

DRAFT  
FOR DISCUSSION ONLY

# OVERSIGHT OF CHARITABLE ASSETS ACT

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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For November 5 – 7, 2010 Committee Meeting

*With Prefatory Note and Comments*

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October 20, 2010

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# OVERSIGHT OF CHARITABLE ASSETS ACT

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# OVERSIGHT OF CHARITABLE ASSETS ACT

## PREFATORY NOTE

The Charitable Sector. [Importance of charitable sector in the U.S. and history of charitable sector in the U.S. ] American charities provide a wide range of services and benefits – from arts organizations, to hospitals, to the relief of poverty, to educational institutions, to environmental protections. American charities manage substantial funds in conjunction with carrying out their charitable purposes, holding some funds for current operating needs and others as endowments. [cite to recent data] Charities carry out important functions, lessening the role of government in some cases and improving the quality of life for many people.

Public confidence in charities will help maintain the vibrancy of the charitable sector. If potential donors worry that charities will misuse contributed funds, donors are unlikely to contribute. The good work charities do will suffer if reports of abuse, fraud, or other types of misbehavior reduce public confidence in the sector.

The regulation of charities remains minimal, and yet the importance of public confidence in the sector points to the need for some modicum of oversight. In the charitable sector, self-regulation has always been important and will continue to be important. [note third sector report] The Internal Revenue Service has begun to increase its role in charitable supervision, by expanding the information required under the Form 990 annual report that many charities must file. In order to protect the role of the states in supervising charities, the role of the attorney general should be clarified.

Charity regulators in some states are more active than those in other states, but the committee has not seen evidence of overreaching by charitable regulators. Instead, the concern voiced by some observers of the sector is that many states should increase resources available to charity regulators, so they can do a better job of providing the appropriate level of regulation.

***Goals of the Act.*** The Uniform Oversight of Charitable Assets Act will articulate and confirm the role of the state attorney general in protecting charitable assets. The attorney general's oversight function exists in most states in the common law or by statute, but in a few states courts have found no common law authority and in a few other states the scope of the authority is unclear. The attorney general's authority is broad and this Act will not limit or narrow that authority.

The Act will also make sure the attorney general has the information needed to perform the oversight function, without overburdening the charities or the attorney general with excessive reporting requirements. The Act specifies which transactions and legal proceedings require notice to the attorney general and provides for registration and annual reports for some charities.

The Act will replace the Uniform Supervision of Trustees for Charitable Purposes Act (1954). That Act has been adopted in a small number of states and is out-of-date.

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

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

***Which Charities Does the Statute Cover?*** The Act has a relatively broad definition of “covered charity” and then will apply certain sections of the Act (registration and reporting) more narrowly. The Drafting Committee continues to discuss which charities should be covered by the statute, which should be required to register, and which should file additional reports. “Covered charity” is an entity that holds property for charitable purposes, but the term excludes governmental entities and businesses.

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

***Registration.*** A charity covered by the registration section must register with the attorney general within a specified period of time after the charity is established or receives property. The charity must provide basic information about the charity (name, address, statutory agent, purpose) and a copy of the charity’s organizing document (articles of incorporation or trust instrument).

***Annual Reports.*** Charities that file a report with the Internal Revenue Service such as a Form 990 or a Form 990-EZ will file a copy with the attorney general. Other charities will file an annual report with some basic information, listed in the Act, about the charity. The Act may limit the requirement to file an annual report to charities with assets above a minimum amount.

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

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

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

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

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

- An action against or on behalf of a charity seeking to enforce the use of charitable assets or the breach of a duty owed to the charity;
- A proceeding seeking instructions relating to the administration, use, or distribution of the charitable assets;
- A proceeding to construe a document under which charitable assets are held or to modify the terms under which charitable assets are held;
- A proceeding involving a trust or probate estate in which matters affecting charitable assets may be decided; or
- A proceeding to remove or replace a trustee of a charitable trust.

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

attorney general can also acquire information or documents from the other official.

1                                   **OVERSIGHT OF CHARITABLE ASSETS ACT**

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

3 Oversight of Charitable Assets Act.

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

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

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

10                  (3) “Covered charity”:

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

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

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

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

18                                 (iv) conducts significant activities in this state; or

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

21                         (B) does not include:

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



(ii) a person organized primarily for business purposes and not primarily for charitable purposes;

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

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

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

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

## Comment

**Subsection (1). Charitable Asset.** The term Property includes all interest in real or personal property, including remainder interests and conservation or preservation easements or restrictions.

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

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

**Subsection (3). Covered charity.** Charity is defined broadly in the Act, with the definition explicitly including entities of any legal form that hold or administer property dedicated to or donated for charitable purposes. The definition of “charity” is broad enough to take in not only organizations traditionally thought of as charitable, but also non-charitable organizations that hold or administer assets dedicated to charitable purposes or that have been donated for charitable purposes. Because the definition underlies the obligation to register with the attorney general, it limits the term to organizations that have significant contacts in the state.

1 The drafting committee believes that the threshold strikes an appropriate balance between the  
2 risk of overburdening charities that have little contact with a particular state and the need for the  
3 attorney general to be alerted to the existence of charitable organizations and assets in the state  
4 that might call for oversight. Simply having a bank or investment account in the state does not  
5 cause an entity to fall within the definition, and financial institutions and investment companies  
6 are not included within the definition by virtue of having accounts owned by charities, unless the  
7 institution serves as trustee for a charity.

8  
9 Governmental entities and political organizations are excluded from the definition of  
10 “charity” for purposes of the [act]. [Does the exclusion of political organizations exclude  
11 organizations for candidates, issue-focused organizations?]  
12

13 Assets must be in a state on more than a temporary basis so that a traveling art exhibit  
14 will not cause the charity that owns the artwork to become subject to oversight in the state in  
15 which an exhibit is held. The committee may need to clarify further what it means to hold assets  
16 on more than a temporary basis. For example, a probate estate might hold assets dedicated to a  
17 charitable purpose during the period of administration.  
18

19 The committee will continue to discuss the appropriate scope of the definition of covered  
20 charity. In particular, more clarity is needed with respect to subsection (4)(C) and the meaning  
21 of “substantial” and with respect to subsection (4)(D) and the meaning of “significant.” For  
22 example, the act should clarify inclusion (or lack of inclusion) of a charity that holds one  
23 meeting a year in the state or makes grants in the state. We also need to address L3Cs and  
24 companies like Newman’s Own that provide a percentage of profits for charitable purposes.  
25 L3Cs may qualify as IRC §501(c)(3) charities or they may not.  
26

27 **Subsection (4). Person.** The Act uses as the definition of person the definition approved  
28 by the Uniform Law Commission.  
29

30 **Subsection (5). Record.** Record is defined, using the Uniform Law Commission  
31 standard definition, in order to use one word instead of several when the act deals with papers,  
32 reports, instruments, and records, and to make clear that information in electronic form is  
33 included.  
34

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

37 (a) The [attorney general] may represent the public interest in the oversight and  
38 protection of charitable assets by:

39 (1) enforcing the due application of charitable assets for the charitable purpose of

1 a covered charity or any charitable purpose for which the assets were given or committed; and

2 (2) acting to prevent or correct a breach of fiduciary or other legal duty in the  
3 administration of a covered charity or charitable assets.

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

7 (1) a misapplication or diversion of charitable assets from use for the charity's  
8 designated charitable purposes;

9 (2) a departure from the charitable purpose of a covered charity or from the terms  
10 of a charitable trust or a restricted gift; or

11 (3) a breach of fiduciary or other legal duty in the administration of a charity or  
12 charitable assets.

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

### 15 **Comment**

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

28  
29 Subsection (c) reflects the committee's desire to articulate that the statute does not  
30 replace any common law or other statutory powers the attorney general may have. The language

1 of this provision also specifies that the act does not limit or restrict the rights of others provided  
2 by common law or statute. Thus, existing (or evolving) state law with respect to standing of  
3 those other than the attorney general is undisturbed by the Act.  
4 [add discussion of relator statutes and consider adding a legislative note for states with relator  
5 statutes]

6  
7 Language specifying the attorney general's authority to issue an order to stop or to seek  
8 an assurance of voluntary compliance is provided in the Legislative Note following Section 4.  
9 States that provide for similar instruments to exercise attorney general authority elsewhere in the  
10 state code, for instance, in the consumer protection statutes, will want to coordinate the language  
11 here with that language.

12  
13 The Act does not, either expressly or by implication, affect existing law concerning the  
14 rights of persons other than the [Attorney General] to standing in connection with a matter  
15 involving a charity.

16  
17 Although a charity's purposes need not be static, the terms of the organizing documents  
18 in effect at the time the charity receives assets constrain the use of those assets.  
19

20 **SECTION 4. INVESTIGATION BY [ATTORNEY GENERAL].** The [attorney  
21 general] may conduct an investigation to ascertain whether:

22 (1) an action may be advisable within the authority of the Attorney General pursuant to  
23 Section 3;

24 (2) a law or legal duty concerning the use or management of charitable assets has been  
25 violated; or

26 (3) this [act] has been violated.

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

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

1           (c) A civil investigative demand must:

2                   (1) state the general subject matter of the investigation and grounds for the  
3           alleged violation being investigated;

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

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

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

11          (d) A civil investigative demand may not:

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

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

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

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

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

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

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

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

1 material. An individual may assert the right against self-incrimination on the record or make the  
2 assertion known to the [attorney general].

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

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

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

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

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

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

1 under this section may be punished as a contempt of court.

2  
3 **SECTION \_\_\_\_.** **ORDER TO STOP; ASSURANCE OF VOLUNTARY**  
4 **COMPLIANCE.**

5  
6 (a) *When it appears to the [attorney general] that a person has engaged in, is engaging*  
7 *in, or is about to engage in a misapplication of charitable assets, a breach of fiduciary duty, or a*  
8 *violation of this [act] or law of this state other than this [act] concerning the use or management*  
9 *of charitable assets, the [attorney general] may issue an order to stop, prohibiting the person*  
10 *and any other person that participated, is participating or is about to participate in the act, from*  
11 *engaging or continuing to engage in the act. The order must not be issued until the [attorney*  
12 *general] has given notice to each person that will be subject to the order of the nature of the*  
13 *alleged violation and the act that is the basis of the alleged violation and the time for the person*  
14 *to file an answer has expired. A person that will be subject to the order may file with the*  
15 *[attorney general] an answer to the notice not later than two business days after delivery of the*  
16 *notice.*

17  
18 (b) *An order issued by the [attorney general] under subsection (a) must be served on*  
19 *each person that is subject to the order in the manner provided [in Section 4 for service of a civil*  
20 *investigative demand]. The order expires 10 days after being served.*

21  
22 (c) *A person that has been duly served with an order issued under this section and*  
23 *willfully and knowingly violates a provision of the order while the order remains in effect, either*  
24 *as originally issued or as modified, is guilty of [XXX]. The [attorney general] may commence a*  
25 *criminal action for the violation.*

26  
27 (d) *The [attorney general] may accept an assurance of voluntary compliance with*  
28 *respect to an act that would be subject to an order to stop pursuant to subsection (a). The*  
29 *assurance of voluntary compliance must be in writing and must be filed with and approved by*  
30 *the [court] of the county in which the alleged violator resides or has its principal place of*  
31 *business. An assurance of voluntary compliance must not be considered for any purpose as an*  
32 *admission of violation. A person that violates the terms of an assurance of voluntary compliance*  
33 *shall pay to the state a civil penalty of not more than \$[ ] per violation. A [court] approving an*  
34 *assurance of voluntary compliance retains jurisdiction to award a civil penalty under this*  
35 *subsection, and the attorney general acting in the name of the state may petition for recovery of*  
36 *the civil penalty.]*

37 **Comment**

38 The Act articulates the Attorney General's authority to undertake an investigation as a  
39 means of fulfilling the authority articulated in Section 3. The Attorney General acts in the public  
40 interest to protect charitable assets. The committee discussed the threshold for initiating an  
41 investigation. Some states (e.g., Massachusetts) require court approval before beginning a civil  
42 investigation. Others do not, and specify no particular threshold standard to justify commencing  
43 a civil investigation. The committee concluded that a less demanding threshold standard is  
44 appropriate. Information often comes to the attorney general in a form much less formal than a

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

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

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

24 The committee has not yet had the opportunity to discuss this Legislative Note. Both of  
25 these sections come from the Missouri statutes and will require re-working. In particular,  
26 committee members have raised questions about subsection (f) in the Legislative Note because  
27 of concerns about self-incrimination and the granting of immunity. The committee will think  
28 through these sections at its fall meeting.  
29

## 30 **SECTION 5. REGISTRATION.**

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

32 (b) A covered charity shall register with the [attorney general] on or before the later of:

33 (1) [ ] [days] [months] after the effective date of this [act];

34 (2) [ ] [days] [months] after the date the charity is

35 [created][formed][established]; or

36 (3) [ ] [days] [months] after the date the charity receives charitable assets,

37 (c) The registration required by subsection (b) must include:



- 1 (1) the name and address of the covered charity;
- 2 (2) the name and address of the statutory agent of the charity;
- 3 (3) the name and address of a director, trustee, or executive director of the
- 4 charity;
- 5 (4) a short statement of the charity's purpose;
- 6 (5) a true copy of the current version of the charity's articles of incorporation,
- 7 trust instrument, or other record, if any, creating the charity; and
- 8 [(6) the federal employer identification number, if any, for the charity.]

9 (d) The [attorney general] may establish a fee to accompany the registration required by

10 subsection (b) and a penalty for late registration.

11 (e) The registry established pursuant to subsection (a) and records filed with the

12 [attorney general] are public records, except that the [attorney general] shall:

13 (1) withhold from public inspection a record or any part of a record filed with the

14 [attorney general] or with a governmental agency of this state, another state, or the United States,

15 or any governmental subdivision thereof, which is required by law to be kept confidential; and

16 (2) on the written request of a covered charity, withhold from public inspection a

17 record or any part of a record filed which does not relate to a charitable purpose or charitable

18 assets and is not otherwise a public record.

### 19 **Comment**

20 The main thrust of the 1954 Uniform Supervision of Trustees for Charitable Purposes Act

21 was to provide a mechanism to facilitate the supervisory role of the Attorney General by

22 providing for registration that would alert the Attorney General to the existence and

23 administration of charitable trusts. This Act continues to incorporate that function. The drafting

24 committee has opted to keep the registration obligation simple, so as to avoid overburdening

25 either charitable organizations or attorney generals' offices. It is expected that the registration

26 function will move to an electronic system, thereby reducing some of the burden. Only entities

1 that meet the Act’s definition of “covered charity” have the obligation to register in the state.  
2 While a large organization that operates in many states will likely have an obligation to register  
3 in multiple states, the committee hopes that the Act’s move toward uniformity will minimize the  
4 burden of multiple registrations.  
5

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

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

## 19 **SECTION 6. ANNUAL REPORT.**

20 (a) This section does not apply to:

21  
22 (1) a church or other house of worship; or

23  
24 (2) a covered charity that receives revenues of less than \$[ ] during the  
25 charity’s annual accounting period for which this section would otherwise require an annual  
26 report and holds less than \$[ ] in assets throughout that period.

27 (b) A covered charity shall file with the [attorney general], not later than five months and  
28 fifteen days after the end of the covered charity’s accounting period, a report in one of the  
29 following forms:

30 (1) a copy of the charity’s annual federal tax return, if the return includes the  
31 information listed in paragraph (2); or

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

33 (A) a current list of the charity’s directors, trustees, and officers;  
34

- 1 (B) the charity’s gross annual revenues for the accounting period;  
2  
3 (C) the charity’s total assets as of the last day of the accounting period;  
4  
5 (D) a description of any contracts, loans, leases, or other financial  
6 transactions during the accounting period between the charity and any officer, director, or  
7 trustee, either directly or with an entity in which the officer, director, or trustee had a financial  
8 interest;
- 9 (E) a description of any suspected embezzlement, theft, diversion, or  
10 misuse of the charity’s charitable assets of which the charity became aware during the  
11 accounting period;
- 12 (F) a list of any instances of which the charity became aware during the  
13 accounting period of use of the charity’s funds to pay any penalty, fine, or judgment;
- 14 (G) a statement describing any change in the charity’s federal, state, or  
15 local tax exempt status during the accounting period;
- 16 (H) a statement describing any use during the accounting period or of  
17 which the charity became aware during the accounting period of restricted funds for a purpose  
18 other than those specified in the restriction; and
- 19 (I) a description of the charity’s three most significant program activities  
20 during the accounting period.

## 21 **Comment**

22  
23 The committee intends to exclude from this section religious organizations but not  
24 organizations that are not purely religious, for example religious schools. The committee  
25 recognizes that “church or other house of worship” may not capture all of the religions practiced  
26 in this country and will consider other formulations.  
27

28 Many charities will be able to meet the annual report requirement of Section 6 simply by  
29 filing a copy of the federal tax return the charity files. If the charity files a Form 990, Form 990-

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

11  
12 The Internal Revenue Code requires a private foundation to file a copy of its Form 990-  
13 PF, IRC 6033(c)(2), with the state, so we should be able to exempt private foundations who  
14 already file that form with the state. The committee needs to consider this exemption, but the  
15 committee will likely be able to exempt private foundations from Section 6.

16  
17 States that require annual reporting under a statute that regulates charitable solicitation  
18 will want to coordinate the report required here with that required by the solicitation statute and  
19 may find the reporting requirement in Section 6 duplicative and unnecessary.

20  
21 The drafting committee did not reach consensus on the optimal threshold for the small  
22 organization exception. Some committee members noted that the reporting requirement can  
23 encourage good governance, and some members also noted that the small organizations are often  
24 the ones that get into trouble. The [attorney general] needs to receive information in a timely  
25 fashion to be able to address problems before charitable assets are lost. The registration and  
26 reporting requirements are important in promoting appropriate oversight of charitable assets.

## 27 28 **SECTION 7. NOTICE TO [ATTORNEY GENERAL].**

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

33 (b) A covered charity shall give written notice to the [attorney general] not later than  
34 [20] [30] [60] days before the adoption by agreement with the donor of a modification of a  
35 restriction on the management, investment, purpose, or use of charitable assets if the amount  
36 subject to the agreement is more than \$[25,000].

(c) The following rules apply to a covered charity in connection with a dissolution, termination, disposition of assets, or merger:

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

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

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

(3) The charity shall give written notice to the [attorney general] at least [ ] days before it sells, leases, exchanges, otherwise disposes of, or encumbers all or substantially all of its assets unless:

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

(B) the [attorney general] has given the charity a written waiver of one or more of the requirements of this section.

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

(5) No assets may be transferred in connection with a dissolution, termination, or disposition of assets, and a merger may not be consummated until the earliest of:

(A) [20] days after the notice required by this section has been delivered

1 to the [attorney general];

2 (B) the charity's receipt of the [attorney general]'s consent in writing to a  
3 proposed transfer; or

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

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

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

16 (d) If a probate estate involves, or may involve, the distribution of property totaling at  
17 least \$[25,000] to one or more covered charities, or cause the creation of one or more covered  
18 charities, the [personal representative] at the time the will is admitted to probate shall deliver to  
19 the [attorney general] a true copy of the will.

20 (e) If a revocable trust becomes irrevocable because of the settlor's death and if the  
21 distribution under the trust involves, or may involve, distribution of property totaling at least  
22 \$[25,000] to one or more covered charities or cause the creation of one or more covered  
23 charities, the trustee, not later than [30] days after the date of the settlor's death, shall deliver to

1 the [attorney general] a description of the charitable interests.

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

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

11 (h) A covered charity shall give notice to the [attorney general] not later than [20] days  
12 after receipt of notice of revocation or modification of its federal, state, or local tax exemption.

### 13 **Comment**

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

18  
19 **Subsection (a). Amendment.** This subsection requires a charity to file with the attorney  
20 general any amendment to its governing documents that changes the purpose of the charity or  
21 results in a material change to the structure, governance, or activities of the charity. For  
22 example, a charity should report a change in voting structure, either the elimination of a class of  
23 voting members or the creation of voting members. [Need examples here of “material” changes].  
24

25 **Subsection (b). Modification.** If a charity and a donor agree to modify a restriction  
26 imposed by a donor on a gift to the charity, then the charity must notify the [attorney general] of  
27 the modification. If a charity intends to use the doctrines of cy pres or deviation, either under  
28 trust law or under UPMIFA, to modify a restriction, the charity will need court approval and  
29 notice to the [attorney general] will be required under Section 8.  
30

31 **Subsection (c). Dissolution, termination, disposition of assets, and merger.** If the  
32 charity will terminate or dispose of substantially all of its assets, the charity must notify the

1 [attorney general] before the charity gives up control of the assets. This notice provision gives  
2 the [attorney general] time to review the proposed transaction and recommend changes if  
3 necessary while the assets can still be reached. If the [attorney general] objects to the proposed  
4 transaction, the [attorney general] must deliver the objection to the charity in writing and then the  
5 charity cannot proceed with the transaction until the [attorney general] consents (presumably  
6 after negotiations between the charity and the [attorney general]) or a court approves the  
7 transaction. This subsection gives the [attorney general] the information needed to work with the  
8 charity on an appropriate plan of distribution or other transfer, and then provides for a court  
9 determination if the [attorney general] and the charity cannot reach agreement.

10  
11 **Subsection (d) Probate estate. If a probate estate contains a gift to a charity, the**  
12 [personal representative] must notify the attorney general of the distribution of an estate that may  
13 involve the distribution of charitable assets. This provision is necessary, because the public's  
14 interest in a charitable bequest may not be protected if an heir contests the will and the [attorney  
15 general] does not know that a charitable bequest existed.

16  
17 **Subsection (e). Revocable trust.** If a decedent's property will be distributed through a  
18 revocable trust rather than through probate, the [attorney general] should still get notice of any  
19 significant charitable gifts. The amount that is "significant" is left in brackets for states to  
20 consider. The drafting committee thought that gifts to charity worth at least \$25,000 collectively  
21 represented a "significant" charitable interest.

22  
23 **Subsection (f). Irrevocable trust.** The creation of an irrevocable trust with charitable  
24 interests that may not have risen to the level that requires registration, still merits notification to  
25 the attorney general of the trust's existence.

26  
27 **Subsection (g). Bankruptcy.** The [attorney general] should be aware of a charity's  
28 decision to file for bankruptcy so that the [attorney general] can protect the public's interest in  
29 the charitable assets.

30  
31 **Subsection (h). Revocation of tax exemption.** The revocation of a federal or state tax  
32 exemption may signal problems with a charity that the [attorney general] should consider. This  
33 subsection requires provides for notification to the [attorney general] of revocation or  
34 modification of a charity's exempt status for any tax purpose.

35  
36 **SECTION 8. NOTICE OF PROCEEDING CONCERNING COVERED**  
37 **CHARITABLE OR CHARITABLE ASSETS.**

38 (a) This section applies to:

39 (1) an action against or on behalf of a covered charity or an action seeking to  
40 enforce the terms governing charitable assets given to a covered charity;



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

3 (3) a proceeding by, against or on behalf of a covered charity seeking:

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

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

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

9 (D) removal, appointment of or replacement of a trustee of a charitable  
10 trust;

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

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

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

## 22 **Comment**

23 The list of kinds of proceedings that require notice to the attorney general is adapted from

1 provisions found in charitable corporation, trust, and probate sections of various state codes,  
2 although no one state provides a model for the entire section. The drafting committee concluded  
3 that the attorney general ought to be made aware of a wide range of proceedings that might affect  
4 charitable assets or the structure or governance of a charity. [Might include examples here, too.  
5 For example, changing the membership structure by eliminating one or more classes of voting  
6 members, should require notification.]

7  
8 In states where the attorney general is a necessary party to any or all of the kinds of  
9 actions addressed in this section, parts or all of the section will be unnecessary.  
10

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

14 **Comment**

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

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

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

26 (b) The [attorney general] may:

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

29 (2) make available to the official a statement, record, or other information  
30 relating to a covered charity which is relevant to the official's oversight of covered charities and

charitable assets; or

(3) request from the official a statement, record, 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.

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

**SECTION 12. 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 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

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

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