

D R A F T
FOR DISCUSSION ONLY

PROTECTION OF CHARITABLE ASSETS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAW

For April 1-3, 2011 Committee Meeting

With Prefatory Note and Comments

Strike and Score Version

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ON UNIFORM STATE LAWS

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February 24, 2011

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PROTECTION OF CHARITABLE ASSETS ACT

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PROTECTION OF CHARITABLE ASSETS ACT

PREFATORY NOTE

The Charitable Sector. [Importance of charitable sector in the U.S. and history of charitable sector in the U.S.-] American charities provide a wide range of services and benefits – from arts organizations, to hospitals, to the relief of poverty, to educational institutions, to environmental protections. American charities manage substantial funds in conjunction with carrying out their charitable purposes, holding some funds for current operating needs and others as endowments. [cite to recent data] Charities carry out important functions, lessening the role of government in some cases and improving the quality of life for many people.

Public confidence in charities will help maintain the vibrancy of the charitable sector. If potential donors worry that charities will misuse contributed funds, donors are unlikely to contribute. The good work charities do will suffer if reports of abuse, fraud, or other types of misbehavior reduce public confidence in the sector.

The regulation of charities remains minimal, and yet the importance of public confidence in the sector points to the need for some modicum of oversight. In the charitable sector, self-regulation has always been important and will continue to be important. [note third sector report] The Internal Revenue Service has begun to increase its role in charitable supervision, by expanding the information required under the Form 990 annual report that many charities must file. In order to protect the role of the states in protecting charitable assets~~supervising charities~~, the role of the ~~A~~ttorney ~~G~~eneral should be clarified.

Charity regulators in some states are more active than those in other states, but the committee has not seen evidence of overreaching by charitable regulators. Instead, the concern voiced by some observers of the sector is that many states should increase resources available to charity regulators, so they can do a better job of providing the appropriate level of oversight and protection~~regulation~~. [A number of states have adopted legislation to elaborate on the common law. Many of these statutes are relative complex (cites), some require registration, as in the Uniform Supervision of Trustees for Charitable Purposes Act (1954) which this replaces. (cites). Other states with legislation include].

Goals of the Act. The Uniform ~~Protection~~Oversight of Charitable Assets Act will articulate and confirm the role of the state ~~A~~ttorney ~~G~~eneral in protecting charitable assets. The ~~A~~ttorney ~~G~~eneral's oversight function exists in most states in the common law or by statute, but in some states the scope of the authority is unclear. The ~~A~~ttorney ~~G~~eneral's authority is broad and this Act will not limit or narrow that authority.

The Act will ~~also make sure~~provide the ~~A~~ttorney ~~G~~eneral with at least an inventory of basic ~~has the information needed to perform the oversight function~~, without overburdening the charities or the ~~A~~ttorney ~~G~~eneral with excessive reporting requirements. The Act specifies which transactions and legal proceedings require notice to the ~~A~~ttorney ~~G~~eneral and provides for registration and annual reports for some charities. It is based on a rather minimalist or basic platform, designed for those states that lack any significant legislation, although all states can

benefit from its concepts and clarity.

~~—The Act will replace the Uniform Supervision of Trustees for Charitable Purposes Act (1954). That Act has been adopted in a small number of states and is out of date.~~

The term “Attorney General” is used to mean the charity regulator in a state. In many states, the Office of the Attorney General has a division called the Charity Section or something similar. A lawyer in that section typically has the title Assistant Attorney General, but the person in that role may have a different title.

It is useful to remember that the Attorney General has an educational role and a facilitative role as well as a regulative role. ~~The Attorneys General now generally wants to~~ educate charities and work with charities to help them become more efficient and more effective. The Attorney General will be better able to perform these roles with adequate information about the charities operating in the state.

Which Charities Does the Statute Cover? The Attorney General has ~~oversight~~ authority ~~to protect over~~ all charitable assets in a state and oversight over all charities registered in a state, so the Act logically applies broadly to charities. Certain sections of the Act (registration, reporting, and notice) apply more narrowly. The Act does not cover governmental entities and businesses, except to the extent that those non-charities hold charitable assets.

General Authority of the Attorney General. The Act states the broad duty of the Attorney General to represent the public interest in the protection of charitable assets. The Act states that the Attorney General may enforce the use of charitable assets by a charity for the purposes for which the assets were given to the charity, may take action to prevent or correct a breach of a fiduciary duty in connection with the administration of a charity or charitable assets, and may intervene in an action brought to correct a misapplication of charitable funds, a departure from the purpose of the charity, or a breach of a fiduciary duty owed the charity.

Registration. A charity covered by the registration section must register with the Attorney General within a specified period of time after the charity receives property. The charity must provide basic information about the charity (name, address, statutory agent, federal identification number, and contact person~~purpose~~) and a copy of the charity’s organizing document (articles of incorporation or trust instrument). The Act includes a one-page statutory form of registration.

Annual Reports. Charities with assets above a minimum amount will file an annual report with the Attorney General. The annual report will provide basic information and will require that the charity attach a copy of any report the charity files with the Internal Revenue Service (e.g., a Form 990 or a Form 990-EZ).

Notice of “Life Events.” One of the concerns the Drafting Committee sought to address was the problem that occurs when an Attorney General learns about the loss of charitable assets after a charity has disposed of the assets. The Act requires a charity to file a notice of the following, a specified number of days [20, 30 or 60 days] before the event occurs. Events that

1 require notice include the following:

- 2
- 3 | • Any amendment to the charity's organizational document, if the amendment changes the
- 4 | purposes or results in a material change in the structure, governance, or activities of the
- 5 | charity.
- 6 |
- 7 | • The intent to dissolve or terminate, with a copy of the charity's plan of dissolution. The
- 8 | charity cannot transfer assets until the earlier of receiving written consent from the
- 9 | Attorney General, written notice that the Attorney General will take no action, or the
- 10 | passage of time [20 days]. After dissolution, the charity must file with the Attorney
- 11 | General a description of the assets transferred and a list of the names and addresses of
- 12 | those who received the assets, other than creditors. [this is not currently in the act –
- 13 | should it be?]
- 14 | ☐
- 15 | • The intent to sell, lease, exchange, or otherwise dispose of all or substantially all of its
- 16 | property, unless the transaction is in the regular course of the charity's activities or the
- 17 | Attorney General waives this requirement.
- 18 |
- 19 | • The intent to merge with any other entity. The notice must include a copy of the
- 20 | proposed plan of merger.
- 21 |
- 22 | • A decision to file for bankruptcy (no later than the date of the filing).
- 23 |
- 24 | • Receipt of a notice of revocation or modification of a federal, state, or local tax
- 25 | exemption (within a specified period of time after receipt).
- 26 |

27 In addition, the personal representative of an estate or the trustee of a trust that involves the
28 | distribution of property to a charity must send the Attorney General a copy of the will or a
29 | description of the charitable interests in the trust.

30
31 Any person who asserts a claim in a proceeding involving a charity or charitable assets
32 must give written notice to the attorney general if the value of the charitable assets involved is at
33 least \$25,000. The notice must include a copy of the pleading. The proceedings that require
34 notice are the following:

- 35
- 36 | • An action against or on behalf of a charity seeking to enforce the use of charitable assets
- 37 | or the breach of a duty owed to the charity;
- 38 |
- 39 | • A proceeding seeking instructions relating to the administration, use, or distribution of
- 40 | the charitable assets;
- 41 |
- 42 | • A proceeding to construe a document under which charitable assets are held or to modify
- 43 | the terms under which charitable assets are held;
- 44 |
- 45 | • A proceeding involving a trust or probate estate in which matters affecting charitable
- 46 | assets may be decided; or

- 1
- 2 • A proceeding to remove or replace a trustee of a charitable trust.
- 3

4 ***Cooperation with Other Officials.*** The Act permits the Attorney General to cooperate
5 | with any official of the state, of another state, or of the United States. The Attorney General
6 | can provide information or documents concerning an investigation or proceeding to the other
7 | official in connection with the other official's role in the oversight of charities and charitable
8 | assets. The Attorney General can also acquire information or documents from the other
9 | official.

1 **PROTECTION OF CHARITABLE ASSETS ACT**

2 **SECTION 1. SHORT TITLE.** This [act] may be cited as the [Uniform][Model]

3 Protection of Charitable Assets Act.

4 **SECTION 2. DEFINITIONS.** In this [act]:

5 (1) “Charitable asset” means property that is [irrevocably dedicated][legally committed
6 or held] for a charitable purpose.

7 (2) “Charitable purpose” means the relief of poverty, the advancement of education or
8 religion, the promotion of health, the promotion of a governmental purpose, or any other purpose
9 the achievement of which is beneficial to the community.

10 (3) “Person” means an individual, corporation, business trust, statutory trust, estate, trust,
11 partnership, limited liability company, association, joint venture, public corporation, government
12 or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

13 (4) “Record” means information that is inscribed on a tangible medium or that is stored
14 in an electronic or other medium and is retrievable in perceivable form.

15 (5) “Responsible individual” means an individual who, with respect to a person holding
16 charitable assets:

17 (A) is generally familiar with the affairs of the person; and

18 (B) participates, directly or indirectly, in the control or management of the person
19 or, in the case of a person being formed, will participate in the control or management of the
20 person.; and

21 ~~—————(C) is not participating in the control or management of the person as a~~
22 ~~nominee of another person solely for the purpose of satisfying the requirement of this [act] that~~
23 ~~the person designate a responsible individual.~~
24
25

1 **(6) “State” means [get standard definition].**

2
3 **Comment**

4
5 **Subsection (1). Charitable Asset.** The term property includes all interest in real or
6 tangible or intangible personal property, including remainder interests and conservation or
7 preservation easements or restrictions. ~~Property that a donor has pledged to a charity is not yet~~
8 ~~“irrevocably dedicated to a charitable purpose” unless state law considers the pledge binding.~~
9

10 **Subsection (2). Charitable purposes.** The definition of charitable purposes follows that
11 of UTC § 405, Restatement (Third) of Trusts § 28 (2003), and UPMIFA § 2(1) (2006). This
12 long-familiar standard derives from the English Statute of Charitable Uses, enacted in 1601.
13

14 Some 17 states have created statutory definitions of charitable purpose for various
15 reasons. *See, e.g.*, 10 Pa. Cons. Stat. § 162.3 (2005) (defining charitable purpose within the
16 Solicitation of Funds for Charitable Purposes Act to include “humane,” “patriotic,” “social
17 welfare and advocacy,” and “civic” purposes). The definition in subsection (4) applies for
18 purposes of this Act and does not affect other definitions of charitable purpose.
19

20 **Subsection (3). Person.** The Act uses as the definition of person the definition approved
21 by the Uniform Law Commission. The definition includes individuals as well as entities.
22 Charities are typically organized as nonprofit corporations or charitable trusts and both are
23 included within this definition.
24

25 **Subsection (4). Record.** Record is defined, using the standard Uniform Law
26 Commission standard definition, in order to use one word instead of several when the act deals
27 ~~with papers, reports, instruments, and records, and to make clear that~~ with traditional forms of
28 paper, as well as information in electronic form ~~is included.~~
29

30 **Subsection (5). Responsible Individual.** This term describes someone the Attorney
31 General could contact for information about the charity. Often the Attorney General will be
32 able to resolve a question about a charity’s use of assets informally, and having someone
33 identified as a contact person for the charity will make that informal discussion more efficient
34 and effective. A responsible individual should be someone who is generally familiar with,
35 among other things, how the charity is managed but the person need not be a director or trustee.
36 The definition is based on one in the Uniform Law Enforcement Access to Entity Information
37 Act (2009).
38

39 **SECTION 3. AUTHORITY OF [ATTORNEY GENERAL] TO PROTECT**

40 **CHARITABLE ASSETS.**

1 (a) The [~~A~~ttorney ~~G~~eneral] represents the [public interest] [interest of the public] in
2 the ~~oversight and~~ protection of ~~charities and~~ charitable assets.

3 (b) The [~~A~~ttorney ~~G~~eneral] may:

4 (1) enforce the application and prevent the misapplication or diversion of a
5 charitable assets ~~for~~ in accordance with:

6 (A) the ~~charitable~~ purposes or terms, if any, for which the asset ~~was s~~ are
7 ~~held, given or committed; and~~

8 (B); and the charitable purposes of a person holding charitable assets; and

9 (2) act to prevent or remedy a breach of fiduciary or other legal duty:

10 (A) -in the governance, management, or administration of a person
11 ~~holding~~ a charitable asset; or

12 (B) in the governance of a person organized primarily for charitable
13 purposes;

14 (3) seek declaratory, injunctive, or other equitable relief to determine that an
15 asset is a charitable asset;

16 (4)

17 :

18 ~~—(c) The [attorney general] may~~ commence or intervene in an action to:

19 (A) ~~prevent~~ enjoin, remedy, or obtain damages for a violation of this [act];

20 or

21 ~~;(B) or~~ seek other remedy to enforce ~~a provision of~~ this [act]. ~~or~~

22 (c) The [Attorney General] may conduct an investigation, including exercising
23 administrative subpoena power, if the [Attorney General] has reason to believe the investigation

1 is necessary to determine whether action may be advisable under this [act].

2 to prevent or remedy:

3 _____ (1) a misapplication or diversion of charitable assets from use for the charitable
4 purposes of a person holding the charitable assets;

5 _____ (2) a departure from the charitable purpose for which charitable assets were
6 given; or _____

7 _____ (3) a breach of fiduciary or other legal duty in the governance of a person holding
8 charitable assets.

9 (d) This [act] does not limit ~~or restrict~~ the powers and duties of the [Attorney General]
10 under law of this state other than this [act].

11 **Comment**

12 One of the major goals of the Act is to articulate the Attorney General's ~~oversight~~
13 protection authority ~~to protect over~~ charitable assets. In most states, whether or not that function
14 is embodied in a statute, the authority is inherent in the common law powers of the [Attorney
15 General]. In at least a few states, however, it has been held that no such common law authority
16 exists, and in some other states, whether it exists and what it consists of is not clear. The drafting
17 committee intends that the Act clarify and articulate [Attorney General] authority to protect
18 charitable assets. At the same time, that authority is not unlimited. The [Attorney General]'s
19 legitimate role is to correct abuses, but not to take over governance or to substitute the
20 [Attorney General]'s judgment for the legitimate judgment of the charity's board or trustees;
21 to protect the interests of the indefinite beneficiaries of charity, while recognizing that charitable
22 assets are private, not quasi-public property; and to protect the donor's expressed intent and hold
23 the charity to its expressed purposes.

24
25 Section (b)(1)(B). Although a charity's purposes need not be static, the terms of the
26 organizing documents in effect at the time the charity receives assets constrain the use of those
27 assets.

28
29 Legislative Note: States vary with respect to process and procedure relating to Attorney
30 General investigative authority. States that detail Attorney General subpoena power in code
31 sections dealing broadly with Attorney General power will have no need for this section. States
32 that provide in their codes for Attorney General civil subpoena power specifically in connection
33 with another Attorney General function (such as consumer protection) can use that language in
34 this section with any necessary adaptations. In many states the Attorney General has civil
35 jurisdiction but not criminal jurisdiction. For example, in Connecticut the Attorney General is

1 the civil charitable regulator but if the Attorney General wishes to initiate a criminal proceeding
2 the Attorney General must do so through the chief state's attorney. In other states (e.g.
3 Maryland) the county state's attorney has general criminal jurisdiction. The committee also
4 needs to determine whether the addition of a new crime in this subsection is appropriate. In
5 some states crimes can only be created in the criminal code.
6
7

8 Subsection (d) reflects the committee's desire to articulate that the statute does not
9 replace any common law or other statutory powers the [attorney general] may have.

10 [add discussion of relator statutes and consider adding a legislative note for states with relator
11 statutes]
12
13

14 The Act does not, either expressly or by implication, affect existing law concerning the
15 rights of persons other than the [Attorney General] to standing in connection with a matter
16 involving a charity.
17

18 ~~Although a charity's purposes need not be static, the terms of the organizing documents~~
19 ~~in effect at the time the charity receives assets constrain the use of those assets.~~
20

21 **~~SECTION 4. INVESTIGATION BY [ATTORNEY GENERAL].~~** The [attorney
22 general] ~~may conduct an investigation, including exercising administrative subpoena power, if~~
23 ~~the [attorney general] has reasonable belief that:~~

24 ~~(1) an action may be advisable within the authority of the [attorney general] pursuant to~~
25 ~~Section 3;~~

26 ~~—— (2) a law or legal duty concerning the use or management of charitable assets has been~~
27 ~~violated; or~~

28 ~~—— (3) this [act] has been violated.~~

29 **~~Legislative Note:~~** ~~If a state does not provide through other law for the process the attorney~~
30 ~~general uses for civil investigative demands, the state should consider making the text of this~~
31 ~~section subsection (a) and enacting the following provisions as part of this section. A separate~~
32 ~~possible Section concerning enforcement is also set out for consideration of the states:~~

33 ~~—— [(b) The [attorney general] may sign and cause to be served on a person that is believed~~
34 ~~to have information, documentary material, or physical evidence relevant to the subject matter of~~
35 ~~an investigation pursuant to subsection (a) a civil investigative demand requiring the person to~~
36 ~~appear and testify, or to produce documentary material or physical evidence for examination, at~~
37 ~~a reasonable time and place stated in the demand. Service of a civil investigative demand, notice,~~

~~or subpoena may be made by any person authorized by law to serve process or by any duly authorized employee of the [attorney general].~~

~~—— (c) A civil investigative demand must:~~

~~—— (1) state the general subject matter of the investigation and grounds for the alleged violation being investigated;~~

~~(2) describe the class or classes of information, documentary material, or physical evidence to be produced, with reasonable specificity so as fairly to indicate the material demanded;~~

~~(3) prescribe a return date by which the information, documentary material, or physical evidence is to be produced; and~~

~~(4) identify the member of the [attorney general's] staff to whom the information, documentary material, or physical evidence requested is to be produced.~~

~~(d) A civil investigative demand may not:~~

~~(1) contain a requirement that would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of this state; or~~

~~(2) require the disclosure of information that would be privileged or, for any other reason, could not be required by a subpoena duces tecum issued by a court of this state.~~

~~(e) Service of a civil investigative demand, notice, or subpoena may be made by [state rules].~~

~~(1) delivering a duly executed copy thereof to the person to be served, or to an officer or agent authorized by appointment or by law to receive service of process on behalf of the person;~~

~~(2) delivering a duly executed copy thereof to the principal place of business or the residence in this state of the person to be served;~~

~~(3) mailing a duly executed copy thereof by registered or certified mail, addressed to the person to be served, to the principal place of business or the residence in this state of the person or, if the person has no place of business or residence in this state, to the principal office or place of business or the residence of the person; or~~

~~(4) mailing a duly executed copy thereof by registered or certified mail, requesting a return receipt signed by the addressee only, to the last known place of business, residence, or abode within or without this state of the person to be served.~~

~~(f) An individual may not refuse to answer a material question, produce documentary material, or testify in an investigation pursuant to this section on the ground that the testimony or documentary material may tend to incriminate the individual or subject the individual to a~~

1 ~~penalty. If the individual asserts a right against self-incrimination, the individual may not be~~
2 ~~subjected to criminal prosecution or an action for a criminal penalty or forfeiture because of a~~
3 ~~transaction, matter, or thing about which the individual may testify or produce documentary~~
4 ~~material. An individual may assert the right against self-incrimination on the record or make the~~
5 ~~assertion known to the [attorney general].~~

6 ~~(g) Information, documentary material, or physical evidence demanded pursuant to a~~
7 ~~civil investigative demand must be produced during normal business hours at the principal office~~
8 ~~or place of business of the person served, or at such other time and place as may be agreed by~~
9 ~~the person served and the [attorney general].~~

10 ~~(h) No information, documentary material, or physical evidence requested pursuant to a~~
11 ~~civil investigative demand shall, unless otherwise ordered by a court for good cause shown, be~~
12 ~~produced for or the contents thereof be disclosed to, any person other than the [attorney~~
13 ~~general] without the consent of the person that produced the information, documentary material,~~
14 ~~or physical evidence; provided, that under such reasonable terms and conditions as the [attorney~~
15 ~~general] shall prescribe, such information, documentary material or physical evidence shall be~~
16 ~~made available for inspection and copying by the person who produced such information,~~
17 ~~documentary material or physical evidence, or any duly authorized representative of the person.~~

18 ~~(i) Material containing trade secrets must not be presented before any court except with the~~
19 ~~approval of the court in which the action is pending after adequate notice to the person~~
20 ~~furnishing the material or, in the case of disclosure to agencies of other states, the approval of~~
21 ~~the [court].~~

22 ~~(j) At any time before the return date specified in a civil investigative demand or not~~
23 ~~later than 20 days after the demand has been served, whichever period is shorter, the person~~
24 ~~served with the demand may petition the [court] to extend the return date for, or to modify or set~~
25 ~~aside the demand, stating good cause.~~

26 ~~(k) A person on which a civil investigative demand is served shall comply with its terms~~
27 ~~unless otherwise provided by order of a court. A person that, with intent to avoid, evade, or in~~
28 ~~whole or in part prevent compliance with a civil investigative demand, removes from a place,~~
29 ~~conceals, withholds, destroys, mutilates, alters, or falsifies information, documentary material,~~
30 ~~or physical evidence in the possession, custody, or control of the person, which is the subject of~~
31 ~~the demand, is guilty of [XX]. The [attorney general] shall have original jurisdiction to enforce~~
32 ~~the provisions of this subsection.~~

33 ~~(l) If a person fails to comply with a civil investigative demand duly served on the person~~
34 ~~or the person refuses to surrender material when whenever satisfactory copying or reproduction~~
35 ~~of the material cannot be done, the [attorney general] may file, in the [trial court of general~~
36 ~~jurisdiction] in a county or judicial district in which the person resides, is found, or transacts~~
37 ~~business, and serve upon the person, a petition for an order of the court for enforcement of the~~
38 ~~demand. If the person transacts business in more than one county or judicial district the petition~~
39 ~~must be filed in the county or judicial district in which the person maintains the person's~~
40 ~~principal place of business, or in such other county or judicial district as may be agreed by the~~
41 ~~parties. When the petition is filed, the court shall have jurisdiction to hear and determine the~~

1 ~~matter presented, and to enter an order required to enforce the provisions of this [act]. A final~~
2 ~~order may be appealed to the [state supreme court]. Disobedience of a final order entered~~
3 ~~under this section may be punished as a contempt of court.~~

4
5 ~~SECTION ____.~~ **ORDER TO STOP; ASSURANCE OF VOLUNTARY**

6 **~~COMPLIANCE.~~**

7 ~~(a) When it appears to the [attorney general] that a person has engaged in, is engaging~~
8 ~~in, or is about to engage in a misapplication of charitable assets, a breach of fiduciary duty, or a~~
9 ~~violation of this [act] or law of this state other than this [act] concerning the use or management~~
10 ~~of charitable assets, the [attorney general] may issue an order to stop, prohibiting the person~~
11 ~~and any other person that participated, is participating or is about to participate in the act, from~~
12 ~~engaging or continuing to engage in the act. The order must not be issued until the [attorney~~
13 ~~general] has given notice to each person that will be subject to the order of the nature of the~~
14 ~~alleged violation and the act that is the basis of the alleged violation and the time for the person~~
15 ~~to file an answer has expired. A person that will be subject to the order may file with the~~
16 ~~[attorney general] an answer to the notice not later than two business days after delivery of the~~
17 ~~notice.~~

18
19 ~~(b) An order issued by the [attorney general] under subsection (a) must be served on~~
20 ~~each person that is subject to the order in the manner provided [in Section 4 for service of a civil~~
21 ~~investigative demand]. The order expires 10 days after being served.~~

22
23 ~~(c) A person that has been duly served with an order issued under this section and~~
24 ~~willfully and knowingly violates a provision of the order while the order remains in effect, either~~
25 ~~as originally issued or as modified, is guilty of [XXX]. The [attorney general] may commence a~~
26 ~~criminal action for the violation.~~

27
28 ~~(d) The [attorney general] may accept an assurance of voluntary compliance with~~
29 ~~respect to an act that would be subject to an order to stop pursuant to subsection (a). The~~
30 ~~assurance of voluntary compliance must be in writing and must be filed with and approved by~~
31 ~~the [court] of the county in which the alleged violator resides or has its principal place of~~
32 ~~business. An assurance of voluntary compliance must not be considered for any purpose as an~~
33 ~~admission of violation. A person that violates the terms of an assurance of voluntary compliance~~
34 ~~shall pay to the state a civil penalty of not more than \$[] per violation. A [court] approving an~~
35 ~~assurance of voluntary compliance retains jurisdiction to award a civil penalty under this~~
36 ~~subsection, and the attorney general acting in the name of the state may petition for recovery of~~
37 ~~the civil penalty.]~~

38 **Comment**

39 ~~—The Act articulates the attorney general's authority to undertake an investigation as a~~
40 ~~means of fulfilling the authority articulated in Section 3. The attorney general acts in the public~~
41 ~~interest to protect charitable assets. The Drafting Committee discussed the threshold for~~
42 ~~initiating an investigation. Some states (e.g., Massachusetts) require court approval before~~

beginning a civil investigation. Others do not, and specify no particular threshold standard to justify commencing a civil investigation. The committee concluded that a less-demanding threshold standard is appropriate. Information often comes to the attorney general in a form much less formal than a sworn complaint; for example, information about abuses and misdeeds is often brought to light in newspaper stories. The committee was sensitive to the burden that an investigation can impose on a charity, but concluded that a reasonable amount of discretion and flexibility in the attorney general is more often likely to diminish the burden on charities than to justify inappropriate intrusion.

States vary with respect to process and procedure relating to attorney general investigative authority. States that detail attorney general subpoena power in code sections dealing broadly with attorney general power will have no need for this section. States that provide in their codes for attorney general civil subpoena power specifically in connection with another attorney general function (such as consumer protection) can use that language in this section. The language used in this section is modeled on Missouri code sections concerning consumer protection. The language in subsection (b) that refers to Section 4 will have to be modified after a decision on how best to proceed with the language about civil investigative demands.

Language specifying the attorney general's authority to issue an order to stop or to seek an assurance of voluntary compliance is provided in the Legislative Note following Section 4. States that provide for similar instruments to exercise attorney general authority elsewhere in the state code, for instance, in the consumer protection statutes, will want to coordinate the language here with that language. Some states may want to enact this material as a separate section.

Subsection (c) of new Section in Legislative Note. In many states the attorney general has civil jurisdiction but not criminal jurisdiction. For example, in Connecticut the attorney general is the civil charitable regulator but if the attorney general wishes to initiate a criminal proceeding the attorney general must do so through the chief state's attorney. In other states (e.g. Maryland) the county state's attorney has general criminal jurisdiction. The committee also needs to determine whether the addition of a new crime in this subsection is appropriate. In some states crimes can only be created in the criminal code.

SECTION 45. REGISTRATION.

(a) The [Attorney General] shall establish and maintain a registry of persons required to register under this section.

(b) A person ~~is~~shall be required to register under this section if:

~~(1)~~ the person holds or administers a charitable assets in excess of \$5,000 and:

~~(1A)~~ is organized under the law of this state or if it is a trust has its situs

1 in this state;

2 _____ (2B) has its principal place of business in this state;

3 _____ (3C) holds charitable assets in this state other than assets held primarily
4 for investment purposes ~~in this state~~;

5 _____ (4D) conducts activities in this state; or

6 _____ (5E) holds assets that are given or committed~~specifically dedicated~~ to the
7 benefit of a persons in this state;

8 _____ (c) The following are exempt from the requirement in subsection (b) to register:

9 ~~(2) and if the person is not:—~~

10 _____ (1A) a government, governmental subdivision, agency, or instrumentality;
11 ~~except to the extent that it holds charitable assets;~~

12 ~~_____ (B) a corporation sole or other religious organization which holds~~
13 ~~property for religious purposes; or any agency or organization affiliated with and directly~~
14 ~~supervised by such a religious organization; or an officer, director or trustee of any such religious~~
15 ~~organization who holds property in an official capacity for religious purposes;~~

16 ~~_____ (C) a person not organized primarily for charitable purposes except to the~~
17 ~~extent that it holds charitable assets;~~

18 _____ (2D) an organization the primary purpose of which is to influence
19 elections;

20 _____ (3E) a financial institution, investment company, or storage facility that
21 holds charitable assets that belong to another person; ~~or~~

22 _____ (4F) a individual holding a charitable asset other than in a fiduciary
23 capacity;

1 (5) a [personal representative] of a decedent's estate that holds a charitable asset,
2 during the period of administration of the estate;

3 (6) a trustee of a revocable trust that becomes irrevocable because of the settlor's
4 death, during a period of administration following the settlor's death not to exceed one year[.];
5 or]

6 **Alternative A**

7 [(7) a religious organization that holds property for religious purposes, an agency
8 or organization affiliated with and directly supervised by the religious organization, or an
9 officer, director, or trustee of the religious organization which holds property in an
10 official capacity for religious purposes.]

11 **Alternative B**

12 [(7) [religious organization as defined by Internal Revenue Code].]

13 **End of Alternatives-**

14 ~~(de)~~ The following activities do not constitute conducting activities in ~~this~~ state within
15 the meaning of section (b)(~~41~~)(D):

16 (1) maintaining, defending, mediating, arbitrating, or settling an action ory
17 proceeding;

18 (2) holding a meetings of trustees, directors, or members;

19 (3) maintaining ~~anbank~~ accounts in a financial institution or an investment
20 accounts;

21 (4) owning, without more, real or personal property;

22 (5) conducting an isolated transaction that is completed in not more than~~within~~
23 30 days and ~~that~~ is not ~~one~~ in the course of repeated-similar transactions ~~of a like nature; and~~

(6) soliciting or accepting contributions; and

(7) making a grant to a person in this state.-

(~~ed~~) A person required to register under this section shall register with the [~~A~~attorney
~~G~~general] ~~on or before the~~ not later than ~~later of~~ [~~three~~3] months after the date the person
receives charitable assets in excess of ~~\$~~\$5,000].

(~~fe~~) The registration required by subsection (b) must include:

(1) the name and address of the person;

(2) the name and address of the statutory agent of the person or ~~of~~ the individual
on whom service of process may be made;

(3) the name and address of a responsible individual of the person; [and]

~~————— (4) a short statement of the person's primary activities;~~

~~————— (5) a true copy of the current version of the person's articles of incorporation,
trust instrument, or other record, if any, that serves as the organizational document of the person;
and~~

(~~4~~6) the federal employer identification number, if any, for the person~~].~~];

~~—————~~
[(5) if the person is organized primarily for charitable purposes, a copy of the
person's articles of incorporation and bylaws, trust instrument, or other record, if any,
that serves as the organizational document of the person; [and]

(6) if the person is not organized primarily for charitable purposes, a copy of the
portion of the person's articles of incorporation and bylaws, trust instrument, or other
record, if any, that relates to the use and administration of the charitable asset held by the
person.]; and]

1 [(7) whether the person has registered under [the state's solicitation statute] and if
2 so, under what name and under what registration number, if any.]

3 ~~(f) The [attorney general] may collect a filing fee of [\$15.00] with the registration~~
4 ~~required by this section and a late fee of [\$25.00] per month up to a maximum of [\$200]. The~~
5 ~~funds collected will be used for services provided for under this [act]. The [attorney general]~~
6 ~~may extend the time for filing for good cause shown.~~

7 (gg) The registry established pursuant to subsection (a) and records filed with the
8 [Aattorney Ggeneral] are public records, except that the [Aattorney Ggeneral] shall:

9 (1) withhold from public inspection a record or any part of a record filed with the
10 [Aattorney Ggeneral] or with a governmental agency of this state, another state, or the United
11 States, or any governmental subdivision thereof, which is required by law to be kept confidential;
12 and

13 (2) on the written request of a person required to register under this section,
14 withhold from public inspection a record or any part of a record filed which does not relate to a
15 charitable purpose or charitable assets and is not otherwise a public record.

16 [(h) The [Attorney General] may collect a filing fee of \$[15.00] with the registration
17 required by this section and a late fee of \$[100.00]. The funds collected will be used for services
18 provided for under this [act]. The [Attorney General] may extend the time for filing for good
19 cause shown.]

21 **Comment**

22 The main thrust of the 1954 Uniform Supervision of Trustees for Charitable Purposes Act
23 was to provide a mechanism to facilitate the supervisory role of the Attorney General by
24 providing for registration that would alert the Attorney General to the existence and
25 administration of charitable trusts. This Act continues to incorporate that function. The Drafting

1 Committee has opted to keep the registration obligation simple, so as to avoid overburdening
2 either charitable organizations or Attorneys General. It is expected that the registration
3 function will move to an electronic system, thereby reducing some of the burden. Electronic
4 registration will be sufficient to meet the requirements of Section 5, and the Drafting Committee
5 hopes that states will be able to accommodate electronic registration. While a large organization
6 that operates in many states will likely have an obligation to register in multiple states, the
7 committee hopes that the Act's move toward uniformity will minimize the burden of multiple
8 registrations. The Act includes a statutory form of registration so that states can ease the burden
9 on charities by adopting a requirement that is consistent across states.

10
11 Registration is important for several reasons. First, the list of registered charities can
12 serve as a quick resource of information for the Attorney General and for the public. If the
13 Attorney General receives a question from a member of the public, the Attorney General
14 may be able to answer the question simply by reviewing the information provided in the
15 registration. No further inquiry may be necessary, and both the Attorney General and the
16 charity will save time and expense.

17
18 Also, a potential donor may consult the list of registered charities to determine whether a
19 charity requesting a donation is current in its filings with the Attorney General. If the charity
20 is not registered, the donor will want to investigate further before making a donation. If the
21 charity has consistently made the required filings, that information suggests a well-managed
22 charity, with fiduciaries who comply with their duties.

23
24 Finally, the requirement to register serves as a reminder to someone organizing a charity
25 of the seriousness of the fiduciary role an individual undertakes when acting as a director or
26 trustee of a charity. If the individual does not want the responsibility of managing charitable
27 assets under the oversight of the Attorney General, the individual can give the assets to an
28 existing charity or start a donor advised fund.

29
30 Subsection (b) sets forth which organizations will be required to register under the Act.
31 The registration requirement applies to entities of any legal form that hold or administer property
32 dedicated to or donated for charitable purposes. The scope of the requirement is broad enough to
33 take in not only organizations traditionally thought of as charitable, but also non-charitable
34 organizations that hold or administer assets dedicated to charitable purposes or that have been
35 donated for charitable purposes. The obligation to register is limited to organizations that have
36 significant contacts in the state. The Drafting Committee believes that the threshold strikes an
37 appropriate balance between the risk of overburdening charities that have little contact with a
38 particular state and the need for the Attorney General to be alerted to the existence of
39 charitable organizations and assets in the state that might call for oversight. Simply having a
40 bank account or investment account in the state does not cause an entity to fall within the
41 definition, and financial institutions and investment companies are not included within the
42 definition by virtue of having accounts owned by charities, unless the institution serves as trustee
43 for a charity.

44
45 The term "principal place of business" is used to mean principal place of administration,
46 governance, activities, and operation. Although using the term "business" for charitable

1 activities sounds odd, the term is used to bring with it the substantial caselaw connected with the
2 term.

3
4 Although the types of contact listed in subsection (b) are not limited by the terms
5 “substantial” or “significant,” the intention is that a negligible level of activity or other contact
6 not be considered sufficient to cause an Attorney General to assert ~~oversight-protection~~
7 powers. The state constitution will control the level of activity necessary for Attorney General
8 ~~oversight~~protection.

9
10 Subsection (b)(2)(A) excludes governments from the Act, but if a government accepts an
11 asset for charitable purposes, the Act will provide oversight for that asset. For example, a local
12 government might accept the donation of land for a public park or might accept a conservation
13 easement over land in the state.

14
15 Subsection (b)(2)(C) excludes persons not organized primarily for charitable purposes.
16 The Drafting Committee intends to exclude entities like benefit corporations and L3Cs even
17 though those entities may be established in part for charitable purposes. The committee also
18 intends to exclude labor organizations, social organizations, and trade associations.

19
20 Subsection (b)(2)(F) excludes individuals who may hold charitable assets as volunteers
21 but not in a fiduciary capacity. For example, a volunteer might hold assets in connection with a
22 school’s PTO fundraiser. The PTO will register, but a volunteer who holds assets connected
23 with the fundraiser do not need to register.

24
25 Subsection (d) indicates that the threshold amount for filing is \$5,000. The Drafting
26 Committee chose this amount because it is the same as the amount that necessitates filing a Form
27 1023, Recognition of Exempt Status, with the Internal Revenue Service. The information
28 required to register with the Attorney General is significantly less than the information
29 required to complete a Form 1023, so an organization should not face an undue burden if
30 required to register with the Attorney General.

31
32 Legislative Note to Subsection (g) – if a state FOIA statute requires more here, then add.
33 In some states an amendment to FOIA may be necessary. Some states will delete.
34

1 **SECTION 56. ANNUAL REPORT.**

2 (a) A person required to register under Section 4 which holds charitable assets valued in
3 excess of \$[5,000] at the end of the person's most recent accounting period5 or has total revenue
4 in excess of \$[--] for the person's most recent accounting period shall file ~~shall file~~ with the
5 [~~A~~attorney ~~G~~eneral], not later than ~~5~~five months and ~~15~~fifteen days after the end of the person's
6 accounting period, a, the following:

7 _____ (1) ~~a copy of the person's most recent federal information return, if any; and~~
8 _____ (2) ~~an annual report providing and certify providing the accuracy of~~ the following
9 information:

10 _____ (1A) a current list of the names of the individuals responsible for the
11 management of the person-~~charity's~~ directors, trustees, and officers;
12

13 _____ (2B) the person's total revenue for its most recent accounting period;
14

15 _____ (3E) the person's total assets as of the last day of its most recent
16 accounting period;

17 (4) a description of the person's most significant program activities, not
18 exceeding three activities, during the accounting period;

19 (5) a copy of any amendment during the accounting period of the person's
20 articles of incorporation and bylaws, trust instrument, or other record that serves as the
21 person's organizational documents;

22 (6) whether during the accounting period the person: _____

23 (A) engaged in a reportable event under Section 6;

24 **Alternative A**

25 (_____) ~~[(B) entered into a description of any~~ contract, loan, lease, or other
26 financial transaction ~~during the accounting period between the person and~~ with any officer,

1 director, trustee, or other fiduciary, either directly or with an entity in which the officer, director,
2 trustee, or other fiduciary had a material financial interest;]

3 **Alternative B**

4 _____ [(B) entered into a financial transaction that materially benefits an officer,
5 director, trustee, or other fiduciary, other than a transaction related to the individual's role as a
6 fiduciary, or entered into a financial transaction that materially benefits an entity in which the
7 fiduciary had a material financial interest;]

8 **End of Alternatives**

9 ~~(CE) a description of any~~ became aware of a material embezzlement, theft,
10 ~~or diversion; or misuse of the charity's person's~~ charitable assets; ~~of which the person became~~
11 ~~aware during the accounting period;~~

12 ~~_____ (DF) became aware a list of any instances of which the person~~
13 ~~became aware during the accounting period~~ of use of a charitable asset ~~the person's funds~~ to pay
14 any penalty, fine, or judgment;

15 ~~_____ (EG) became aware of a list of any instances of which the person~~
16 ~~became aware during the accounting period of~~ the payment by an officer, director, trustee, or
17 other fiduciary of a penalty, fine, or judgment with respect to the person; and

18 ~~_____ (H) a statement describing any change in the person's federal or state, tax~~
19 ~~exempt status during the accounting period;~~

20 ~~((FI) a statement describing any use during~~
21 ~~the accounting period or of which the person became aware during~~
22 ~~the accounting period~~ became aware of the use of restricted funds
23 for a purpose other than the purpose ~~ose~~ specified in the restriction;

1 ~~;~~ and

2 _____
3 (7) an explanation of any affirmative answer reported under paragraph (6); and

4 (8) a change to any information provided under Section 4.

5 (b) If the person is required to file a Form 990, Form 990-PF, or Form 990-EZ with the
6 Internal Revenue Service, then the person shall attach a copy of the form to the annual report.~~(f)~~
7 ~~a description of the person's most significant program activities, not to exceed three activities,~~
8 ~~during the accounting period.~~

9 **Comment**

10
11 Many charities will be able to meet the annual report requirement of Section 6 simply by
12 filing a copy of the federal tax return the charity files. If the charity files a Form 990, Form 990-
13 EZ, or a Form 990-PF, the charity may file a copy of that return and need not file an additional
14 report. If the charity files Form 990-N, the charity will need to file an additional report, because
15 the Form 990-N does not request a significant level of information. This draft states the
16 requirement without reference to specific tax return numbers because the return numbers may
17 change over time. The difficulty with stating the requirement in this way, however, is to convey
18 the idea that a return that provides information similar to that required by this section (Form 990,
19 Form 990-EZ, Form 990-PF) is sufficient but a return that provides only a minimal level of
20 information (Form 990-N) is not. The committee will compare the requirements of Section 6
21 with the requirements of the tax returns and consider whether to require information beyond that
22 listed in the tax returns.

23
24 The Internal Revenue Code requires a private foundation to file a copy of its Form 990-
25 PF, IRC 6033(c)(2), with the state, so we should be able to exempt private foundations who
26 already file that form with the state. The committee needs to consider this exemption, but the
27 committee will likely be able to exempt private foundations from Section 6.

28
29 States that require annual reporting under a statute that regulates charitable solicitation
30 will want to coordinate the report required here with that required by the solicitation statute and
31 may find the reporting requirement in Section 6 duplicative and unnecessary.

32
33 The drafting committee did not reach consensus on the optimal threshold for the small
34 organization exception. Some committee members noted that the reporting requirement can
35 encourage good governance, and some members also noted that the small organizations are often
36 the ones that get into trouble. The ~~A~~ttorney ~~G~~eneral needs to receive information in a timely
37 fashion to be able to address problems before charitable assets are lost. The registration and
38 reporting requirements are important in promoting appropriate ~~oversight~~ protection of charitable

1 assets.
2

3 **SECTION ~~67~~. NOTICE TO [ATTORNEY GENERAL] OF REPORTABLE**
4 **EVENT.**

5 (a) A person required to register under Section ~~45~~ shall give ~~written~~ notice in a record to
6 the [~~A~~attorney ~~G~~general] not later than [20] [30] days before a reportable event occurs.

7 (b) The following are reportable events under this section: any of the following occur:

8 (1) a dissolution of the person;

9 (2) a termination of the person:

10 (3) a disposition by the person of all or substantially all of the person's charitable
11 assets, ~~unless the disposition occurs in the usual or regular course of the person's activities;~~

12 (4) the consummation of a merger, conversion, or domestication;

13 (5) a ~~change in the situs of the principal place of business of the person~~removal
14 of the person from the jurisdiction of this state; or

15 (6) a removal of significant charitable assets from this state.

16 ~~(c)~~ A transfer of a ~~No~~ charitable assets ~~may be transferred~~ in connection with any event
17 described in subsection (b) which occurs earlier than that requires the provision of notice under
18 section (a) by a person to the [attorney general] until
19 the earliest of:

20 —————(1) [20] days after delivery of the notice required by ~~this section~~ subsection

21 (a) has been delivered to the [~~A~~attorney ~~G~~general] shall be a violation of this [act] unless;

22 —————(2) ~~the~~ before the transfer the person's receives the consent ~~receipt~~ of the
23 [~~A~~attorney ~~G~~general]'s ~~consent~~ in a record ~~writing~~ to a proposed transfer; or

24 —————(3) ~~the~~ the person's receivespt ~~of written~~ notice in a record that the [~~A~~attorney

1 ~~G~~general] will take no action regarding the transfer.

2
3 (de) If a ~~decedent's probate~~ estate opened by a court in this state involves, or may
4 involve, the distribution of property to a person holding or authorized to hold charitable assets,
5 ~~unless the person authorized to hold charitable assets will distribute the assets to a specified~~
6 ~~charity~~, the [personal representative], not later than ~~[ninety{30}] days~~ after the date ~~of the~~
7 [personal representative's] ~~is appointed~~ment, shall ~~deliver to the [Attorney G~~general]-a ~~true~~
8 copy of the will; a copy of the petition for probate or application for unsupervised probate; and a
9 copy of the inventory, or if none is filed with the court, then a statement of the estimated value of
10 the estate, unless the distribution is a specific devise with a value of less than \$100,000 to a
11 named person holding charitable assets.-

12 (ed) If a revocable trust ~~having its principal place of administration administered~~ in this
13 state becomes irrevocable [because of the settlor's death] and if ~~it~~the provides for a distribution
14 of property distribution under the trust involves, or may involve, distribution of property to a
15 person holding or authorized to hold charitable assets, ~~unless the person authorized to hold~~
16 ~~charitable assets will distribute the assets to a specified charity~~, the trustee, not later than
17 ~~[ninety30] days~~ after the date of the settlor's death, shall ~~deliver to the [Attorney~~
18 ~~G~~general] a description of the charitable interests and a statement of the estimated value of the
19 trust assets, unless the distribution is a specific distribution with a value of less than \$100,000 to
20 a named person holding charitable assets.-

21 ~~(e) A person who holds a charitable asset in this state shall give notice to the [attorney~~
22 ~~general] of a decision to file for bankruptcy not later than the date on which the charity files a~~
23 ~~bankruptcy petition under Title 11 of the United States Code, files a receivership under [state~~

1 ~~receivership statute] or any similar receivership statute of another state, makes an assignment for~~
2 ~~the benefit of creditors, or initiates any other insolvency proceeding.~~

3 (f) A person required to register ~~under Section 4 in this state~~ shall give notice in a record
4 to the [~~A~~attorney ~~G~~eneral] not later than [20] days after:

5 ~~———(1) receipt of any notice of revocation, n or modification, or denial of its federal~~
6 ~~or state [income] tax exemption.; or~~

7 ~~(2) adoption of any amendment to its articles of incorporation, trust instrument, or~~
8 ~~other record creating the person if the amendment changes the purposes of the person or results~~
9 ~~in a material change to the structure, governance, or activities of the person.~~

10 ~~(g) A notice required to be given under this section shall include the name of the person,~~
11 ~~an explanation of the event that causes the notice requirement to apply, and the approximate~~
12 ~~value of the charitable asset involved.~~

13 ~~(h) Failure to provide notice as required under this section [shall result in][will be~~
14 ~~considered a breach of fiduciary duty.]~~

15 Comment

16 The Act requires notice to the ~~A~~attorney ~~G~~eneral of a variety of transactions and events
17 that raise particular opportunities for misapplication of charitable assets, so that the ~~A~~attorney
18 ~~G~~eneral has an opportunity to monitor the events in time to prevent problems in addition to
19 correcting problems that have already arisen.

20
21 **Subsection (a). Disposition or removal of all or significantly all assets.** If the charity
22 will terminate or dispose of substantially all of its assets, the charity must notify the ~~A~~attorney
23 ~~G~~eneral before the charity gives up control of the assets. This notice provision gives the
24 ~~A~~attorney ~~G~~eneral time to review the proposed transaction and recommend changes if
25 necessary while the assets can still be reached. If the ~~A~~attorney ~~G~~eneral objects to the proposed
26 transaction, the ~~A~~attorney ~~G~~eneral must deliver the objection to the charity in writing and then
27 the charity cannot proceed with the transaction until the ~~A~~attorney ~~G~~eneral consents
28 (presumably after negotiations between the charity and the ~~A~~attorney ~~G~~eneral) or a court
29 approves the transaction. This subsection gives the ~~A~~attorney ~~G~~eneral the information needed
30 to work with the charity on an appropriate plan of distribution or other transfer, and then
31 provides for a court determination if the ~~A~~attorney ~~G~~eneral and the charity cannot reach

1 agreement.

2
3 **Subsection (c) Probate estate.** If a probate estate contains a gift to a charity, the
4 | personal representative must notify the ~~A~~attorney ~~G~~general of the distribution of an estate that
5 | may involve the distribution of charitable assets. This provision is necessary, because the
6 | public's interest in a charitable bequest may not be protected if an heir contests the will and the
7 | ~~A~~attorney ~~G~~general does not know that a charitable bequest existed.
8

9 **Subsection (d). Revocable trust.** If a decedent's property will be distributed through a
10 | revocable trust rather than through probate, the ~~A~~attorney ~~g~~general-~~General~~ should still get notice
11 | of any significant charitable gifts. The amount that is "significant" is left in brackets for states to
12 | consider. The Drafting Committee thought that gifts to charity worth at least \$25,000
13 | collectively represented a "significant" charitable interest.
14

15 **Subsection (e). Bankruptcy.** The [~~A~~attorney ~~G~~general] should be aware of a charity's
16 | decision to file for bankruptcy so that the [~~A~~attorney ~~g~~general] can protect the public's interest in
17 | the charitable assets. [Moved to Section 8]
18

19 **Subsection (f)(1). Revocation of tax exemption.** The revocation of a federal or state
20 | tax exemption may signal problems with a charity that the ~~A~~attorney ~~G~~general should consider.
21 | This subsection requires provides for notification to the ~~A~~attorney ~~G~~general of revocation or
22 | modification of a charity's exempt status for any tax purpose.
23

24 **Subsection (f)(2). Amendment.** This subsection requires a charity to file with the
25 | ~~A~~attorney ~~G~~general any amendment to its governing documents that changes the purpose of the
26 | charity or results in a material change to the structure, governance, or activities of the charity.
27 | For example, a charity should report a change in voting structure, either the elimination of a class
28 | of voting members or the creation of voting members. [Add examples of other "material"
29 | changes].
30

31 **SECTION ~~78~~. NOTICE TO ATTORNEY GENERAL OF ACTION OR**
32 **PROCEEDING-CONCERNING COVERED CHARITABLE OR CHARITABLE**
33 **ASSETS.**

34 (a) This section applies to:

35 (1) an action against or on behalf of a person holding a charitable asset ~~or an~~
36 ~~action~~-seeking to enforce ~~a-the-term terms governing the use or management~~relating to a gift of a
37 charitable asset;

38 (2) an action ~~against a person~~ concerning ~~the use of an application of a~~ charitable

assets or a breach of ~~fiduciary duty~~ or other ~~legal duty~~ obligation owed to a person holding a charitable asset;

(3) a proceeding by, against, or on behalf of a person holding a charitable assets seeking for:

(A) instruction, injunction, or declaratory relief relating to the management, use, or distribution of a charitable assets ~~or income produced by charitable assets~~;

(B) construction of a record under which a charitable assets ~~is~~ are held;

(C) modification, interpretation, or termination of the terms of a record under which a charitable asset ~~iss~~ are held; or

(D) removal, appointment ~~of~~, or replacement of a trustee of a charitable trust;

~~(E4) - a proceeding relating to the administration of a probate challenge to the administration of or a distribution from a decedent's estate or a trust in which matters affecting a charitable assets may be decided; and~~

~~(F) bankruptcy under Title 11 of the United States Code, receivership under [state receivership statute] or a similar receivership statute of another state, or any other insolvency proceeding. d~~

~~(5) a proceeding to contest or set aside the probate of a will or establishment, funding or dissolution of a trust under which property is given for charitable purposes.~~

(b) When a person commences an action or proceeding to which this section applies, the person shall give notice in a record to the ~~[Attorney General]~~ if the value of the charitable assets involved in the action or proceeding is at least \$[25,000]. The notice must include a copy

1 of the initial pleading. ~~An~~No order, decree, or judgment rendered in any action ~~in~~as to which
2 notice is required ~~by~~ under this section ~~is not~~shall be binding ~~up~~ on the [Attorney General] if
3 the ~~required~~ notice has not been given. ~~The statute of limitations for the [attorney general] to~~
4 ~~bring an action shall not commence until such time as the requisite notice has been given.~~

5 **Comment**

6 The list of kinds of proceedings that require notice to the Attorney General is adapted
7 from provisions found in charitable corporation, trust, and probate sections of various state
8 codes, although no one state provides a model for the entire section. The Drafting Committee
9 concluded that the Attorney General ought to be made aware of a wide range of proceedings
10 that might affect charitable assets or the structure or governance of a charity. [Might include
11 examples here, too. For example, changing the membership structure by eliminating one or
12 more classes of voting members, should require notification.]

13
14 Legislative Note: In states where the Attorney General is a necessary party to any or
15 all of the kinds of actions addressed in this section, parts or all of the section will be unnecessary.
16

17 SECTION 9. EQUITABLE RELIEF.

18 If a person required to register under Section 4, file an annual report under Section 5, provide
19 notice of a reportable event under Section 7, or provide notice of an action or proceeding under
20 Section 8 fails to do so, the [Attorney General] may seek appropriate equitable relief.

21 _____
22 ~~SECTION 9. PARTICIPATION BY [ATTORNEY GENERAL] IN PROCEEDING~~
23 ~~INVOLVING COVERED CHARITY. The [attorney general] may commence an action~~
24 ~~pursuant to this [act] and may intervene in an action or proceeding listed in Section 8(a).~~

25 **Comment**

26 This section articulates Attorney General authority to bring an action or intervene in a
27 proceeding brought by someone else. The committee intends to make the Attorney General a
28 proper party to a wide array of proceedings involving charities, charitable fiduciaries, or
29 charitable assets, so that the Attorney General may exercise the discretion to participate or
30 refrain from participating in court proceedings that relate the Attorney General duty and
31 authority under this Act.

1 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
2 U.S.C. Section 7003(b).

3 | **SECTION 1~~2~~3. REPEALS.** The following ~~acts and parts of acts~~ are repealed:

4 | **SECTION 1~~3~~4. EFFECTIVE DATE.** This [act] takes effect