

DRAFT
FOR DISCUSSION ONLY

OVERSIGHT

PROTECTION OF CHARITABLE ASSETS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE ~~LAW~~LAW

~~For November 5—7, 2010 Committee Meeting~~

With Prefatory Note and Comments

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By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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~~October 20, 2010~~

January 10, 2011

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PROTECTION OF CHARITABLE ASSETS ACT

TABLE OF CONTENTS

PREFATORY NOTE.....	1
SECTION 1. SHORT TITLE.....	1
SECTION 2. DEFINITIONS.....	1
SECTION 3. AUTHORITY OF [ATTORNEY GENERAL] TO PROTECT CHARITABLE ASSETS.....	4
SECTION 4. INVESTIGATION BY [ATTORNEY GENERAL].....	6
SECTION 5. REGISTRATION.....	10
SECTION 6. ANNUAL REPORT.....	15
SECTION 7. NOTICE TO [ATTORNEY GENERAL].....	18
SECTION 8. NOTICE OF PROCEEDING CONCERNING COVERED CHARITABLE OR CHARITABLE ASSETS.....	23
SECTION 9. PARTICIPATION BY [ATTORNEY GENERAL] IN PROCEEDING INVOLVING COVERED CHARITY.....	25
SECTION 10. COOPERATION WITH OTHER OFFICIAL.....	25
SECTION 11. UNIFORMITY OF APPLICATION AND CONSTRUCTION.....	26
SECTION 12. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.....	26
SECTION 13. REPEALS.....	26
SECTION 14. EFFECTIVE DATE.....	26

OVERSIGHTPROTECTION 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 supervising charities, 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 regulation.

Goals of the Act. The Uniform Oversight 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 ~~a few states courts have found no common law authority and in a few others~~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 also make sure the attorney general has the information needed to perform the oversight function, 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.

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 attorney general 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 ~~Act~~attorney general has oversight authority over all charitable assets in a relatively broad definition of “covered charity”state and then will apply certainall charities registered in a state, so the Act applies broadly to charities. Certain sections of the Act (registrationand, reporting), and notice) apply more narrowly. The Drafting Committee continues to discuss which charities should be covered by the statute, which should be required to register, and which should file additional reports. “Covered charity” is an entity that holds property for charitable purposes, but the term excludesAct 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 is established or receives property. The charity must provide basic information about the charity (name, address, statutory agent, 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 filethe charity attach a copy of any report the charity files with the Internal Revenue Service such as(e.g., a Form 990 or a Form 990-EZ) will file a copy with the attorney general. Other charities will file an annual report with some basic information, listed in the Act, about the charity. The Act may limit the requirement to file an annual report to charities with assets above a minimum amount.)

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 require notice include the following:

- Any amendment to the charity's organizational document, if the amendment changes the purposes or results in a material change in the structure, governance, or activities of the charity.
- The intent to dissolve or terminate, with a copy of the charity's plan of dissolution. The charity cannot transfer assets until the earlier of receiving written consent from the attorney general, written notice that the attorney general will take no action, or the passage of time [20 days]. After dissolution, the charity must file with the attorney general a description of the assets transferred and a list of the names and addresses of those who received the assets, other than creditors. [this is not currently in the act – should it be?]
- The intent to sell, lease, exchange, or otherwise dispose of all or substantially all of its property, unless the transaction is in the regular course of the charity's activities or the attorney general waives this requirement.
- The intent to merge with any other entity. The notice must include a copy of the proposed plan of merger.
- A decision to file for bankruptcy (no later than the date of the filing).
- Receipt of a notice of revocation or modification of a federal, state, or local tax exemption (within a specified period of time after receipt).

In addition, the personal representative of an estate or the trustee of a trust that involves the distribution of property to a charity must send the attorney general a copy of the will or trust a description of the charitable interests in the trust.

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

- An action against or on behalf of a charity seeking to enforce the use of charitable assets or the breach of a duty owed to the charity;
- A proceeding seeking instructions relating to the administration, use, or distribution of the charitable assets;
- A proceeding to construe a document under which charitable assets are held or to modify the terms under which charitable assets are held;

- A proceeding involving a trust or probate estate in which matters affecting charitable assets may be decided; or
- A proceeding to remove or replace a trustee of a charitable trust.

Cooperation with Other Officials. The Act permits the attorney general to cooperate with any official of the state, of another state, or of the United States. The attorney general can provide information or documents concerning an investigation or proceeding to the other official in connection with the other official's role in the oversight of charities and charitable assets. The attorney general can also acquire information or documents from the other official.

OVERSIGHT

PROTECTION OF CHARITABLE ASSETS ACT

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

~~Oversight~~Protection of Charitable Assets Act.

SECTION 2. DEFINITIONS. In this [act]:

(1) “Charitable asset” means property that is ~~held by [or for a covered charity] or donated [to a covered charity]~~irrevocably dedicated for a charitable purpose.

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

~~(3) “Covered charity”:~~

~~(A) means a person other than an individual which holds or administers [property irrevocably dedicated to or donated for a charitable purpose] [charitable assets] and which:~~

~~_____ (i) is organized under the law of this state;~~

~~_____ (ii) has its principal place of [governance][activities][management] in this state;~~

~~_____ (iii) holds substantial charitable assets in this state on more than a temporary basis;~~

~~_____ (iv) conducts significant activities in this state; or~~

~~_____ (v) holds assets that are specifically dedicated to the benefit of persons in this state; and~~

~~_____ (B) does not include:~~

~~_____ (i) a government, governmental subdivision, agency, or instrumentality, unless it holds funds exclusively for a charitable purpose;~~

1 ~~_____ (ii) a person organized primarily for business purposes and not primarily~~
2 ~~for charitable purposes;~~

3 ~~_____ (iii) an organization the primary purpose of which is to influence~~
4 ~~elections; or~~

5 ~~_____ (iv) a financial institution, investment company, or storage facility that~~
6 ~~holds charitable assets that belong to another person.~~

7 ~~_____ (4) “Person” means an individual, corporation, business trust, statutory trust, estate, trust,~~
8 ~~partnership, limited liability company, association, joint venture, public corporation, government~~
9 ~~or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.~~

10 ~~(54) “Record” means information that is inscribed on a tangible medium or that is stored~~
11 ~~in an electronic or other medium and is retrievable in perceivable form.~~

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

14 ~~(A) is generally familiar with the affairs of the person;~~

15 ~~(B) participates, directly or indirectly, in the control or management of the person~~
16 ~~or, in the case of a person being formed, will participate in the control or management of the~~
17 ~~person; and~~

18 ~~(C) is not participating in the control or management of the person as a nominee~~
19 ~~of another person solely for the purpose of satisfying the requirement of this [act] that the person~~
20 ~~designate a responsible individual.~~

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Comment

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

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

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

~~**Subsection (3). Covered charity.** Charity is defined broadly in the Act, with the definition explicitly including entities of any legal form that hold or administer property dedicated to or donated for charitable purposes. The definition of “charity” is broad enough to take in not only organizations traditionally thought of as charitable, but also non-charitable organizations that hold or administer assets dedicated to charitable purposes or that have been donated for charitable purposes. Because the definition underlies the obligation to register with the attorney general, it limits the term to organizations that have significant contacts in the state. The drafting committee believes that the threshold strikes an appropriate balance between the risk of overburdening charities that have little contact with a particular state and the need for the attorney general to be alerted to the existence of charitable organizations and assets in the state that might call for oversight. Simply having a bank or investment account in the state does not cause an entity to fall within the definition, and financial institutions and investment companies are not included within the definition by virtue of having accounts owned by charities, unless the institution serves as trustee for a charity.~~

~~———— Governmental entities and political organizations are excluded from the definition of “charity” for purposes of the [act]. [Does the exclusion of political organizations exclude organizations for candidates, issue focused organizations?]~~

~~———— Assets must be in a state on more than a temporary basis so that a traveling art exhibit will not cause the charity that owns the artwork to become subject to oversight in the state in which an exhibit is held. The committee may need to clarify further what it means to hold assets on more than a temporary basis. For example, a probate estate might hold assets dedicated to a charitable purpose during the period of administration.~~

~~———— The committee will continue to discuss the appropriate scope of the definition of covered charity. In particular, more clarity is needed with respect to subsection (4)(C) and the meaning of “substantial” and with respect to subsection (4)(D) and the meaning of “significant.” For~~

1 | ~~example, the act should clarify inclusion (or lack of inclusion) of a charity that holds one~~
2 | ~~meeting a year in the state or makes grants in the state. We also need to address L3Cs and~~
3 | ~~companies like Newman's Own that provide a percentage of profits for charitable purposes.~~
4 | ~~L3Cs may qualify as IRC §501(c)(3) charities or they may not.~~
5 |

6 | ~~_____ **Subsection (4). Person.** The Act uses as the definition of person the definition approved~~
7 | ~~by the Uniform Law Commission. The definition includes individuals as well as entities.~~
8 | ~~Charities are typically organized as nonprofit corporations or charitable trusts and both are~~
9 | ~~included within this definition.~~
10 |

11 | **Subsection (54). Record.** Record is defined, using the Uniform Law Commission
12 | standard definition, in order to use one word instead of several when the act deals with papers,
13 | reports, instruments, and records, and to make clear that information in electronic form is
14 | included.
15 |

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

24 | **SECTION 3. AUTHORITY OF [ATTORNEY GENERAL] TO PROTECT**
25 | **CHARITABLE ASSETS.**

26 | (a) The [attorney general] ~~may represent~~represents the public interest in the oversight
27 | and protection of charities and charitable assets ~~by~~.

28 | ~~_____ (b) The [attorney general] may:~~

29 | (1) ~~enforein~~enforce the ~~due~~ application of charitable assets for the charitable
30 | ~~purpose of a covered charity or any charitable purpose~~purposes for which the assets ~~were~~are
31 | held, given or committed; and

32 | (2) ~~actin~~act to prevent or ~~correct~~remedy a breach of fiduciary or other legal duty
33 | ~~in the administration~~ of a ~~covered charity or person holding a~~ charitable ~~assets~~asset.

34 | ~~(bc)~~ The [attorney general] may commence or intervene in an action to enjoin,

1 ~~correct~~remedy, or obtain damages for a violation of this [act], or seek other remedy to enforce a
2 provision of this [act] or to prevent or ~~correct~~remedy:

3 (1) a misapplication or diversion of charitable assets from use for the ~~charity's~~
4 ~~designated~~ charitable purposes of a person holding the charitable assets;

5 (2) a departure from the charitable purpose ~~of a covered charity or from the terms~~
6 ~~of afor which~~ charitable ~~trust or a restricted gift~~assets were given; or

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

9 (ed) 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 authority to protect charitable assets. In most states, whether or not that function is embodied in
14 a statute, the authority is inherent in the common law powers of the [attorney general]. In at
15 least a few states, however, it has been held that no such common law authority exists, and in
16 some other states, whether it exists and what it consists of is not clear. The drafting committee
17 intends that the Act clarify and articulate [attorney general] authority to protect charitable assets.
18 At the same time, that authority is not unlimited. The [attorney ~~general's~~general]'s legitimate
19 role is to correct abuses, but not to take over governance or to substitute the [attorney
20 ~~general's~~general]'s judgment for the legitimate judgment of the charity's board or trustees; to
21 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 Subsection (ed) reflects the committee's desire to articulate that the statute does not
26 replace any common law or other statutory powers the ~~attorney general may have. The language~~
27 ~~of this provision also specifies that the act does not limit or restrict the rights of others provided~~
28 ~~by common law or statute. Thus, existing (or evolving) state law with respect to standing of~~
29 ~~those other than the attorney general is undisturbed by the Act. [attorney general] may have.~~

30
31 [add discussion of relator statutes and consider adding a legislative note for states with relator
32 statutes]

33
34 ~~Language specifying the attorney general's authority to issue an order to stop or to seek~~

1 | ~~an assurance of voluntary compliance is provided in the Legislative Note following Section 4.~~
2 | ~~States that provide for similar instruments to exercise attorney general authority elsewhere in the~~
3 | ~~state code, for instance, in the consumer protection statutes, will want to coordinate the language~~
4 | ~~here with that language.~~

5 |
6 | The Act does not, either expressly or by implication, affect existing law concerning the
7 | rights of persons other than the [~~Attorney General~~attorney general] to standing in connection
8 | with a matter involving a charity.

9 |
10 | Although a charity's purposes need not be static, the terms of the organizing documents
11 | in effect at the time the charity receives assets constrain the -use of those assets.
12 |

13 | **SECTION 4. INVESTIGATION BY [ATTORNEY GENERAL].** The [attorney
14 | general] may conduct an investigation ~~to ascertain whether, including exercising administrative~~
15 | ~~subpoena power, if the [attorney general] has reasonable belief that:~~

16 | (1) an action may be advisable within the authority of the ~~Attorney General~~[attorney
17 | ~~general~~] pursuant to Section 3;

18 | (2) a law or legal duty concerning the use or management of charitable assets has been
19 | violated; or

20 | (3) this [act] has been violated.

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

25 | *[(b) The [attorney general] may sign and cause to be served on a person that is believed*
26 | *to have information, documentary material, or physical evidence relevant to the subject matter of*
27 | *an investigation pursuant to subsection (a) a civil investigative demand requiring the person to*
28 | *appear and testify, or to produce documentary material or physical evidence for examination, at*
29 | *a reasonable time and place stated in the demand. Service of a civil investigative demand, notice,*
30 | *or subpoena may be made by any person authorized by law to serve process or by any duly*
31 | *authorized employee of the [attorney general].*

32 | (c) *A civil investigative demand must:*

33 | (1) *state the general subject matter of the investigation and grounds for the*
34 | *alleged violation being investigated;*

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

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

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

8 (d) A civil investigative demand may not:

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

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

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

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

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

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

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

27 (f) An individual may not refuse to answer a material question, produce documentary
28 material, or testify in an investigation pursuant to this section on the ground that the testimony
29 or documentary material may tend to incriminate the individual or subject the individual to a
30 penalty. If the individual asserts a right against self-incrimination, the individual may not be
31 subjected to criminal prosecution or an action for a criminal penalty or forfeiture because of a
32 transaction, matter, or thing about which the individual may testify or produce documentary
33 material. An individual may assert the right against self-incrimination on the record or make the
34 assertion known to the [attorney general].

35 (g) Information, documentary material, or physical evidence demanded pursuant to a

1 civil investigative demand must be produced during normal business hours at the principal office
2 or place of business of the person served, or at such other time and place as may be agreed by
3 the person served and the [attorney general].

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

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

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

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

27 (l) If a person fails to comply with a civil investigative demand duly served on the person
28 or the person refuses to surrender material when whenever satisfactory copying or reproduction
29 of the material cannot be done, the [attorney general] may file, in the [trial court of general
30 jurisdiction] in a county or judicial district in which the person resides, is found, or transacts
31 business, and serve upon the person, a petition for an order of the court for enforcement of the
32 demand. If the person transacts business in more than one county or judicial district the petition
33 must be filed in the county or judicial district in which the person maintains the person's
34 principal place of business, or in such other county or judicial district as may be agreed by the
35 parties. When the petition is filed, the court shall have jurisdiction to hear and determine the
36 matter presented, and to enter an order required to enforce the provisions of this [act]. A final
37 order may be appealed to the [state supreme court]. Disobedience of a final order entered
38 under this section may be punished as a contempt of court.

39 |

1 often comes to the attorney general in a form much less formal than a sworn complaint; for
2 example, information about abuses and misdeeds is often brought to light in newspaper stories.
3 The committee was sensitive to the burden that an investigation can impose on a charity, but
4 concluded that a reasonable amount of discretion and flexibility in the attorney general is more
5 often likely to diminish the burden on charities than to justify inappropriate intrusion.
6

7 States vary with respect to process and procedure relating to attorney general
8 investigative authority. States that detail attorney general subpoena power in code sections
9 dealing broadly with attorney general power will have no need for this section. States that
10 provide in their codes for attorney general civil subpoena power specifically in connection with
11 another attorney general function (such as consumer protection) can use that language in this
12 section. The language used in this section is modeled on Missouri code sections concerning
13 consumer protection. The language in subsection (b) that refers to Section 4 will have to be
14 modified after a decision on how best to proceed with the language about civil investigative
15 demands.
16

17 Language specifying the attorney general’s authority to issue an order to stop or to seek
18 an assurance of voluntary compliance is provided in the Legislative Note following Section 4.
19 States that provide for similar instruments to exercise attorney general authority elsewhere in the
20 state code, for instance, in the consumer protection statutes, will want to coordinate the language
21 here with that language. Some states may want to enact this material as a separate section.
22

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

30 ~~The committee has not yet had the opportunity to discuss this Legislative Note. Both of these~~
31 ~~sections come from the Missouri statutes and will require re-working. In particular, committee~~
32 ~~members have raised questions about subsection (f) in the Legislative Note because of concerns~~
33 ~~about self-incrimination and the granting of immunity. The committee will think through these~~
34 ~~sections at its fall meeting.~~
35

36 SECTION 5. REGISTRATION.

37 (a) The [attorney general] shall establish and maintain a registry of ~~eovered~~
38 charitiespersons required to register under this section.

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

40 (1) the person holds or administers a charitable asset and:

- 1 (A) is organized under the law of this state;
- 2 (B) has its principal place of business in this state;
- 3 (C) holds charitable assets other than assets held primarily for investment
4 purposes in this state;
- 5 (D) conducts activities in this state; or
- 6 (E) holds assets that are specifically dedicated to the benefit of persons in
7 this state;
- 8 (2) and if the person is not:
- 9 (A) a government, governmental subdivision, agency, or instrumentality,
10 except to the extent that it holds charitable assets;
- 11 (B) a corporation sole or other religious organization which holds
12 property for religious purposes; or any agency or organization affiliated with and directly
13 supervised by such a religious organization; or an officer, director or trustee of any such religious
14 organization who holds property in an official capacity for religious purposes;
- 15 (C) a person not organized primarily for charitable purposes except to the
16 extent that it holds charitable assets;
- 17 (D) an organization the primary purpose of which is to influence
18 elections;
- 19 (E) a financial institution, investment company, or storage facility that
20 holds charitable assets that belong to another person; or
- 21 (F) an individual holding a charitable asset other than in a fiduciary
22 capacity.
- 23 (c) The following activities do not constitute conducting activities in a state within the

1 meaning of section (b)(1)(D):

2 (1) maintaining, defending, or settling any proceeding;

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

4 (3) maintaining bank accounts or investment accounts;

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

6 (5) conducting an isolated transaction that is completed within 30 days and that is
7 not one in the course of repeated transactions of a like nature; and

8 (6) soliciting or accepting contributions.

9 (d) A person required to register under this section shall register with the [attorney
10 general] on or before the later of:

11 ~~_____ (1) [_____] [days] [3] months~~ after the ~~effective date of this [act];~~

12 ~~_____ (2) [_____] [days] [months] after the date the charity is~~

13 ~~[created][formed][established]; or~~

14 ~~_____ (3) [_____] [days] [months] after the date the charity~~ the person receives charitable
15 assets; in excess of [\$5,000].

16 (ee) The registration required by subsection (b) must include:

17 (1) the name and address of the ~~covered charity~~ person;

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

20 (3) the name and address of a ~~director, trustee, or executive director~~ responsible
21 individual of the ~~charity~~ person;

22 (4) a short statement of the ~~charity's purpose~~ person's primary activities;

23 (5) a true copy of the current version of the ~~charity's~~ person's articles of

1 incorporation, trust instrument, or other record, if any, ~~creating the charity that serves as the~~
2 organizational document of the person; and

3 ~~((6) the federal employer identification number, if any, for the charity.)~~person.

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

9 (eg) The registry established pursuant to subsection (a) and records filed with the
10 [attorney general] are public records, except that the [attorney general] shall:

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

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

17 **Comment**

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

1 will likely have an obligation to register in multiple states, the committee hopes that the Act's
2 move toward uniformity will minimize the burden of multiple registrations. The Act includes a
3 statutory form of registration so that states can ease the burden on charities by adopting a
4 requirement that is consistent across states.
5

6 ~~Charity regulators involved in the drafting process noted that availability of information~~
7 ~~to the public serves an important function. The Act opens the registration and supporting~~
8 ~~documents to the public, with the exception of documents made confidential by any other law~~
9 ~~and, upon request of a charity or charity actor, any part of a document that does not relate to~~
10 ~~charitable assets and is not otherwise a public record. Since the required information does not~~
11 ~~require disclosures that are generally considered confidential, the committee will give further~~
12 ~~consideration to inclusion of Subsection (e)(2).~~
13

14 ~~The committee may develop a registration form and include the form in the comments.~~
15 ~~Also, the committee intends that electronic registration be permitted and will determine whether~~
16 ~~the Act needs to include a reference to electronic registration or whether making clear the~~
17 ~~permissibility of electronic registration in the comments will be sufficient.~~
18

19 Registration is important for several reasons. First, the list of registered charities can
20 serve as a quick resource of information for the attorney general and for the public. If the
21 attorney general receives a question from a member of the public, the attorney general may be
22 able to answer the question simply by reviewing the information provided in the registration. No
23 further inquiry may be necessary, and both the attorney general and the charity will save time
24 and expense.
25

26 Also, a potential donor may consult the list of registered charities to determine whether a
27 charity requesting a donation is current in its filings with the attorney general. If the charity is
28 not registered, the donor will want to investigate further before making a donation. If the charity
29 has consistently made the required filings, that information suggests a well-managed charity,
30 with fiduciaries who comply with their duties.
31

32 Finally, the requirement to register serves as a reminder to someone organizing a charity
33 of the seriousness of the fiduciary role an individual undertakes when acting as a director or
34 trustee of a charity. If the individual does not want the responsibility of managing charitable
35 assets under the oversight of the attorney general, the individual can give the assets to an existing
36 charity or start a donor advised fund.
37

38 Subsection (b) sets forth which organizations will be required to register under the Act.
39 The registration requirement applies to entities of any legal form that hold or administer property
40 dedicated to or donated for charitable purposes. The scope of the requirement is broad enough to
41 take in not only organizations traditionally thought of as charitable, but also non-charitable
42 organizations that hold or administer assets dedicated to charitable purposes or that have been
43 donated for charitable purposes. The obligation to register is limited to organizations that have
44 significant contacts in the state. The Drafting Committee believes that the threshold strikes an
appropriate balance between the risk of overburdening charities that have little contact with a

1 particular state and the need for the attorney general to be alerted to the existence of charitable
2 organizations and assets in the state that might call for oversight. Simply having a bank account
3 or investment account in the state does not cause an entity to fall within the definition, and
4 financial institutions and investment companies are not included within the definition by virtue
5 of having accounts owned by charities, unless the institution serves as trustee for a charity.
6

7 _____ The term “principal place of business” is used to mean principal place of administration,
8 governance, activities, and operation. Although using the term “business” for charitable
9 activities sounds odd, the term is used to bring with it the substantial caselaw connected with the
10 term.
11

12 Although the types of contact listed in subsection (b) are not limited by the terms
13 “substantial” or “significant,” the intention is that a negligible level of activity or other contact
14 not be considered sufficient to cause an attorney general to assert oversight powers. The state
15 constitution will control the level of activity necessary for attorney general oversight.
16

17 Subsection (b)(2)(A) excludes governments from the Act, but if a government accepts an
18 asset for charitable purposes, the Act will provide oversight for that asset. For example, a local
19 government might accept the donation of land for a public park or might accept a conservation
20 easement over land in the state.
21

22 Subsection (b)(2)(C) excludes persons not organized primarily for charitable purposes.
23 The Drafting Committee intends to exclude entities like benefit corporations and L3Cs even
24 though those entities may be established in part for charitable purposes. The committee also
25 intends to exclude labor organizations, social organizations, and trade associations.
26

27 Subsection (b)(2)(F) excludes individuals who may hold charitable assets as volunteers
28 but not in a fiduciary capacity. For example, a volunteer might hold assets in connection with a
29 school’s PTO fundraiser. The PTO will register, but a volunteer who holds assets connected
30 with the fundraiser do not need to register.
31

32 Subsection (d) indicates that the threshold amount for filing is \$5,000. The Drafting
33 Committee chose this amount because it is the same as the amount that necessitates filing a Form
34 1023, Recognition of Exempt Status, with the Internal Revenue Service. The information
35 required to register with the attorney general is significantly less than the information required to
36 complete a Form 1023, so an organization should not face an undue burden if required to register
37 with the attorney general.
38

SECTION 6. ANNUAL REPORT.

39 ~~(a) This section does not apply to:~~

40 ~~_____ (1) a church or other house of worship; or~~

41 ~~_____ (2) a covered charity that receives revenues of less than \$[_____] during the~~
42
43

1 | ~~charity's annual accounting period for which this section would otherwise require an annual~~
2 | ~~report and holds less than \$[] in assets throughout that period.~~

3 | ~~——(b) A covered charity~~ (a) A person required to register under Section 5 shall file shall
4 | file with the [attorney general], not later than five months and fifteen days after the end of the
5 | ~~covered charity's person's~~ accounting period, ~~a report in one of the following forms:~~

6 | (1) a copy of the ~~charity's annual~~ person's most recent federal ~~tax return, if the~~
7 | ~~return includes the~~ information ~~listed in paragraph (2); or~~ return, if any; and

8 | (2) an annual report providing the following information:

9 | (A) a current list of the charity's directors, trustees, and officers;

10 | (B) the ~~charity's gross annual revenues~~ person's total revenue for ~~theits~~
11 | most recent accounting period;

12 | (C) the ~~charity's~~ person's total assets as of the last day of ~~theits most~~
13 | recent accounting period;

14 | (D) a description of any ~~contracts, loans, leases~~ contract, loan, lease, or
15 | other financial ~~transaction~~ transaction during the accounting period between the ~~charity~~ person
16 | and any officer, director, ~~or~~ trustee, or other fiduciary, either directly or with an entity in which
17 | the officer, director, ~~or~~ trustee, or other fiduciary had a material financial interest;

18 | (E) a description of any ~~suspected~~ embezzlement, theft, diversion, or
19 | misuse of the charity's charitable assets of which the ~~charity~~ person became aware during the
20 | accounting period;

21 | (F) a list of any instances of which the ~~charity~~ person became aware
22 | during the accounting period of use of the ~~charity's~~ person's funds to pay any penalty, fine, or
23 | judgment;

1 (G) a ~~statement describing list of~~ any instances of which the person
2 became aware during the accounting period of the payment by a officer, director, trustee, or other
3 fiduciary of a penalty, fine, or judgment with respect to the person;

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

6 (HI) a statement describing any use during the accounting period or of
7 which the ~~charity person~~ became aware during the accounting period of restricted funds for a
8 purpose other than those specified in the restriction; and

9 (IJ) a description of the ~~charity's three person's~~ most significant program
10 activities, not to exceed three activities, during the accounting period.

11 Comment

12
13 ~~_____ The committee intends to exclude from this section religious organizations but not~~
14 ~~organizations that are not purely religious, for example religious schools. The committee~~
15 ~~recognizes that "church or other house of worship" may not capture all of the religions practiced~~
16 ~~in this country and will consider other formulations.~~

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

30
31 The Internal Revenue Code requires a private foundation to file a copy of its Form 990-
32 PF, IRC 6033(c)(2), with the state, so we should be able to exempt private foundations who
33 already file that form with the state. The committee needs to consider this exemption, but the
34 committee will likely be able to exempt private foundations from Section 6.

1 States that require annual reporting under a statute that regulates charitable solicitation
2 will want to coordinate the report required here with that required by the solicitation statute and
3 may find the reporting requirement in Section 6 duplicative and unnecessary.
4

5 The drafting committee did not reach consensus on the optimal threshold for the small
6 organization exception. Some committee members noted that the reporting requirement can
7 encourage good governance, and some members also noted that the small organizations are often
8 the ones that get into trouble. The [attorney general] needs to receive information in a timely
9 fashion to be able to address problems before charitable assets are lost. The registration and
10 reporting requirements are important in promoting appropriate oversight of charitable assets.
11

12 SECTION 7. NOTICE TO [ATTORNEY GENERAL].

13 (a) A ~~covered charity shall deliver to the [attorney general] a copy of an amendment to~~
14 ~~its articles of incorporation, trust instrument, or other record creating the charity within [—]~~
15 ~~days after adoption of the amendment if the amendment changes the purposes of the charity or~~
16 ~~results in a material change to the structure, governance, or activities of the covered charity.~~

17 ~~— (b) A covered charity person required to register under Section 5 shall give written notice~~
18 ~~to the [attorney general] not later than [20] [30] [60] days before the adoption by agreement with~~
19 ~~the donor of a modification of a restriction on the management, investment, purpose, or use of~~
20 ~~charitable assets if the amount subject to the agreement is more than \$[25,000].~~

21 ~~— (c) The any of the following rules apply to a covered charity in connection with a occur:~~

22 ~~_____ (1) a dissolution, of the person;~~

23 ~~_____ (2) a termination, of the person;~~

24 ~~_____ (3) a disposition of assets, or merger;~~

25 ~~— (1) A charity that is a nonprofit corporation shall give written notice to the~~
26 ~~[attorney general] that it intends to dissolve at or before the time it delivers articles of dissolution~~
27 ~~to the [secretary of state] pursuant to [dissolution provisions of nonprofit corporation statute].~~

28 ~~The notice must include a copy of the plan of dissolution.~~

1 ~~_____ (2) A charity that is a trust shall give written notice to the [attorney general] not~~
2 ~~later than [] days before the termination of the trust pursuant to [provision in trust statutes~~
3 ~~allowing termination of small trust] or the record creating the trust. The notice must include an~~
4 ~~explanation of the distribution of the charitable assets on termination.~~

5 ~~_____ (3) The charity shall give written notice to the [attorney general] at least []~~
6 ~~days before it sells, leases, exchanges, otherwise disposes of, or encumbers by the person of all~~
7 ~~or substantially all of ~~its~~the person's assets, unless:~~

8 ~~_____ (A) the transaction or series of transactions that result in the transfer or~~
9 ~~encumbrance is the disposition occurs in the usual or regular course of the ~~charity's~~person's~~
10 ~~activities; ~~or~~~~

11 ~~_____ (B) (4) the [attorney general] has given consummation of a merger,~~
12 ~~conversion, or domestication;~~

13 ~~_____ (5) a change in the charity a written waiver of one or more situs of the~~
14 ~~requirements principal place of this section business of the person; or~~

15 ~~_____ (4) The charity shall give written notice to the [attorney general] at least []~~
16 ~~days before consummating a merger with another person. The notice must include a copy of the~~
17 ~~proposed plan of merger.~~

18 ~~_____ (5) _____ (6) a removal of significant charitable assets from this state.~~

19 ~~_____ (b) No charitable assets may be transferred in connection with ~~a dissolution, termination,~~~~
20 ~~~~or disposition of assets, and a merger may not be consummated~~ any event that requires the~~
21 ~~provision of notice under section (a) by a person to the [attorney general] until the earliest of:~~

22 ~~_____ (A(1) [20] days after the notice required by this section has been~~
23 ~~delivered to the [attorney general];~~

1 | ~~————(B)(2) the charity's person's receipt of the [attorney general]'s consent in~~
2 | writing to a proposed transfer; or

3 | ~~————(C)(3) the charity's person's receipt of written notice that the [attorney~~
4 | general] will take no action regarding the transfer.

5 | ~~————(6) If, not later than [20] days after the charity has delivered a notice required by~~
6 | ~~this subsection to the [attorney general], the [attorney general] objects to a plan of dissolution,~~
7 | ~~termination, disposition of assets, or merger in a writing delivered to the charity, the transfer~~
8 | ~~may not proceed until the [attorney general] consents in writing or the charity obtains approval~~
9 | ~~of the [court].————~~

10 | ~~————(7) When substantially all of the assets of the charity have been transferred~~
11 | ~~pursuant to a plan of dissolution, termination, disposition of assets, or merger, the charity shall~~
12 | ~~deliver to the [attorney general] a list of the names and addresses of each person, other than a~~
13 | ~~creditor, to which the assets were transferred. The list must include a description of the assets~~
14 | ~~each transferee received.~~

15 | ~~(d)(c) If a probate estate opened in this state involves, or may involve, the distribution of~~
16 | ~~property totaling at least \$[25,000] to one or more covered charities, or cause the creation of one~~
17 | ~~or more covered charities to a person holding or authorized to hold charitable assets, unless the~~
18 | ~~person authorized to hold charitable assets will distribute the assets to a specified charity, the~~
19 | ~~[personal representative] at the time the will is admitted to probate], not later than [30] days after~~
20 | ~~the date of the [personal representative's] appointment, shall deliver to the [attorney general] a~~
21 | true copy of the will.

22 | ~~(ed) If a revocable trust administered in this state becomes irrevocable because of the~~
23 | settlor's death and if the distribution under the trust involves, or may involve, distribution of

1 | property ~~totaling at least \$[25,000] to one or more covered charities or cause the creation of one~~
2 | ~~or more covered charities~~ to a person holding or authorized to hold charitable assets, unless the
3 | person authorized to hold charitable assets will distribute the assets to a specified charity, the
4 | trustee, not later than [30] days after the date of the settlor's death, shall deliver to the [attorney
5 | general] a description of the charitable interests.

6 | ~~(f) On the creation of an irrevocable trust that includes an interest, present or future, in a~~
7 | ~~covered charity or for charitable purposes, the trustee not later than [30] days after the date of the~~
8 | ~~creation of the trust, shall deliver to the [attorney general] a description of the charitable~~
9 | ~~interests.~~

10 | ~~(g) A covered charity~~ (e) A person who holds a charitable asset in this state shall give
11 | notice to the [attorney general] of a decision to file for bankruptcy not later than the date on
12 | which the charity files a bankruptcy petition under Title 11 of the United States Code, files a
13 | receivership under [state receivership statute] or any similar receivership statute of another state,
14 | makes an assignment for the benefit of creditors, or initiates any other insolvency proceeding.

15 | ~~(hf)~~ A covered charity person required to register in this state shall give notice to the
16 | [attorney general] not later than [20] days after:

17 | (1) receipt of any notice of revocation or modification of its federal, ~~state,~~ or
18 | local state tax exemption; or

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

22 | (g) A notice required to be given under this section shall include the name of the person,
23 | an explanation of the event that causes the notice requirement to apply, and the approximate

1 value of the charitable asset involved.

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

4 **Comment**

5 The Act requires notice to the attorney general of a variety of transactions and events that
6 raise particular opportunities for misapplication of charitable assets, so that the attorney general
7 has an opportunity to monitor the events in time to prevent problems in addition to correcting
8 problems that have already arisen.

9
10 **Subsection (a). Disposition or removal of all or significantly all assets. ~~Amendment.~~**
11 ~~This subsection requires a charity to file with the attorney general any amendment to its~~
12 ~~governing documents that changes the purpose of the charity or results in a material change to~~
13 ~~the structure, governance, or activities of the charity. For example, a charity should report a~~
14 ~~change in voting structure, either the elimination of a class of voting members or the creation of~~
15 ~~voting members. [Need examples here of “material” changes].~~

16
17 ~~———— **Subsection (b). Modification.** If a charity and a donor agree to modify a restriction~~
18 ~~imposed by a donor on a gift to the charity, then the charity must notify the [attorney general] of~~
19 ~~the modification. If a charity intends to use the doctrines of cy pres or deviation, either under~~
20 ~~trust law or under UPMIFA, to modify a restriction, the charity will need court approval and~~
21 ~~notice to the [attorney general] will be required under Section 8.~~

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

34
35 **Subsection (dc) Probate estate.** If a probate estate contains a gift to a charity, the
36 [personal representative] must notify the attorney general of the distribution of an estate that may
37 involve the distribution of charitable assets. This provision is necessary, because the public’s
38 interest in a charitable bequest may not be protected if an heir contests the will and the [attorney
39 general] does not know that a charitable bequest existed.

40
41 **Subsection (ed). Revocable trust.** If a decedent’s property will be distributed through a

1 | revocable trust rather than through probate, the [attorney general] should still get notice of any
2 | significant charitable gifts. The amount that is “significant” is left in brackets for states to
3 | consider. The ~~drafting committee~~Drafting Committee thought that gifts to charity worth at least
4 | \$25,000 collectively represented a “significant” charitable interest.

5 |
6 | ~~———— Subsection (f). Irrevocable trust. The creation of an irrevocable trust with charitable~~
7 | ~~interests that may not have risen to the level that requires registration, still merits notification to~~
8 | ~~the attorney general of the trust’s existence.~~

9 |
10 | ~~———— Subsection (g).~~

11 | Subsection (e). Bankruptcy. The [attorney general] should be aware of a charity’s
12 | decision to file for bankruptcy so that the [attorney general] can protect the public’s interest in
13 | the charitable assets.

14 |
15 | Subsection (hf)(1). Revocation of tax exemption. The revocation of a federal or state
16 | tax exemption may signal problems with a charity that the [attorney general] should consider.
17 | This subsection requires provides for notification to the [attorney general] of revocation or
18 | modification of a charity’s exempt status for any tax purpose.

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

27 | SECTION 8. NOTICE OF PROCEEDING CONCERNING COVERED

28 | CHARITABLE OR CHARITABLE ASSETS.

29 | (a) This section applies to:

30 | (1) an action against or on behalf of a ~~covered charity~~person holding a charitable
31 | asset or an action seeking to enforce the terms governing the use or management of a charitable
32 | assets given to a covered charityasset;

33 | (2) an action against a ~~covered charity or other~~ person concerning an application
34 | of charitable assets or a breach of fiduciary or other legal duty ~~owed to a covered charity~~;

35 | (3) a proceeding by, against or on behalf of a ~~covered charity~~person holding

1 | charitable assets seeking:

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

4 | (B) construction of a record under which charitable assets are held;

5 | (C) modification, interpretation or termination of the terms of a record
6 | under which charitable assets are held; or

7 | (D) removal, appointment of or replacement of a trustee of a charitable
8 | trust;

9 | (4) a proceeding relating to the administration of a probate estate or trust in
10 | which matters affecting charitable assets may be decided; and

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

13 | (b) When a person commences an action or proceeding to which this section applies, the
14 | person shall give notice in a record to the [attorney general] if the value of the charitable assets
15 | involved in the action or proceeding is at least \$[25,000]. The notice must include a copy of the
16 | initial pleading. No order, decree or judgment rendered in any action as to which notice is
17 | required under this section shall be binding upon the [attorney general] if the required notice has
18 | not been given. The statute of limitations for the [attorney general] to bring an action shall not
19 | commence until such time as the requisite notice has been given.

20 | **Comment**

21 | The list of kinds of proceedings that require notice to the attorney general is adapted from
22 | provisions found in charitable corporation, trust, and probate sections of various state codes,
23 | although no one state provides a model for the entire section. The ~~drafting committee~~Drafting
24 | Committee concluded that the attorney general ought to be made aware of a wide range of
25 | proceedings that might affect charitable assets or the structure or governance of a charity.

1 [Might include examples here, too. For example, changing the membership structure by
2 eliminating one or more classes of voting members, should require notification.]
3

4 In states where the attorney general is a necessary party to any or all of the kinds of
5 actions addressed in this section, parts or all of the section will be unnecessary.
6

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

10 **Comment**

11 This section articulates attorney general authority to bring an action or intervene in a
12 proceeding brought by someone else. The committee intends to make the attorney general a
13 proper party to a wide array of proceedings involving charities, charitable fiduciaries, or
14 charitable assets, so that the attorney general may exercise the discretion to participate or refrain
15 from participating in court proceedings that relate the attorney general duty and authority under
16 this Act.
17

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

19 (a) The [attorney general] may cooperate with an official of this state, another state, or
20 the United States, or any political subdivision or agency thereof, charged with overseeing
21 covered charities or charitable assets.

22 (b) The [attorney general] may:

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

25 (2) make available to the official a statement, record, or other information
26 relating to a covered charity which is relevant to the official's oversight of covered charities and
27 charitable assets; or

28 (3) request from the official a statement, record, or other information relevant to

1 an investigation pursuant to Section 4.

2 **Comment**

3
4 This section authorizes cooperation between a state attorney general and relevant officials
5 of other states and the federal government.
6

7 **SECTION 11. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
8 applying and construing this uniform act, consideration must be given to the need to promote
9 uniformity of the law with respect to its subject matter in the states that adopt it.

10 **SECTION 12. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
11 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal
12 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq.,
13 but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
14 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
15 U.S.C. Section 7003(b).

16 **SECTION 13. REPEALS.** The following acts and parts of acts are repealed:

17 **SECTION 14. EFFECTIVE DATE.** This [act] takes effect