

DRAFT
FOR DISCUSSION ONLY

PROTECTION OF CHARITABLE ASSETS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAW

With Prefatory Note and Comments

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January 10, 2011

DRAFTING COMMITTEE ON PROTECTION OF CHARITABLE ASSETS ACT

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in drafting this Act consists of the following individuals:

K. KING BURNETT, P.O. Box 910, Salisbury, MD 21803-0910, *Chair*

JAMES BOPP, 1 S. 6th St., Terre Haute, IN 47807

MARY JO H. DIVELY, Carnegie Mellon University, Warner Hall, 6th Floor, 5000 Forbes Ave., Pittsburgh, PA 15213

BARRY C. HAWKINS, 300 Atlantic St., Stamford, CT 06901

LYLE W. HILLYARD, 595 S. Riverwoods Pkwy., Suite 100, Logan, UT 84321

THOMAS L. JONES, University of Alabama Law School, University Station, P. O. Box 865557, Tuscaloosa, AL 35486-0050

CARL H. LISMAN, 84 Pine St., P.O. Box 728, Burlington, VT 05402

JOHN J. MCAVOY, 3110 Brandywine St., N.W., Washington, DC 20008

FREDERICK P. STAMP, U.S. District Court, P.O. Box 791, Wheeling, WV 26003

CHARLES A. TROST, Tennessee Department of Revenue, 500 Deaderick St., Suite 1200, Nashville, TN 37242

DAVID S. WALKER, Drake University Law School, 2507 University Ave., Des Moines, IA 50311

SUSAN N. GARY, University of Oregon, 1515 Agate St., Eugene, OR 97403, *Reporter*
(November 2010 -), *Co-Reporter* (January - November 2010)

LAURA B. CHISOLM, Case Western Reserve University, 11075 East Blvd., Cleveland, OH 44106, *Reporter* (December 2007 - January 2010), *Co-Reporter* (January - November 2010)

EX OFFICIO

ROBERT A. STEIN, University of Minnesota Law School, 229 19th Ave. S., Minneapolis, MN 55455, *President*

BARRY C. HAWKINS, 300 Atlantic St., Stamford, CT 06901, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISOR

CYNTHIA ROWLAND, One Ferry Bldg., Suite 200, San Francisco, CA 94111, *ABA Section Advisor*

LISA A. RUNQUIST, 17554 Community St., Northridge, CA 91325-3922, *ABA Section Advisor*

ELAINE WATERHOUSE WILSON, 300 N. LaSalle St., Suite 4000, Chicago, IL 60654-5141, *ABA Section Advisor*

EXECUTIVE DIRECTOR

JOHN A. SEBERT, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this Act may be obtained from:
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
312/450-6600www.nccusl.org

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 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 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

1 similar. A lawyer in that section typically has the title Assistant Attorney General, but the person
2 in that role may have a different title.

3
4 It is useful to remember that the attorney general has an educational role and a facilitative
5 role as well as a regulative role. The attorney general wants to educate charities and work with
6 charities to help them become more efficient and more effective. The attorney general will be
7 better able to perform these roles with adequate information about the charities operating in the
8 state.

9
10 ***Which Charities Does the Statute Cover?*** The attorney general has oversight authority
11 over all charitable assets in a state and all charities registered in a state, so the Act applies
12 broadly to charities. Certain sections of the Act (registration, reporting, and notice) apply more
13 narrowly. The Act does not cover governmental entities and businesses, except to the extent that
14 those non-charities hold charitable assets.

15
16 ***General Authority of the Attorney General.*** The Act states the broad duty of the
17 attorney general to represent the public interest in the protection of charitable assets. The Act
18 states that the attorney general may enforce the use of charitable assets by a charity for the
19 purposes for which the assets were given to the charity, may take action to prevent or correct a
20 breach of a fiduciary duty in connection with the administration of a charity or charitable assets,
21 and may intervene in an action brought to correct a misapplication of charitable funds, a
22 departure from the purpose of the charity, or a breach of a fiduciary duty owed the charity.

23
24 ***Registration.*** A charity covered by the registration section must register with the
25 attorney general within a specified period of time after the charity receives property. The charity
26 must provide basic information about the charity (name, address, statutory agent, purpose) and a
27 copy of the charity's organizing document (articles of incorporation or trust instrument). The
28 Act includes a one-page statutory form of registration.

29
30 ***Annual Reports.*** Charities with assets above a minimum amount will file an annual
31 report with the attorney general. The annual report will provide basic information and will
32 require that the charity attach a copy of any report the charity files with the Internal Revenue
33 Service (e.g., a Form 990 or a Form 990-EZ).

34
35 ***Notice of "Life Events."*** One of the concerns the Drafting Committee sought to address
36 was the problem that occurs when an attorney general learns about the loss of charitable assets
37 after a charity has disposed of the assets. The Act requires a charity to file a notice of the
38 following, a specified number of days [20, 30 or 60 days] before the event occurs. Events that
39 require notice include the following:

- 40
41
 - 42 • Any amendment to the charity's organizational document, if the amendment changes the
43 purposes or results in a material change in the structure, governance, or activities of the
44 charity.
 - 45 • The intent to dissolve or terminate, with a copy of the charity's plan of dissolution. The
46 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

1 passage of time [20 days]. After dissolution, the charity must file with the attorney
2 general a description of the assets transferred and a list of the names and addresses of
3 those who received the assets, other than creditors. [this is not currently in the act –
4 should it be?]

- 5
- 6 • The intent to sell, lease, exchange, or otherwise dispose of all or substantially all of its
7 property, unless the transaction is in the regular course of the charity's activities or the
8 attorney general waives this requirement.
- 9
- 10 • The intent to merge with any other entity. The notice must include a copy of the
11 proposed plan of merger.
- 12
- 13 • A decision to file for bankruptcy (no later than the date of the filing).
- 14
- 15 • Receipt of a notice of revocation or modification of a federal, state, or local tax
16 exemption (within a specified period of time after receipt).
- 17

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

21
22 Any person who asserts a claim in a proceeding involving a charity or charitable assets
23 must give written notice to the attorney general if the value of the charitable assets involved is at
24 least \$25,000. The notice must include a copy of the pleading. The proceedings that require
25 notice are the following:

- 26
- 27 • An action against or on behalf of a charity seeking to enforce the use of charitable assets
28 or the breach of a duty owed to the charity;
- 29
- 30 • A proceeding seeking instructions relating to the administration, use, or distribution of
31 the charitable assets;
- 32
- 33 • A proceeding to construe a document under which charitable assets are held or to modify
34 the terms under which charitable assets are held;
- 35
- 36 • A proceeding involving a trust or probate estate in which matters affecting charitable
37 assets may be decided; or
- 38
- 39 • A proceeding to remove or replace a trustee of a charitable trust.
- 40

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

1 **PROTECTION OF CHARITABLE ASSETS ACT**

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

3 Protection of Charitable Assets Act.

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

5 (1) “Charitable asset” means property that is **irrevocably dedicated** for a charitable
6 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;

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; and

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

1 **Comment**

2
3 **Subsection (1). Charitable Asset.** The term property includes all interest in real or
4 tangible or intangible personal property, including remainder interests and conservation or
5 preservation easements or restrictions. Property that a donor has pledged to a charity is not yet
6 “irrevocably dedicated to a charitable purpose” unless state law considers the pledge binding.
7

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

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

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

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

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

36 **SECTION 3. AUTHORITY OF [ATTORNEY GENERAL] TO PROTECT**
37 **CHARITABLE ASSETS.**

38 (a) The [attorney general] represents the public interest in the oversight and protection of
39 charities and charitable assets.

40 (b) The [attorney general] may:

1 (1) enforce the application of charitable assets for the charitable purposes for
2 which the assets are held, given or committed; and

3 (2) act to prevent or remedy a breach of fiduciary or other legal duty of a person
4 holding a charitable asset.

5 (c) The [attorney general] may commence or intervene in an action to enjoin, remedy, or
6 obtain damages for a violation of this [act], or seek other remedy to enforce a provision of this
7 [act] or to prevent or remedy:

8 (1) a misapplication or diversion of charitable assets from use for the charitable
9 purposes of a person holding the charitable assets;

10 (2) a departure from the charitable purpose for which charitable assets were
11 given; or

12 (3) a breach of fiduciary or other legal duty in the governance of a person holding
13 charitable assets.

14 (d) This [act] does not limit or restrict the powers and duties of the [attorney general]
15 under law of this state other than this [act].

16 **Comment**

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

29
30 Subsection (d) reflects the committee's desire to articulate that the statute does not

1 replace any common law or other statutory powers the [attorney general] may have.

2
3 [add discussion of relator statutes and consider adding a legislative note for states with relator
4 statutes]

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] to standing in connection with a matter
8 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, including exercising administrative subpoena power, if
15 the [attorney general] has reasonable belief that:

16 (1) an action may be advisable within the authority of the [attorney general] pursuant to
17 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
36 civil investigative demand must be produced during normal business hours at the principal office

1 or place of business of the person served, or at such other time and place as may be agreed by
2 the person served and the [attorney general].

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

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

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

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

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

1 investigation can impose on a charity, but concluded that a reasonable amount of discretion and
2 flexibility in the attorney general is more often likely to diminish the burden on charities than to
3 justify inappropriate intrusion.

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

14
15 Language specifying the attorney general's authority to issue an order to stop or to seek
16 an assurance of voluntary compliance is provided in the Legislative Note following Section 4.
17 States that provide for similar instruments to exercise attorney general authority elsewhere in the
18 state code, for instance, in the consumer protection statutes, will want to coordinate the language
19 here with that language. Some states may want to enact this material as a separate section.

20
21 Subsection (c) of new Section in Legislative Note. In many states the attorney general
22 has civil jurisdiction but not criminal jurisdiction. For example, in Connecticut the attorney
23 general is the civil charitable regulator but if the attorney general wishes to initiate a criminal
24 proceeding the attorney general must do so through the chief state's attorney. In other states
25 (e.g. Maryland) the county state's attorney has general criminal jurisdiction. The committee also
26 needs to determine whether the addition of a new crime in this subsection is appropriate. In
27 some states crimes can only be created in the criminal code.

28 29 30 **SECTION 5. REGISTRATION.**

31 (a) The [attorney general] shall establish and maintain a registry of persons required to
32 register under this section.

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

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

35 (A) is organized under the law of this state;

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

37 (C) holds charitable assets other than assets held primarily for investment
38 purposes in this state;

(D) conducts activities in this state; or
(E) holds assets that are specifically dedicated to the benefit of persons in this state;

(2) and if the person is not:

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

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

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

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

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

(F) an individual holding a charitable asset other than in a fiduciary capacity.

(c) The following activities do not constitute conducting activities in a state within the meaning of section (b)(1)(D):

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

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

(3) maintaining bank accounts or investment accounts;

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

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

4 (6) soliciting or accepting contributions.

5 (d) A person required to register under this section shall register with the [attorney
6 general] on or before the later of [3] months after the date the person receives charitable assets in
7 excess of [\$5,000].

8 (e) The registration required by subsection (b) must include:

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

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

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

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

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

17 (6) the federal employer identification number, if any, for the person.

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

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

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

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

7 **Comment**

8 The main thrust of the 1954 Uniform Supervision of Trustees for Charitable Purposes Act
9 was to provide a mechanism to facilitate the supervisory role of the Attorney General by
10 providing for registration that would alert the Attorney General to the existence and
11 administration of charitable trusts. This Act continues to incorporate that function. The Drafting
12 Committee has opted to keep the registration obligation simple, so as to avoid overburdening
13 either charitable organizations or attorneys general. It is expected that the registration function
14 will move to an electronic system, thereby reducing some of the burden. Electronic registration
15 will be sufficient to meet the requirements of Section 5, and the Drafting Committee hopes that
16 states will be able to accommodate electronic registration. While a large organization that
17 operates in many states will likely have an obligation to register in multiple states, the committee
18 hopes that the Act's move toward uniformity will minimize the burden of multiple registrations.
19 The Act includes a statutory form of registration so that states can ease the burden on charities by
20 adopting a requirement that is consistent across states.

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

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

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

1 Subsection (b) sets forth which organizations will be required to register under the Act.
2 The registration requirement applies to entities of any legal form that hold or administer property
3 dedicated to or donated for charitable purposes. The scope of the requirement is broad enough to
4 take in not only organizations traditionally thought of as charitable, but also non-charitable
5 organizations that hold or administer assets dedicated to charitable purposes or that have been
6 donated for charitable purposes. The obligation to register is limited to organizations that have
7 significant contacts in the state. The Drafting Committee believes that the threshold strikes an
8 appropriate balance between the risk of overburdening charities that have little contact with a
9 particular state and the need for the attorney general to be alerted to the existence of charitable
10 organizations and assets in the state that might call for oversight. Simply having a bank account
11 or investment account in the state does not cause an entity to fall within the definition, and
12 financial institutions and investment companies are not included within the definition by virtue
13 of having accounts owned by charities, unless the institution serves as trustee for a charity.
14

15 The term “principal place of business” is used to mean principal place of administration,
16 governance, activities, and operation. Although using the term “business” for charitable
17 activities sounds odd, the term is used to bring with it the substantial caselaw connected with the
18 term.
19

20 Although the types of contact listed in subsection (b) are not limited by the terms
21 “substantial” or “significant,” the intention is that a negligible level of activity or other contact
22 not be considered sufficient to cause an attorney general to assert oversight powers. The state
23 constitution will control the level of activity necessary for attorney general oversight.
24

25 Subsection (b)(2)(A) excludes governments from the Act, but if a government accepts an
26 asset for charitable purposes, the Act will provide oversight for that asset. For example, a local
27 government might accept the donation of land for a public park or might accept a conservation
28 easement over land in the state.
29

30 Subsection (b)(2)(C) excludes persons not organized primarily for charitable purposes.
31 The Drafting Committee intends to exclude entities like benefit corporations and L3Cs even
32 though those entities may be established in part for charitable purposes. The committee also
33 intends to exclude labor organizations, social organizations, and trade associations.
34

35 Subsection (b)(2)(F) excludes individuals who may hold charitable assets as volunteers
36 but not in a fiduciary capacity. For example, a volunteer might hold assets in connection with a
37 school’s PTO fundraiser. The PTO will register, but a volunteer who holds assets connected
38 with the fundraiser do not need to register.
39

40 Subsection (d) indicates that the threshold amount for filing is \$5,000. The Drafting
41 Committee chose this amount because it is the same as the amount that necessitates filing a Form
42 1023, Recognition of Exempt Status, with the Internal Revenue Service. The information
43 required to register with the attorney general is significantly less than the information required to
44 complete a Form 1023, so an organization should not face an undue burden if required to register
45 with the attorney general.

1 **SECTION 6. ANNUAL REPORT.**

2 (a) A person required to register under Section 5 shall file with the [attorney
3 general], not later than five months and fifteen days after the end of the person's accounting
4 period, the following:

5 (1) a copy of the person's most recent federal information return, if any; and

6 (2) an annual report providing the following information:

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

8
9 (B) the person's total revenue for its most recent accounting period;

10
11 (C) the person's total assets as of the last day of its most recent
12 accounting period;

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

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

19 (F) a list of any instances of which the person became aware during the
20 accounting period of use of the person's funds to pay any penalty, fine, or judgment;

21 (G) a list of any instances of which the person became aware during the
22 accounting period of the payment by a officer, director, trustee, or other fiduciary of a penalty,
23 fine, or judgment with respect to the person;

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

1 (I) a statement describing any use during the accounting period or of
2 which the person became aware during the accounting period of restricted funds for a purpose
3 other than those specified in the restriction; and

4 (J) a description of the person's most significant program activities, not to
5 exceed three activities, during the accounting period.

6 **Comment**

7
8 Many charities will be able to meet the annual report requirement of Section 6 simply by
9 filing a copy of the federal tax return the charity files. If the charity files a Form 990, Form 990-
10 EZ, or a Form 990-PF, the charity may file a copy of that return and need not file an additional
11 report. If the charity files Form 990-N, the charity will need to file an additional report, because
12 the Form 990-N does not request a significant level of information. This draft states the
13 requirement without reference to specific tax return numbers because the return numbers may
14 change over time. The difficulty with stating the requirement in this way, however, is to convey
15 the idea that a return that provides information similar to that required by this section (Form 990,
16 Form 990-EZ, Form 990-PF) is sufficient but a return that provides only a minimal level of
17 information (Form 990-N) is not. The committee will compare the requirements of Section 6
18 with the requirements of the tax returns and consider whether to require information beyond that
19 listed in the tax returns.

20
21 The Internal Revenue Code requires a private foundation to file a copy of its Form 990-
22 PF, IRC 6033(c)(2), with the state, so we should be able to exempt private foundations who
23 already file that form with the state. The committee needs to consider this exemption, but the
24 committee will likely be able to exempt private foundations from Section 6.

25
26 States that require annual reporting under a statute that regulates charitable solicitation
27 will want to coordinate the report required here with that required by the solicitation statute and
28 may find the reporting requirement in Section 6 duplicative and unnecessary.

29
30 The drafting committee did not reach consensus on the optimal threshold for the small
31 organization exception. Some committee members noted that the reporting requirement can
32 encourage good governance, and some members also noted that the small organizations are often
33 the ones that get into trouble. The attorney general needs to receive information in a timely
34 fashion to be able to address problems before charitable assets are lost. The registration and
35 reporting requirements are important in promoting appropriate oversight of charitable assets.

36 37 **SECTION 7. NOTICE TO [ATTORNEY GENERAL].**

38 (a) A person required to register under Section 5 shall give written notice to the [attorney

1 general] not later than [20] [30] days before any of the following occur:

2 (1) a dissolution of the person;

3 (2) a termination of the person:

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

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

7 (5) a change in the situs of the principal place of business of the person; or

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

9 (b) No charitable assets may be transferred in connection with any event that requires the
10 provision of notice under section (a) by a person to the [attorney general] until the earliest of:

11 (1) [20] days after the notice required by this section has been delivered to the
12 [attorney general];

13 (2) the person's receipt of the [attorney general]'s consent in writing to a
14 proposed transfer; or

15 (3) the person's receipt of written notice that the [attorney general] will take no
16 action regarding the transfer.

17 (c) If a probate estate opened in this state involves, or may involve, the distribution of
18 property to a person holding or authorized to hold charitable assets, unless the person authorized
19 to hold charitable assets will distribute the assets to a specified charity, the [personal
20 representative], not later than [30] days after the date of the [personal representative's]
21 appointment, shall deliver to the [attorney general] a true copy of the will.

22 (d) 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 to a person holding or authorized to hold charitable assets, unless the person authorized
2 to hold charitable assets will distribute the assets to a specified charity, the trustee, not later than
3 [30] days after the date of the settlor's death, shall deliver to the [attorney general] a description
4 of the charitable interests.

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

10 (f) A person required to register in this state shall give notice to the [attorney general]
11 not later than [20] days after:

12 (1) receipt of any notice of revocation or modification of its federal or state tax
13 exemption; or

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

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

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

22 **Comment**

23 The Act requires notice to the attorney general of a variety of transactions and events that
24 raise particular opportunities for misapplication of charitable assets, so that the attorney general

1 has an opportunity to monitor the events in time to prevent problems in addition to correcting
2 problems that have already arisen.

3
4 **Subsection (a). Disposition or removal of all or significantly all assets.** If the charity
5 will terminate or dispose of substantially all of its assets, the charity must notify the attorney
6 general before the charity gives up control of the assets. This notice provision gives the attorney
7 general time to review the proposed transaction and recommend changes if necessary while the
8 assets can still be reached. If the attorney general objects to the proposed transaction, the
9 attorney general must deliver the objection to the charity in writing and then the charity cannot
10 proceed with the transaction until the attorney general consents (presumably after negotiations
11 between the charity and the attorney general) or a court approves the transaction. This
12 subsection gives the attorney general the information needed to work with the charity on an
13 appropriate plan of distribution or other transfer, and then provides for a court determination if
14 the attorney general and the charity cannot reach agreement.

15
16 **Subsection (c) Probate estate.** If a probate estate contains a gift to a charity, the
17 personal representative must notify the attorney general of the distribution of an estate that may
18 involve the distribution of charitable assets. This provision is necessary, because the public's
19 interest in a charitable bequest may not be protected if an heir contests the will and the attorney
20 general does not know that a charitable bequest existed.

21
22 **Subsection (d). Revocable trust.** If a decedent's property will be distributed through a
23 revocable trust rather than through probate, the attorney general should still get notice of any
24 significant charitable gifts. The amount that is "significant" is left in brackets for states to
25 consider. The Drafting Committee thought that gifts to charity worth at least \$25,000
26 collectively represented a "significant" charitable interest.

27
28 **Subsection (e). Bankruptcy.** The [attorney general] should be aware of a charity's
29 decision to file for bankruptcy so that the [attorney general] can protect the public's interest in
30 the charitable assets.

31
32 **Subsection (f)(1). Revocation of tax exemption.** The revocation of a federal or state
33 tax exemption may signal problems with a charity that the attorney general should consider.
34 This subsection requires provides for notification to the attorney general of revocation or
35 modification of a charity's exempt status for any tax purpose.

36
37 **Subsection (f)(2). Amendment.** This subsection requires a charity to file with the
38 attorney general any amendment to its governing documents that changes the purpose of the
39 charity or results in a material change to the structure, governance, or activities of the charity.
40 For example, a charity should report a change in voting structure, either the elimination of a class
41 of voting members or the creation of voting members. [Add examples of other "material"
42 changes].

1 **SECTION 8. NOTICE OF PROCEEDING CONCERNING COVERED**
2 **CHARITABLE OR CHARITABLE ASSETS.**

3 (a) This section applies to:

4 (1) an action against or on behalf of a person holding a charitable asset or an
5 action seeking to enforce the terms governing the use or management of a charitable asset;

6 (2) an action against a person concerning an application of charitable assets or a
7 breach of fiduciary or other legal duty;

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

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

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

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

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

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

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

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

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

5 **Comment**

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

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

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

20 **Comment**

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

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

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

1 (b) The [attorney general] may:

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

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

7 (3) request from the official a statement, record, or other information relevant to
8 an investigation pursuant to Section 4.

9 **Comment**

10 This section authorizes cooperation between a state attorney general and relevant officials
11 of other states and the federal government.
12
13

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

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

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

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