATION.**

\$75,000 for fiscal year 1996 and \$75,000 for fiscal year 1997 is appropriated from the general fund to the attorney general for the purpose of sections 1 to 15.

Sec. 17. **REPEALER.**

Minnesota Statutes 1994, section 309.53, subdivision 1a, is repealed.

Presented to the governor May 30, 1995

Signed by the governor June 1, 1995, 1:58 p.m.

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