

ISSUES MEMORANDUM OVERSIGHT OF CHARITABLE ASSETS ACT

I. The definition of “Covered Charity”.

The degree and nature of contacts with the adopting state necessary for the Act to apply to a charity which neither has its principal office in the state nor was formed under the laws of that state, is difficult of resolution. The committee discussed adopting the state’s existing requirement of registering to do business for foreign entities but the application of the concept of doing business to charities is itself questionable. The Committee has attempted to use the term “holds substantial assets in this state on more than a temporary basis” and “conducts significant activities in this state” as part of the definition, but is uncertain as to whether that is the best approach.

II. Whether to exclude from the text of the Act itself materials in the legislative note to Section 4.

There is considerable variation among the states as to the detail of the statutes on this subject. For example, California and New York have relatively detailed statutes. Other states have barebones statutes and still others have no statutes at all. Uniformity as to all the details relating to the exercise of duties by the attorney general is unlikely to be achieved. The goal of the Committee has been to try to craft a somewhat barebones statute which would be the minimum that we would like to see all states have. Then whether a state wishes to have more detailed procedural provisions relating to investigations, stop orders and other matters would be left to each.

III. Registration.

The Committee has taken the approach that all charities should be covered basically by the Act. Thus the authority of the attorney general to protect charitable assets extends to all charities. Many states carve out some types of charities for special treatment. Notably, religious institutions are often excluded from all or part of state acts on this subject. The Committee believes that the Act should apply to all charities including religious institutions and that if carve-outs are to occur, they should occur in connection with the subjects of registration and the annual report. The Committee has also tentatively taken the position that all charities should register. The basic information needed to register is very rudimentary and should not pose a problem for any charity. It is the act of registration that places charities on the radar screen for attorney general possible review.

On the other hand, the Committee has excluded a church or other house of worship and very small charities from the requirement of an annual report. This subject is still under discussion. Undoubtedly, there will be lack of uniformity on any approach within the states for political reasons. Questions have also been raised by some Observers as to constitutionality of requiring reports or registration by religious organizations, or even including religious organizations within any coverage of the Act.

IV. Annual Reports.

Charities with assets above a certain amount file an annual report with the IRS. A requirement that a charity file with the Attorney General a copy of the report filed with the IRS would mean only minimal additional effort by the charity. The question with respect to annual reports is what to require for charities that fall below the IRS threshold. Some minimal reporting may be helpful for these charities, because small charities often need more supervision than large charities, but the committee is still considering whether to require annual reports only for charities with assets above a de minimis amount and what that amount should be.

V. Notice to the Attorney General.

Notice to the attorney general of certain actions is critical to the oversight function of the attorney general. Conversions and mergers of non-profits particularly in the health care area have generated a great deal of public interest and state legislation. Attorney General offices are often understaffed in the area of charity oversight. We solicit Commissioner comment on the items requiring notice.