

DRAFT
FOR DISCUSSION ONLY

OVERSIGHT OF CHARITABLE ASSETS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

05/4/10

Without Prefatory Note and with Comments

Copyright © 2010
By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.

May 4, 2010

DRAFTING COMMITTEE ON OVERSIGHT OF CHARITABLE ASSETS ACT

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

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

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 South Riverwood Pkwy., Suite 100, Logan, UT 84321

THOMAS L. JONES, University of Alabama Law School, 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., NW, Washington, DC 20008

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

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

LAURA B. CHISOLM, Case Western Reserve University, 11075 East Blvd., Cleveland, OH 44106, *Reporter*

EX OFFICIO

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

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

AMERICAN BAR ASSOCIATION ADVISOR

BETSY B. ADLER, 235 Montgomery St., Suite 1220, San Francisco, CA 94104-3103, *ABA Advisor*

SUSAN N. GARY, University of Oregon School of Law, 1515 Agate St., Eugene, OR 97403, *ABA Section 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*

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
312/450-6600
www.nccusl.org

OVERSIGHT OF CHARITABLE ASSETS ACT

TABLE OF CONTENTS

SECTION 1. SHORT TITLE.	1
SECTION 2. DEFINITIONS.....	1
SECTION 3. [ATTORNEY GENERAL] AUTHORITY TO PROTECT CHARITABLE ASSETS.....	3
SECTION 4. REGISTER OF CHARITIES.....	5
SECTION 5. PUBLIC INSPECTION OF REGISTER.....	Error! Bookmark not defined.
SECTION 6. INVESTIGATION BY THE [ATTORNEY GENERAL]....	Error! Bookmark not defined.
SECTION 7. NOTICE TO [ATTORNEY GENERAL].....	12
SECTION 8. NOTICE OF PROCEEDINGS CONCERNING CHARITABLE ENTITIES, CHARITABLE FIDUCIARIES, AND CHARITABLE ASSETS.....	15
SECTION 9. ATTORNEY GENERAL PARTICIPATION IN PROCEEDINGS INVOLVING CHARITIES.	Error! Bookmark not defined.
SECTION 10. COOPERATION WITH OTHER OFFICIALS.	16
SECTION 11. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.	17
SECTION 12. [UNIFORMITY].....	17
SECTION 13. EFFECTIVE DATE.....	17
SECTION 14. REPEAL.....	17

1 **OVERSIGHT OF CHARITABLE ASSETS ACT**

2 **SECTION 1. SHORT TITLE.**

3 This [act] may be cited as the [Uniform][Model] Oversight of Charitable Assets Act.

4 **SECTION 2. DEFINITIONS.**

5 In this [act]:

6 (1) “Charitable asset” means property of any kind that is held by or for a covered
7 charity or donated to a covered charity for a charitable purpose.

8 (2) “Charitable fiduciary” means:

9 (A) a chief executive officer, director, manager, officer, or trustee of a covered
10 charity or any person having powers or responsibilities similar to any of these persons; or

11 (B) a person holding property irrevocably dedicated to or donated for any
12 charitable purpose.

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

16 (4) “Covered charity” means a person other than an individual that holds or
17 administers property irrevocably dedicated to or donated for a charitable purpose and which:

18 (A) is organized under the laws of this state;

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

20 (C) holds substantial charitable assets within this state on more than a
21 temporary basis;

22 (D) conducts significant activities in this state; or

23 (E) holds assets that are specifically dedicated to the benefit of persons in this

1 state.

2 The term does not include:

3 (A) a church or other house of worship;

4 (B) a governmental subdivision, agency, or instrumentality;

5 (C) a person organized primarily for business purposes and not primarily for
6 charitable purposes;

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

8 (E) a person that does not otherwise meet the definition of covered charity but
9 maintains a bank, custody, investment, or similar account or storage facility in this state; or

10 (F) a financial institution, investment company, or storage facility that holds
11 charitable assets that belong to other persons .

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

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

17 **Comment**

18
19 **Subsection (2). Charitable fiduciary.** The definition includes any legal entity holding
20 property dedicated to charitable purposes or property solicited for charitable purposes, as well as
21 an officer, director, trustee, or manager of a charity. Thus, it would include a financial institution
22 or investment company that holds accounts belonging to charities. The term “charitable
23 fiduciary” comes into play in the act only in the context of breach of fiduciary duty to a charity;
24 thus, the broader reach of the term is appropriate.
25

26 **Subsection (3). Charitable purposes.** The definition of charitable purposes follows that
27 of UTC § 405, Restatement (Third) of Trusts § 28 (2003), and UPMIFA § 2(1) (2006). This
28 long-familiar standard derives from the English Statute of Charitable Uses, enacted in 1601.
29

30 Some 17 states have created statutory definitions of charitable purpose for various

1 purposes. *See, e.g.*, 10 Pa. Cons. Stat. § 162.3 (2005) (defining charitable purpose within the
2 Solicitation of Funds for Charitable Purposes Act to include “humane,” “patriotic,” “social
3 welfare and advocacy,” and “civic” purposes). The definition in subsection (4) applies for
4 purposes of this Act and does not affect other definitions of charitable purpose.
5

6 **Subsection (4). Covered charity.** Charity is defined broadly in the Act, with the
7 definition explicitly including entities of any legal form that hold or administer property
8 dedicated to or solicited for charitable purposes. The definition of “charity” is broad enough to
9 take in not only organizations traditionally thought of as charitable, but also non-charitable
10 organizations that hold or administer assets dedicated to charitable purposes or that have been
11 solicited for charitable purposes. Because the definition underlies the obligation to register with
12 the attorney general, it limits the term to organizations that have significant contacts in the state.
13 The drafting committee believes that the threshold strikes an appropriate balance between the
14 risk of overburdening charities that have little contact with a particular state and the need for the
15 attorney general to be alerted to the existence of charitable organizations and assets in the state
16 that might call for oversight. Simply having a bank or investment account in the state does not
17 cause an entity to fall within the definition, and financial institutions and investment companies
18 are not included within the definition by virtue of having accounts owned by charities.
19

20 Governmental entities, churches, and political organizations are excluded from the
21 definition of “charity” for purposes of the [act].
22

23 [Note – need comment about “dedicated to” – i.e., doesn’t include Paul Newman or LC3’s]
24

25 **Subsection (5). Person.** The Act uses as the definition of person the definition approved
26 by the Uniform Law Commission.
27

28 **Subsection (6). Record.** Record is defined, using the Uniform Law Commission
29 standard definition, in order to use one word instead of several when the act deals with papers,
30 reports, instruments, and records, and to make clear that information in electronic form is
31 included.
32

33 **SECTION 3. [ATTORNEY GENERAL] AUTHORITY TO PROTECT**

34 **CHARITABLE ASSETS.**

35 (a) The [attorney general] may represent the public interest in the protection of
36 charitable assets, by

37 (1) enforcing the due application of charitable assets for the charitable
38 purposes of a covered charity or any purpose expressed in a record for which the assets were
39 given; and

(2) taking action to prevent or correct breaches of fiduciary duty in the administration of covered charities or charitable assets.

(b) The [attorney general] may commence or intervene in an action to enjoin, correct, obtain damages for, or seek other remedy to enforce a provision of this Act or to prevent or correct:

(1) the diversion of charitable assets;

(2) a departure from the purposes for which a covered charity has been created or for which charitable assets were given to the entity;

(3) a breach of fiduciary duty in the administration of a charity or by a charitable fiduciary .

(c) The powers, duties, and authority of the [attorney general] provided in this [act] do not limit or restrict the powers, duties, and authority of the [attorney general] provided by common law or statute.

Comment

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

Subsection (c) reflects the committee's desire to articulate that the statute does not replace any common law or other statutory powers the attorney general may have. The language of this provision also specifies that the act does not limit or restrict the rights of others provided by common law or statute. Thus, existing (or evolving) state law with respect to standing of those other than the attorney general is undisturbed by the Act.

1
2 Language specifying the attorney general's authority to issue an order to stop or to seek
3 an assurance of voluntary compliance is bracketed. States that provide for similar instruments to
4 exercise attorney general authority elsewhere in the state code, for instance, in the consumer
5 protection statutes, will want to coordinate the language here with that language.

6
7 [Note – this statute is not saying anything expressly or by implication about the law re standing
8 of others.]

9
10 [Note – some comment about the fact that a charity's purposes need not be static, but are
11 constrained by what is expressed in the organizing documents.]
12

13 **SECTION 4. INVESTIGATION BY THE [ATTORNEY GENERAL]**

14 The [attorney general] may conduct an investigation in the public interest to ascertain
15 whether:

16 (a) a covered charity or charitable fiduciary has misapplied or caused a
17 misapplication of charitable assets;

18 (b) a covered charity has departed from the charitable purposes for which it was
19 created or for which it has operated or to which property was specifically dedicated;

20 (c) a charitable fiduciary has committed a breach of fiduciary duty;

21 (d) a statute concerning the use or management of charitable assets has been violated;

22 or

23 (e) this [act] has been violated.

24
25 **Legislative Note:** If a state does not provide through other law for the process the
26 attorney general uses for civil investigative demands, the state should consider enacting the
27 following provisions as part of this Section:

28 [(b) The [attorney general] may execute in writing and cause to be served upon any
29 person who is believed to have information, documentary material, or physical evidence relevant
30 to the alleged or suspected violation, a civil investigative demand requiring such person to
31 appear and testify, or to produce relevant documentary material or physical evidence or
32 examination, at such reasonable time and place as may be stated in the civil investigative
33 demand, concerning the subject matter of the investigation. Service of any civil investigative
34 demand, notice, or subpoena may be made by any person authorized by law to serve process or

1 by any duly authorized employee of the [attorney general].

2 (c) Each civil investigative demand shall:

3 (1) state the alleged violation which is under investigation, and the general
4 subject matter of the investigation;

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

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

10 (4) identify the members of the [attorney general's] staff to whom the
11 information, documentary material, or physical evidence requested is to be made available.

12 (d) No civil investigative demand shall:

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

15 (2) require the disclosure of any documentary material which would be
16 privileged or which, for any other reason, could not be required by a subpoena duces tecum
17 issued by a court of this state.

18 (e) Service of any civil investigative demand, notice, or subpoena may be made by:

19 (A) delivering a duly executed copy thereof to the person to be served, or to
20 any officer or agent authorized by appointment or by law to receive service of process on behalf
21 of such person;

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

24 (C) mailing by registered or certified mail a duly executed copy thereof,
25 addressed to the person to be served, at the principal place of business or the residence in this
26 state or, if such person has no place of business or residence in this state, to his principal office
27 or place of business or his residence; or

28 (D) the mailing thereof by registered or certified mail, requesting a return
29 receipt signed by the addressee only, to the last known place of business, residence or abode
30 within or without this state of such person for whom the same is intended.

31 (f) No individual shall be permitted to refuse to answer any question material to the
32 matter in controversy or to refuse to produce documentary material or testify on the ground that
33 the testimony or documentary material required of the individual may tend to incriminate the
34 individual or subject the individual to any penalty; but, if such individual asserts rights against
35 self-incrimination, the individual shall not be subject to criminal prosecution or to any action for

1 a criminal penalty or forfeiture on account of any transaction, matter or thing concerning which
2 the individual may testify or produce documentary material. An individual may make an
3 assertion of this right against self-incrimination on the record or make the assertion known to the
4 [attorney general].

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

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

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

21 (j) At any time before the return date specified in a civil investigative demand) or
22 within twenty days after the civil investigative demand has been served, whichever period is
23 shorter, a petition to extend the return date for, or to modify or set aside the civil investigative
24 demand, stating good cause, may be filed in the [court].

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

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

petition is filed in the [trial court of general jurisdiction] of a county or judicial district, the court shall have jurisdiction to hear and determine the matter presented, and to enter such order or orders as may be required to carry into effect the provisions of this [act]. Any final order so entered shall be subject to appeal to the state supreme court. Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.

SECTION 5. ORDER TO STOP; ASSURANCE OF VOLUNTARY COMPLIANCE.

(a) When it appears to the [attorney general] that a person has engaged in, is engaging in, or is about to engage in the misapplication of charitable assets; a breach of fiduciary duty, or a violation of a statute concerning the use of management of charitable assets or this [act], the [attorney general] may issue and cause to be served upon such person, and any other person or persons concerned with or who, in any way, have participated, are participating or are about to participate in such act, an order prohibiting such person or persons from engaging or continuing to engage in such act. The order shall not be issued until the [attorney general] has notified each person who will be subject to an order of the nature of the alleged violation and the nature of the act that is the basis of such alleged violation. The person to whom such notice is given shall have two business days from the receipt of such notice to file an answer to such notice with the [attorney general] before the order authorized by this subsection may be issued.

(b) All orders issued by the attorney general under Section 5(a) shall be served in the manner provided in Section 4 for the service of civil investigative demands and shall expire ten days after being served.

(c) Any person who has been duly served with an order issued under this section and who willfully and knowingly violates any provision of the order while the order remains in effect, either as originally issued or as modified, is guilty of [XXX]. The [attorney general] shall have original jurisdiction to commence all criminal actions necessary to enforce this section.

(d) The [attorney general] may accept an assurance of voluntary compliance with respect to any act that would be subject to an order to stop. The assurance of voluntary compliance shall be in writing and shall be filed with and subject to the approval of the [court] of the county in which the alleged violator resides or has a principal place of business. An assurance of voluntary compliance shall not be considered an admission of violation for any purpose. Any person who violates the terms of an assurance of voluntary compliance shall pay to the state a civil penalty of not more than [two thousand dollars] per violation. For the purposes of this subsection, the [court] of a county approving an assurance of voluntary compliance shall retain jurisdiction, and the attorney general acting in the name of the state may petition for recovery of civil penalties under this subsection.]

Comment

The Act articulates the Attorney General's authority to undertake an investigation as a means of fulfilling the duty articulated in Section 3. The committee discussed the threshold for initiating an investigation. Some states (e.g., Massachusetts) require the court approval or a sworn complaint prior to beginning an investigation. Others do not, and specify no particular

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

8
9 There is variation among the states, specified elsewhere in statutes, as to process and
10 procedure relating to attorney general investigative authority. States the detail attorney general
11 subpoena power in code sections that deal broadly with attorney general power will have no need
12 for this section. States that provide in their codes for attorney general civil subpoena power
13 specifically in connection with another attorney general function (such as consumer protection)
14 can use that language in this section. The language used in this section is modeled on Missouri
15 code sections concerning consumer protection.

17 **SECTION 5. REGISTRATION.**

18 (a) The [attorney general] shall establish and maintain a registry of covered charities.

19 (b) Every covered charity shall register with the [attorney general] on or before the
20 later of:

21 (1) [____] after the effective date of this [act];

22 (2) [30 days, 2 months, 3 months, 6 months] after the date the covered charity
23 is [created][formed][established]; or

24 (3) the date the covered charity receives charitable assets,

25 (c) The registration shall include:

26 (1) the name and address of the covered charity;

27 (2) the name and address of the statutory agent of the covered charity;

28 (3) a short statement of the covered charity's purpose;

29 (4) a true copy of the covered charity's articles of incorporation, trust
30 instrument, or other record, if any, creating the covered charity; and

31 (5) the federal employer identification number, if any, for the covered charity.

1 (d) The [attorney general] may establish a fee to accompany the registration and a
2 penalty for late registration.

3 (e) The register and records filed with the [attorney general] are public records,
4 except that:

5 (1) the [attorney general] shall withhold from public inspection copies of any
6 report filed with the [attorney general] or with any other governmental agency of this state,
7 another state, the United States, or any government subdivision thereof which is required by law
8 to be kept confidential; and

9 (2) the [attorney general] shall, upon the written request of a covered charity
10 or charitable fiduciary, withhold from public inspection any part of a document filed that does
11 not relate to charitable purposes or charitable assets and that is not otherwise a public record.

12 **Comment**

13 The main thrust of the 1954 Uniform Supervision of Trustees for Charitable Purposes Act
14 was to provide a mechanism to facilitate the supervisory role of the Attorney General by
15 providing for registration that would alert the Attorney General to the existence and
16 administration of charitable trusts. This Act continues to incorporate that function. The drafting
17 committee has opted to keep the registration obligation simple, so as to avoid overburdening
18 either charitable organizations or attorney generals' offices. It is expected that the registration
19 function will move to an electronic system, thereby dissipating some of the burden. Only entities
20 that meet the Act's definition of "charity"- that is, entities organized in the state or holding
21 substantial charitable assets in the state – have the obligation to register in the state. While a
22 large organization that operates in many states will likely have an obligation to register in
23 multiple states, the committee hopes that the Act's move toward uniformity will minimize the
24 burden of multiple registrations.

25
26 Charity regulators involved in the drafting process noted that availability of information
27 to the public serves an important function. The Act opens the registration and supporting
28 documents to the public, with the exception of documents made confidential by any other law
29 and, upon request of a charity or charity fiduciary, any part of a document that does not relate to
30 charitable assets and is not otherwise a public record.

31 32 **SECTION 6. ANNUAL REPORT.**

1 (a) This Section does not apply to a covered charity with annual revenues of less
2 than [xxxx.xx].
3

4 (b) Each covered charity shall file with the [attorney general], no later than four
5 months and fifteen days after the end of the covered charity's accounting period, an annual report
6 providing the following information:

- 7 (1) a current list of the covered charity's directors, trustees, and officers;
8
- 9 (2) the covered charity's gross annual revenues;
10
- 11 (3) the covered charity's total assets;
12
- 13 (4) a list of any contracts, loans, leases, or other financial transactions
14 between the covered charity and any officer, director, or trustee, either directly or with an entity
15 in which any such officer, director, or trustee had any financial interest;
16
- 17 (5) a description of any embezzlement, theft, diversion, or misuse of the
18 covered charity's charitable assets of which the covered charity became aware during the year;
19
- 20 (6) a list of any instances of use of the covered charity's funds to pay any
21 penalty, fine, or judgment of which the covered charity became aware during the year;
22
- 23 (7) a statement describing any change in the covered charity's federal, state,
24 or local tax exempt status during the year;
25
- 26 (8) a statement describing any use during the year of restricted funds for
27 purposes other than those specified in the restriction;
28
- 29 (9) a description of the covered charity's three most significant program
30 activity areas during the year; and
31
- 32 (10) a copy of the covered charity's Form 990, 990EZ, or 990N, if the covered
33 charity files one.
34

35 **Comment**

36
37 States that require annual reporting under a statute that regulates charitable solicitation
38 may find this section to be duplicative and unnecessary. At the very least, those states will likely
39 want to coordinate the report required here with that required by the solicitation statute. The
40 drafting committee did not reach consensus on the optimal threshold for the small organization
41 exception. Some committee members noted that the reporting requirement can encourage good
42 governance.
43

1 **SECTION 7. NOTICE TO [ATTORNEY GENERAL].**

2 (a) A covered charity registered with the [attorney general] shall file with the
3 [attorney general] any amendment to its articles of incorporation, trust instrument, or other
4 record creating the covered charity within [20, 30, 60 days] after adoption of the amendment if
5 the amendment changes the purposes of the covered charity or results in a material change to the
6 structure, governance, or activities of the covered charity.

7 (b) A covered charity registered with the [attorney general] must do the following in
8 connection with dissolution, termination, disposition of assets, and merger:

9 (1) A covered charity that is a nonprofit corporation shall give written notice
10 to the [attorney general] that it intends to dissolve at or before the time it delivers articles of
11 dissolution to the [secretary of state] pursuant to [dissolution provisions of nonprofit corporation
12 statute]. The notice must include a copy of the plan of dissolution.

13 (2) A covered charity that is a trust shall give written notice to the [attorney
14 general] no later than [20, 30, 60] days before the termination of the trust pursuant to [provision
15 in trust statutes allowing termination of small trust] or the record creating the trust. The notice
16 must include an explanation of the distribution of the charitable assets on termination.

17 (3) A covered charity shall give written notice to the [attorney general] at least
18 [20, 30, 60] days before it sells, leases, exchanges, otherwise disposes of, or encumbers all or
19 substantially all of its property unless:

20 (A) the transaction or series of transactions that result in the transfer or
21 encumbrance is in the usual or regular course of the covered charity's activities; or

22 (B) the [attorney general] has given the covered charity a written
23 waiver of this section.

1 (4) A covered charity shall give written notice to the [attorney general] at least
2 [20, 30, 60] days before the consummation of any merger with any other person. The notice
3 must include a copy of the proposed plan of merger.

4 (5) No assets may be transferred in connection with a dissolution, termination,
5 disposition of assets, or merger until the earlier of:

6 (A) [20] days after the notice required by this section has been
7 delivered to the [attorney general];

8 (B) the covered charity's receipt of the [attorney general]'s consent in
9 writing to the plan of dissolution; or

10 (C) the covered charity's receipt of written notice that the [attorney
11 general] will take no action with respect to the transfer.

12 (6) If within [20] days after a covered charity has delivered the notice required
13 by this Section to the [attorney general] the [attorney general] objects to the plan of dissolution,
14 disposition of asserts, or merger in a writing delivered to the covered charity, then [need
15 consequence here]

16 (7) When substantially all of the assets of a covered charity have been
17 transferred pursuant to a plan of dissolution, disposition of assets, or merger, the covered charity
18 shall deliver to the [attorney general] a list of the names and addresses of those, other than
19 creditors, to whom the assets were transferred. The list must include a description of what assets
20 each transferee received.

21 (c) Whenever a probate estate involves, or may involve, the distribution of property
22 totaling at least [\$25,000] to one or more covered charities or cause the creation of one or more
23 covered charities, the [personal representative] shall at the time of the opening of the estate

1 deliver to the [attorney general] a true copy of the will.

2 (d) Whenever a revocable trust becomes irrevocable by reason of the settlor's death,
3 if the distribution under the trust involves, or may involve, the distribution of property totaling at
4 least [\$25,000] to one or more covered charities or cause the creation of one or more covered
5 charities, the trustee shall, within [30 days] of the date of the settlor's death deliver to the
6 [attorney general] a description of the charitable interests.

7 (e) On the creation of an irrevocable trust that includes one or more interests, present
8 or future, in a covered charity or for charitable purposes, the trustee shall, within [30 days] of the
9 date of the creation of the trust, deliver to the [attorney general] a description of the charitable
10 interests.

11 (f) A covered charity shall give notice to the [attorney general] of a decision to file
12 for bankruptcy on a date no later than the date on which the covered charity files for bankruptcy.

13 (g) A covered charity shall give notice to the [attorney general] within [20] days of a
14 receipt of notice of revocation or modification of its federal, state, or local tax exemption.

16 Comment

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

21
22 **Subsection (a)** requires a charity to file with the attorney general any amendment to its
23 governing documents that changes the purpose of the charity or results in a material change to
24 the structure, governance, or activities of the charity. [Need examples here of "material"
25 changes]. **Subsection (b)** specifies a variety of circumstances that involve the termination of a
26 charity or the rearrangement of charitable assets that require notice to the attorney general by the
27 charity. **Subsection (c)** requires the [personal representative] to notify the attorney general of
28 the distribution of an estate that may involve the distribution of charitable assets, and **subsection**
29 **(d)** requires notice to the attorney general if decedent's property will be distributed through a
30 revocable trust. **Subsection (e)** requires an irrevocable trust with charitable interests that may

1 not have risen to the level that requires registration, to notify the attorney general of the trust's
2 existence. **Subsection (g)** provides for notification to the attorney general of revocations of
3 charitable tax exemptions. The obligation to notify the attorney general is placed on officers and
4 agencies that are responsible for evaluating and acting on tax exemption applications.
5

6 **SECTION 8. NOTICE OF PROCEEDINGS CONCERNING CHARITABLE**
7 **ENTITIES, CHARITABLE FIDUCIARIES, AND CHARITABLE ASSETS.** When a
8 person commences any of the actions or proceedings listed in this Section, the person shall give
9 notice in a record to the [attorney general] if the value of the charitable assets involved in the
10 action or proceeding is at least [\$25,000]. The notice must include a copy of the initial pleading.
11 The following actions and proceedings require notice:

12 (a) An action against or on behalf of a covered charity or pursuant to a record under
13 which charitable assets were given to the covered charity;

14 (b) An action against a charitable fiduciary concerning the application of charitable
15 assets or the breach of fiduciary duty owed to a covered charity

16 (c) A proceeding seeking:

17 (1) instructions or other declaratory relief relating to the management, use, or
18 distribution of charitable assets or income produced by charitable assets;

19 (2) construction of a record under which charitable assets are held; or

20 (3) modification of the terms under which charitable assets are held.

21 (4) removal or replacement of a trustee or a charitable trust.

22 (d) A proceeding to enforce, construe, nullify, or impair the provisions of a record
23 creating or affecting a charitable trust in which matters affecting charitable assets may be
24 decided.

25 (e) A proceeding relating to the administration of a probate estate in which matters

1 affecting charitable assets may be decided.

2 (f) A proceeding to contest or set aside the probate of a will under which property is
3 given for charitable purposes.

4 **Comment**

5 The list of kinds of proceedings that require notice to the attorney general is adapted from
6 provisions found in charitable corporation, trust, and probate sections of various state codes,
7 although no one state provides model for the entire section. The drafting committee concluded
8 that the attorney general ought to be made aware of a wide range of proceedings that might affect
9 charitable assets or the structure or governance of a charity. [Might include examples here, too.]

10
11 In states where the attorney general is a necessary party to any or all of the kinds of
12 actions addressed in this section, parts or all of the section will be unnecessary.

13
14 **SECTION 9. ATTORNEY GENERAL PARTICIPATION IN PROCEEDINGS**
15 **INVOLVING CHARITIES.**

16 (a) The [attorney general] may commence an action pursuant to this [act] and may
17 intervene in an action or proceeding listed in Section 8.

18 **Comment**

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

25
26 **SECTION 10. COOPERATION WITH OTHER OFFICIALS.**

27 (a) The [attorney general] may cooperate with any official of this state, another state,
28 the United States, or any political subdivision or agency thereof charged with overseeing covered
29 charities or charitable assets. In order to cooperate, the [attorney general] may:

30 (1) notify the official of the commencement, status, or resolution of an
31 investigation or proceeding pursuant to this [act];

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

(3) request from the official statements, records, or other information relevant to an investigation pursuant to Section 4.

Comment

This section authorizes cooperation between a state attorney general and relevant officials of other states and the federal government. Subsection (b) provides that the most protective confidentiality rules of the cooperating governments will govern the confidentiality of shared information.

SECTION 11. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or 36 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 12. [UNIFORMITY]. This act shall be construed so as to protect the rights and interest of the people of the state and the uncertain and indefinite beneficiaries of property dedicated to charitable purposes and to promote uniformity of the law with respect to its subject matter in the states that adopt it.

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

SECTION 14. REPEAL. The following acts and parts of acts are repealed.