

DRAFT
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

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ON UNIFORM STATE LAWS

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March 7, 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, the role of the Attorney General 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. [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 of Charitable Assets Act will articulate and confirm the role of the state Attorney General in protecting charitable assets. The Attorney General'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 Attorney General's authority is broad and this Act will not limit or narrow that authority.

The Act will provide the Attorney General with at least an inventory of basic information without overburdening the charities or the Attorney General with excessive reporting requirements. The Act specifies which transactions and legal proceedings require notice to the Attorney General 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.

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

5
6 It is useful to remember that the Attorney General has an educational role and a
7 facilitative role as well as a regulative role. Attorneys General now generally educate charities
8 and work with charities to help them become more efficient and more effective. The Attorney
9 General will be better able to perform these roles with adequate information about the charities
10 operating in the state.

11
12 ***Which Charities Does the Statute Cover?*** The Attorney General has authority to protect
13 all charitable assets in a state and oversight over all charities registered in a state, so the Act
14 logically applies broadly to charities. Certain sections of the Act (registration, reporting, and
15 notice) apply more narrowly. The Act does not cover governmental entities and businesses,
16 except to the extent that those non-charities hold charitable assets.

17
18 ***General Authority of the Attorney General.*** The Act states the broad duty of the
19 Attorney General to represent the public interest in the protection of charitable assets. The Act
20 states that the Attorney General may enforce the use of charitable assets by a charity for the
21 purposes for which the assets were given to the charity, may take action to prevent or correct a
22 breach of a fiduciary duty in connection with the administration of a charity or charitable assets,
23 and may intervene in an action brought to correct a misapplication of charitable funds, a
24 departure from the purpose of the charity, or a breach of a fiduciary duty owed the charity.

25
26 ***Registration.*** A charity covered by the registration section must register with the
27 Attorney General within a specified period of time after the charity receives property. The
28 charity must provide basic information about the charity (name, address, statutory agent, federal
29 identification number, and contact person) and a copy of the charity’s organizing document
30 (articles of incorporation or trust instrument). The Act includes a one-page statutory form of
31 registration.

32
33 ***Annual Reports.*** Charities with assets above a minimum amount will file an annual
34 report with the Attorney General. The annual report will provide basic information and will
35 require that the charity attach a copy of any report the charity files with the Internal Revenue
36 Service (e.g., a Form 990 or a Form 990-EZ).

37
38 ***Notice of “Life Events.”*** One of the concerns the Drafting Committee sought to address
39 was the problem that occurs when an Attorney General learns about the loss of charitable assets
40 after a charity has disposed of the assets. The Act requires a charity to file a notice of the
41 following, a specified number of days [20, 30 or 60 days] before the event occurs. Events that
42 require notice include the following:

- 43
44
 - Any amendment to the charity’s organizational document, if the amendment changes the
45 purposes or results in a material change in the structure, governance, or activities of the
46 charity.

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

21 In addition, the personal representative of an estate or the trustee of a trust that involves the
22 distribution of property to a charity must send the Attorney General a copy of the will or a
23 description of the charitable interests in the trust.
24

25 Any person who asserts a claim in a proceeding involving a charity or charitable assets
26 must give written notice to the attorney general if the value of the charitable assets involved is at
27 least \$25,000. The notice must include a copy of the pleading. The proceedings that require
28 notice are the following:
29

- 30 • An action against or on behalf of a charity seeking to enforce the use of charitable assets
31 or the breach of a duty owed to the charity;
32
- 33 • A proceeding seeking instructions relating to the administration, use, or distribution of
34 the charitable assets;
35
- 36 • A proceeding to construe a document under which charitable assets are held or to modify
37 the terms under which charitable assets are held;
38
- 39 • A proceeding involving a trust or probate estate in which matters affecting charitable
40 assets may be decided; or
41
- 42 • A proceeding to remove or replace a trustee of a charitable trust.
43

44 ***Cooperation with Other Officials.*** The Act permits the Attorney General to cooperate
45 with any official of the state, of another state, or of the United States. The Attorney General can
46 provide information or documents concerning an investigation or proceeding to the other official

1 in connection with the other official's role in the oversight of charities and charitable assets. The
2 Attorney General can also acquire information or documents from the other official.
3

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

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

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

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

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

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

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

23
24 **Comment**

25 **Subsection (1). Charitable Asset.** The term property includes all interest in real or
26 tangible or intangible personal property, including remainder interests and conservation or

1 preservation easements or restrictions.

2
3 **Subsection (2). Charitable purposes.** The definition of charitable purposes follows that
4 of UTC § 405, Restatement (Third) of Trusts § 28 (2003), and UPMIFA § 2(1) (2006). This
5 long-familiar standard derives from the English Statute of Charitable Uses, enacted in 1601.
6

7 Some 17 states have created statutory definitions of charitable purpose for various
8 reasons. *See, e.g.*, 10 Pa. Cons. Stat. § 162.3 (2005) (defining charitable purpose within the
9 Solicitation of Funds for Charitable Purposes Act to include “humane,” “patriotic,” “social
10 welfare and advocacy,” and “civic” purposes). The definition in subsection (4) applies for
11 purposes of this Act and does not affect other definitions of charitable purpose.
12

13 **Subsection (3). Person.** The Act uses as the definition of person the definition approved
14 by the Uniform Law Commission. The definition includes individuals as well as entities.
15 Charities are typically organized as nonprofit corporations or charitable trusts and both are
16 included within this definition.
17

18 **Subsection (4). Record.** Record is defined, using the standard Uniform Law
19 Commission standard definition, in order to use one word instead of several when the act deals
20 with traditional forms of paper, as well as information in electronic form.
21

22 **Subsection (5). Responsible Individual.** This term describes someone the Attorney
23 General could contact for information about the charity. Often the Attorney General will be able
24 to resolve a question about a charity’s use of assets informally, and having someone identified as
25 a contact person for the charity will make that informal discussion more efficient and effective.
26 A responsible individual should be someone who is generally familiar with, among other things,
27 how the charity is managed but the person need not be a director or trustee. The definition is
28 based on one in the Uniform Law Enforcement Access to Entity Information Act (2009).
29

30 **SECTION 3. AUTHORITY OF [ATTORNEY GENERAL] TO PROTECT** 31 **CHARITABLE ASSETS.**

32 (a) The [Attorney General] represents the [public interest] [interest of the public] in the
33 protection of charitable assets.

34 (b) The [Attorney General] may:

35 (1) enforce the application and prevent the misapplication or diversion of a
36 charitable asset in accordance with:

37 (A) the purposes or terms, if any, for which the asset was given; and

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

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

3 (A) in the governance, management, or administration of a charitable
4 asset; or

5 (B) in the governance of a person organized primarily for charitable
6 purposes;

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

9 (4) commence or intervene in an action to:

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

11 (B) seek other remedy to enforce this [act].

12 (c) The [Attorney General] may conduct an investigation, including exercising
13 administrative subpoena power, if the [Attorney General] has reason to believe the investigation
14 is necessary to determine whether action may be advisable under this [act].

15 (d) This [act] does not limit the powers and duties of the [Attorney General] under law of
16 this state other than this [act].

17 **Comment**

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

1 Section (b)(1)(B). Although a charity's purposes need not be static, the terms of the
2 organizing documents in effect at the time the charity receives assets constrain the use of those
3 assets.
4

5 **Legislative Note:** *States vary with respect to process and procedure relating to Attorney*
6 *General investigative authority. States that detail Attorney General subpoena power in code*
7 *sections dealing broadly with Attorney General power will have no need for this section. States*
8 *that provide in their codes for Attorney General civil subpoena power specifically in connection*
9 *with another Attorney General function (such as consumer protection) can use that language in*
10 *this section with any necessary adaptations. In many states the Attorney General has civil*
11 *jurisdiction but not criminal jurisdiction. For example, in Connecticut the Attorney General is*
12 *the civil charitable regulator but if the Attorney General wishes to initiate a criminal proceeding*
13 *the Attorney General must do so through the chief state's attorney. In other states (e.g.*
14 *Maryland) the county state's attorney has general criminal jurisdiction. The committee also*
15 *needs to determine whether the addition of a new crime in this subsection is appropriate. In*
16 *some states crimes can only be created in the criminal code.*
17

18 Subsection (d) reflects the committee's desire to articulate that the statute does not
19 replace any common law or other statutory powers the [attorney general] may have.
20

21 [add discussion of relator statutes and consider adding a legislative note for states with relator
22 statutes]
23

24 The Act does not, either expressly or by implication, affect existing law concerning the
25 rights of persons other than the [Attorney General] to standing in connection with a matter
26 involving a charity.
27

28 **SECTION 4. REGISTRATION.**

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

31 (b) A person is required to register under this section if the person holds or administers
32 charitable assets in excess of \$5,000 and:

33 (1) is organized under the law of this state or if it is a trust has its situs in this
34 state;

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

36 (3) holds charitable assets in this state other than assets held primarily for

1 investment purposes;

2 (4) conducts activities in this state; or

3 (5) holds assets that are given or committed to the benefit of a person in this state.

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

5 (1) a government, governmental subdivision, agency, or instrumentality;

6 (2) an organization the primary purpose of which is to influence elections;

7 (3) a financial institution, investment company, or storage facility that holds
8 charitable assets that belong to another person;

9 (4) an individual holding a charitable asset other than in a fiduciary capacity;

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

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

15 **Alternative A**

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

20 **Alternative B**

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

22 **End of Alternatives**

23 (d) The following activities do not constitute conducting activities in this state within the

1 meaning of section (b)(4):

2 (1) maintaining, defending, mediating, arbitrating, or settling an action or
3 proceeding;

4 (2) holding a meeting of trustees, directors, or members;

5 (3) maintaining an account in a financial institution or an investment account;

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

7 (5) conducting an isolated transaction that is completed in not more than 30 days
8 and is not in the course of similar transactions;

9 (6) soliciting or accepting contributions; and

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

11 (e) A person required to register under this section shall register with the [Attorney
12 General] not later than [three] months after the date the person receives charitable assets in
13 excess of \$[5,000].

14 (f) The registration required by subsection (b) must include:

15 (1) the name and address of the person;

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

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

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

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

23 (6) if the person is not organized primarily for charitable purposes, a copy of the

1 portion of the person's articles of incorporation and bylaws, trust instrument, or other record, if
2 any, that relates to the use and administration of the charitable asset held by the person.]; and]

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

5 (g) The registry established pursuant to subsection (a) and records filed with the
6 [Attorney General] are public records, except that the [Attorney General] shall:

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

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

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

18 **Comment**

19 The main thrust of the 1954 Uniform Supervision of Trustees for Charitable Purposes Act
20 was to provide a mechanism to facilitate the supervisory role of the Attorney General by
21 providing for registration that would alert the Attorney General to the existence and
22 administration of charitable trusts. This Act continues to incorporate that function. The Drafting
23 Committee has opted to keep the registration obligation simple, so as to avoid overburdening
24 either charitable organizations or Attorneys General. It is expected that the registration function
25 will move to an electronic system, thereby reducing some of the burden. Electronic registration
26 will be sufficient to meet the requirements of Section 5, and the Drafting Committee hopes that
27 states will be able to accommodate electronic registration. While a large organization that
28 operates in many states will likely have an obligation to register in multiple states, the committee

1 hopes that the Act's move toward uniformity will minimize the burden of multiple registrations.
2 The Act includes a statutory form of registration so that states can ease the burden on charities by
3 adopting a requirement that is consistent across states.
4

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

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

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

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

38 The term "principal place of business" is used to mean principal place of administration,
39 governance, activities, and operation. Although using the term "business" for charitable
40 activities sounds odd, the term is used to bring with it the substantial caselaw connected with the
41 term.
42

43 Although the types of contact listed in subsection (b) are not limited by the terms
44 "substantial" or "significant," the intention is that a negligible level of activity or other contact
45 not be considered sufficient to cause an Attorney General to assert protection powers. The state
46 constitution will control the level of activity necessary for Attorney General protection.

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

5
6 Subsection (b)(2)(C) excludes persons not organized primarily for charitable purposes.
7 The Drafting Committee intends to exclude entities like benefit corporations and L3Cs even
8 though those entities may be established in part for charitable purposes. The committee also
9 intends to exclude labor organizations, social organizations, and trade associations.

10
11 Subsection (b)(2)(F) excludes individuals who may hold charitable assets as volunteers
12 but not in a fiduciary capacity. For example, a volunteer might hold assets in connection with a
13 school's PTO fundraiser. The PTO will register, but a volunteer who holds assets connected
14 with the fundraiser do not need to register.

15
16 Subsection (d) indicates that the threshold amount for filing is \$5,000. The Drafting
17 Committee chose this amount because it is the same as the amount that necessitates filing a Form
18 1023, Recognition of Exempt Status, with the Internal Revenue Service. The information
19 required to register with the Attorney General is significantly less than the information required
20 to complete a Form 1023, so an organization should not face an undue burden if required to
21 register with the Attorney General.

22
23 Legislative Note to Subsection (g) – if a state FOIA statute requires more here, then add.
24 In some states an amendment to FOIA may be necessary. Some states will delete.
25

26 **SECTION 5. ANNUAL REPORT.**

27 (a) A person required to register under Section 4 which holds charitable assets valued in
28 excess of \$[5,000] at the end of the person's most recent accounting period or has total revenue
29 in excess of \$[--] for the person's most recent accounting period shall file with the [Attorney
30 General], not later than 5 months and 15 days after the end of the person's accounting period, a
31 report providing and certifying the accuracy of the following information:

32 (1) a current list of the names of the individuals responsible for the management
33 of the person;

34 (2) the person's total revenue for its most recent accounting period;

35 (3) the person's total assets as of the last day of its most recent accounting period;

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

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

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

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

8 **Alternative A**

9 [(B) entered into a contract, loan, lease, or other financial transaction with
10 an officer, director, trustee, or other fiduciary, either directly or with an entity in which the
11 officer, director, trustee, or other fiduciary had a material financial interest;]

12 **Alternative B**

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

17 **End of Alternatives**

18 (C) became aware of a material embezzlement, theft, or diversion of the
19 person's charitable assets;

20 (D) became aware of use of a charitable asset to pay any penalty, fine, or
21 judgment;

22 (E) became aware of the payment by an officer, director, trustee, or other
23 fiduciary of a penalty, fine, or judgment with respect to the person; and

(F) became aware of the use of restricted funds for a purpose other than the purpose specified in the restriction;

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

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

(b) If the person is required to file a Form 990, Form 990-PF, or Form 990-EZ with the Internal Revenue Service, then the person shall attach a copy of the form to the annual report.

Comment

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

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

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

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

1 **SECTION 6. NOTICE TO [ATTORNEY GENERAL] OF REPORTABLE**
2 **EVENT.**

3 (a) A person required to register under Section 4 shall give notice in a record to the
4 [Attorney General] not later than [20] [30] days before a reportable event occurs.

5 (b) The following are reportable events under this section:

6 (1) a dissolution of the person;

7 (2) a termination of the person;

8 (3) a disposition by the person of all or substantially all of the person's charitable
9 assets;

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

11 (5) a removal of the person from the jurisdiction of this state; or

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

13 (c) A transfer of a charitable asset in connection with an event described in subsection
14 (b) which occurs earlier than [20] days after delivery of the notice required by subsection (a) to
15 the [Attorney General] shall be a violation of this [act] unless before the transfer the person
16 receives the consent of the [Attorney General] in a record to a proposed transfer or the person
17 receives notice in a record that the [Attorney General] will take no action regarding the transfer.

18 (d) If a decedent's estate opened by a court in this state involves, or may involve, the
19 distribution of property to a person holding or authorized to hold charitable assets, the [personal
20 representative], not later than [ninety] days after the date the [personal representative] is
21 appointed, shall deliver to the [Attorney General] a copy of the will; a copy of the petition for
22 probate or application for unsupervised probate; and a copy of the inventory, or if none is filed
23 with the court, then a statement of the estimated value of the estate, unless the distribution is a

1 specific devise with a value of less than \$100,000 to a named person holding charitable assets.

2 (e) If a revocable trust having its principal place of administration in this state becomes
3 irrevocable [because of the settlor's death] and if it provides for a distribution of property to a
4 person holding or authorized to hold charitable assets, the trustee, not later than [ninety] days
5 after the date of the settlor's death, shall deliver to the [Attorney General] a description of the
6 charitable interests and a statement of the estimated value of the trust assets, unless the
7 distribution is a specific distribution with a value of less than \$100,000 to a named person
8 holding charitable assets.

9 (f) A person required to register under Section 4 shall give notice in a record to the
10 [Attorney General] not later than [20] days after receipt of any notice of revocation,
11 modification, or denial of its federal or state [income] tax exemption.

12 **Comment**

13 The Act requires notice to the Attorney General of a variety of transactions and events
14 that raise particular opportunities for misapplication of charitable assets, so that the Attorney
15 General has an opportunity to monitor the events in time to prevent problems in addition to
16 correcting problems that have already arisen.

17
18 **Subsection (a). Disposition or removal of all or significantly all assets.** If the charity
19 will terminate or dispose of substantially all of its assets, the charity must notify the Attorney
20 General before the charity gives up control of the assets. This notice provision gives the
21 Attorney General time to review the proposed transaction and recommend changes if necessary
22 while the assets can still be reached. If the Attorney General objects to the proposed transaction,
23 the Attorney General must deliver the objection to the charity in writing and then the charity
24 cannot proceed with the transaction until the Attorney General consents (presumably after
25 negotiations between the charity and the Attorney General) or a court approves the transaction.
26 This subsection gives the Attorney General the information needed to work with the charity on
27 an appropriate plan of distribution or other transfer, and then provides for a court determination
28 if the Attorney General and the charity cannot reach agreement.

29
30 **Subsection (c) Probate estate.** If a probate estate contains a gift to a charity, the
31 personal representative must notify the Attorney General of the distribution of an estate that may
32 involve the distribution of charitable assets. This provision is necessary, because the public's
33 interest in a charitable bequest may not be protected if an heir contests the will and the Attorney
34 General does not know that a charitable bequest existed.

1 **Subsection (d). Revocable trust.** If a decedent’s property will be distributed through a
2 revocable trust rather than through probate, the Attorney General should still get notice of any
3 significant charitable gifts. The amount that is “significant” is left in brackets for states to
4 consider. The Drafting Committee thought that gifts to charity worth at least \$25,000
5 collectively represented a “significant” charitable interest.
6

7 **Subsection (e). Bankruptcy.** The [Attorney General] should be aware of a charity’s
8 decision to file for bankruptcy so that the [Attorney general] can protect the public’s interest in
9 the charitable assets. [Moved to Section 8]
10

11 **Subsection (f)(1). Revocation of tax exemption.** The revocation of a federal or state
12 tax exemption may signal problems with a charity that the Attorney General should consider.
13 This subsection requires provides for notification to the Attorney General of revocation or
14 modification of a charity’s exempt status for any tax purpose.
15

16 **Subsection (f)(2). Amendment.** This subsection requires a charity to file with the
17 Attorney General any amendment to its governing documents that changes the purpose of the
18 charity or results in a material change to the structure, governance, or activities of the charity.
19 For example, a charity should report a change in voting structure, either the elimination of a class
20 of voting members or the creation of voting members. [Add examples of other “material”
21 changes].
22

23 **SECTION 7. NOTICE TO ATTORNEY GENERAL OF ACTION OR** 24 **PROCEEDING.**

25 (a) This section applies to:

26 (1) an action against or on behalf of a person holding a charitable asset seeking to
27 enforce a term relating to a gift of a charitable asset;

28 (2) an action concerning the use of a charitable asset or a breach of duty or other
29 obligation owed to a person holding a charitable asset;

30 (3) a proceeding by, against, or on behalf of a person holding a charitable asset
31 for:

32 (A) instruction, injunction, or declaratory relief relating to the
33 management, use, or distribution of a charitable asset;

34 (B) construction of a record under which a charitable asset is held;

1 (C) modification, interpretation, or termination of the terms of a record
2 under which a charitable asset is held; or

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

5 (E) a challenge to the administration of or a distribution from a decedent's
6 estate or a trust in which matters affecting a charitable asset may be decided; and

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

10 (b) When a person commences an action or proceeding to which this section applies, the
11 person shall give notice in a record to the [Attorney General]. The notice must include a copy of
12 the initial pleading. An order, decree, or judgment rendered in an action in which notice is
13 required by this section is not binding on the [Attorney General] if the notice has not been given.

14 **Comment**

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

22
23 **Legislative Note:** *In states where the Attorney General is a necessary party to any or all of the*
24 *kinds of actions addressed in this section, parts or all of the section will be unnecessary.*
25

26 **SECTION 8. EQUITABLE RELIEF.** If a person required to register under Section 4,
27 file an annual report under Section 5, provide notice of a reportable event under Section 7, or
28 provide notice of an action or proceeding under Section 8 fails to do so, the [Attorney General]

1 may seek appropriate equitable relief.

2 **Comment**

3 This section articulates Attorney General authority to bring an action or intervene in a
4 proceeding brought by someone else. The committee intends to make the Attorney General a
5 proper party to a wide array of proceedings involving charities, charitable fiduciaries, or
6 charitable assets, so that the Attorney General may exercise the discretion to participate or
7 refrain from participating in court proceedings that relate the Attorney General duty and
8 authority under this Act.
9

10 **SECTION 9. COOPERATION WITH OTHER OFFICIAL.**

11 (a) The [Attorney General] may cooperate with an official of this state, another state, or
12 the United States, or any political subdivision or agency of any of the foregoing, charged with
13 the protection of charitable assets.

14 (b) The [Attorney General] may:

15 (1) notify an official described in subsection (a) of the commencement, status, or
16 resolution of an investigation or proceeding pursuant to this [act];

17 (2) make available to the official information relating to a charitable asset which
18 is relevant to the official's protection of charitable assets; or

19 (3) request from the official information relevant to an investigation pursuant to
20 Section 3.

21 **Comment**

22
23 This section authorizes cooperation between a state Attorney General and relevant
24 officials of other states and the federal government.
25

26 **SECTION 10. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
27 applying and construing this uniform act, consideration must be given to the need to promote
28 uniformity of the law with respect to its subject matter among the states that enact it.

1 **SECTION 11. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
2 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal
3 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq.,
4 but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
5 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
6 U.S.C. Section 7003(b).

7 **SECTION 12. REPEALS.** The following are repealed:

8 **SECTION 13. EFFECTIVE DATE.** This [act] takes effect