

CHAPTER 309

SOCIAL AND CHARITABLE ORGANIZATIONS

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309.50 SOLICITATION OF CHARITABLE FUNDS; DEFINITIONS.

[For text of subs 1 to 5, see M.S.1986]

Subd. 6. "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.

[For text of subs 6a to 12, see M.S.1986]

History: 1987 c 336 s 27

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 \$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 (ii), and Internal Revenue Code, section 6033(a)(2)(C)(i).

(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 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.

[For text of subd 2, see M.S.1986]

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 [Repealed, 1987 c 336 s 47]

History: 1987 c 336 s 28

309.52 REGISTRATION REQUIREMENT.

[For text of subd 1, see M.S.1986]

Subd. 1a. 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. 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.

[For text of subs 3 to 10, see M.S.1986]

History: 1987 c 336 s 29,30

309.53 ANNUAL REPORT.

[For text of subd 1, see M.S.1986]

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 \$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.

(b) Does not plan to 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 any accounting year, and

(c) Does not employ a professional fund raiser.

[For text of subd 2, see M.S.1986]

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. 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 \$100,000 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 text of subd 3a, see M.S.1986]

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 \$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.

[For text of subds 6 and 7, see M.S.1986]

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.

History: 1987 c 336 s 31-34

309.531 REGISTRATION OF PROFESSIONAL FUND RAISERS; BOND REQUIRED.

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 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 30 next following the date of issuance. The registration may be renewed for additional one-year periods on application and payment of the fee.

Subd. 2. 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 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. 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. Within 90 days after a solicitation campaign has been completed, and on 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: 1987 c 358 s 115

NOTE: Subdivision 1, was also amended by Laws 1987, chapter 336, section 35, to read as follows:

"Subdivision 1. No person shall act as a professional fund raiser unless registered with the attorney general. The registration statement as hereinafter described shall be in writing, under oath, in the form prescribed by the attorney general and shall be accompanied by an application fee of \$50. Each registration 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. The registration may be renewed for additional one-year periods upon application and payment of the fee."

309.532 [Repealed, 1987 c 336 s 47]

309.533 INVESTIGATIONS; PROCEEDINGS.

[For text of subd 1, see M.S.1986]

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. 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: 1987 c 336 s 36

309.534 [Repealed, 1987 c 336 s 47]

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 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.

Subd. 2. 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. 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: 1987 c 336 s 37

309.55 USE OF NAMES.

[For text of subds 1 to 5, see M.S.1986]

Subd. 6. 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.

[For text of subd 7, see M.S.1986]

History: 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. 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;

(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 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.

Subd. 2. Percentage received for charitable purposes. In addition to the disclosures required by subdivision 1, any professional fund raiser soliciting contributions in this state shall also 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 agency for charitable purposes. A professional fund raiser 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: 1987 c 336 s 39

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, 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 303.13, subdivision 1, clause (3), or in a manner as the court may direct.

[For text of subd 2, see M.S.1986]

History: 1987 c 336 s 40

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 and enjoin 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, denial, revocation, or 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: 1987 c 336 s 41

309.58 [Repealed, 1987 c 336 s 47]