

D R A F T
FOR DISCUSSION ONLY

PROTECTION OF CHARITABLE ASSETS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAW

For April 1 – 3, 2011 Committee Meeting

With Prefatory Note and Revised Comments

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ON UNIFORM STATE LAWS

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March 30, 2011

DRAFTING COMMITTEE ON PROTECTION OF CHARITABLE ASSETS ACT

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

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

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

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

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

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

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

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

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

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

CHARLES A. TROST, 511 Union St., Suite, 2700, Nashville, TN 37219-1760

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

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

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

EX OFFICIO

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

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

AMERICAN BAR ASSOCIATION ADVISOR

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

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

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

EXECUTIVE DIRECTOR

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

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

PROTECTION OF CHARITABLE ASSETS ACT

TABLE OF CONTENTS

PREFATORY NOTE.....	1
SECTION 1. SHORT TITLE.	5
SECTION 2. DEFINITIONS.....	5
SECTION 3. AUTHORITY OF [ATTORNEY GENERAL] TO PROTECT CHARITABLE ASSETS.....	7
SECTION 4. REGISTRATION.....	10
SECTION 5. ANNUAL REPORT	16
SECTION 6. NOTICE TO [ATTORNEY GENERAL] OF REPORTABLE EVENT.....	18
SECTION 7. NOTICE TO ATTORNEY GENERAL OF ACTION OR PROCEEDING.	21
SECTION 8. EQUITABLE RELIEF.....	22
SECTION 9. COOPERATION WITH OTHER OFFICIAL.....	22
SECTION 10. UNIFORMITY OF APPLICATION AND CONSTRUCTION.....	23
SECTION 11. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.....	23
SECTION 12. REPEALS.	23
SECTION 13. EFFECTIVE DATE.....	23

1 **PROTECTION OF CHARITABLE ASSETS ACT**

2 **PREFATORY NOTE**

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

10
11 Public confidence in charities will help maintain the vibrancy of the charitable sector. If
12 potential donors worry that charities will misuse contributed funds, donors are unlikely to
13 contribute. The good work charities do will suffer if reports of abuse, fraud, or other types of
14 misbehavior reduce public confidence in the sector.

15
16 The regulation of charities remains minimal, and yet the importance of public confidence
17 in the sector points to the need for some modicum of oversight. In the charitable sector, self-
18 regulation has always been important and will continue to be important. [note third sector
19 report] The Internal Revenue Service has begun to increase its role in charitable supervision, by
20 expanding the information required under the Form 990 annual report that many charities must
21 file. In order to protect the role of the states in protecting charitable assets, the role of the
22 Attorney General should be clarified.

23
24 The Role of the Attorney General under Existing Law. The duty of the Attorney General
25 to protect assets given to charities or held for charitable purposes “is stated in the legal texts as
26 an absolute duty and is recognized in almost all of the states either by statute or judicial
27 decision.” Regulation of Charities in the States 306 [need cite to this book]. Thirty-seven states
28 have statutes related to this duty. In a few states – Florida, Mississippi, Missouri, Nebraska, and
29 Wyoming -- the statutory authority is limited to corporate transactions or nonprofit corporations,
30 and in Indiana the authority of the Attorney General is limited to petitioning for a trust
31 accounting. In all six of those states, the power to enforce charitable trusts is recognized in the
32 case law. When the Supreme Court of Virginia held that the Attorney General did not have
33 power to enforce charitable corporations but only to enforce charitable trusts, *Virginia v. The*
34 *JOCO Foundation*, 558 S.E.2d 280 (Va. 2002), the legislature responded quickly to clarify that
35 the assets of a charitable corporation “shall be deemed to be held in trust for the public” and that
36 “[t]he attorney general shall have the same authority to act on behalf of the public with respect to
37 such assets as he has with respect to assets held by unincorporated charitable trusts and other
38 charitable entities, including the authority to seek such judicial relief as may be necessary to
39 protect the public interest in such assets.” Va. Code Ann. §2.2-507.1 In Louisiana no case or
40 statute describes the Attorney General’s role with respect to charitable assets, although the
41 statute providing for cy pres proceedings requires notice to the Attorney General. In all other
42 states the duty to enforce charitable funds exists either in the Attorney General or in another
43 public official. [cite to book]

1 California, Illinois, Massachusetts, Michigan, Minnesota, New Hampshire, New York,
2 Ohio, Oregon, Rhode Island, South Carolina, and Washington all have registration statutes, some
3 based on the Uniform Supervision of Trustees for Charitable Purposes Act (1954) which this Act
4 replaces. (cites).

5
6 **Goals of the Act.** The Uniform Protection of Charitable Assets Act will articulate and
7 confirm the role of the state Attorney General in protecting charitable assets. The Attorney
8 General’s authority is broad and this Act will not limit or narrow that authority.

9
10 The Act will provide the Attorney General with at least an inventory of basic information
11 without overburdening the charities or the Attorney General with excessive reporting
12 requirements. The Act specifies which transactions and legal proceedings require notice to the
13 Attorney General and provides for registration and annual reports for some charities. It is based
14 on a rather minimalist or basic platform, designed for those states that lack any significant
15 legislation, although all states can benefit from its concepts and clarity.

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

20
21 It is useful to remember that the Attorney General has an educational role and a
22 facilitative role as well as a regulative role. Attorneys General now generally educate charities
23 and work with charities to help them become more efficient and more effective. The Attorney
24 General will be better able to perform these roles with adequate information about the charities
25 operating in the state.

26
27 **Which Charities Does the Statute Cover?** The Attorney General has a duty to protect all
28 charitable assets in a state and oversight over all charities registered in a state, so the Act
29 logically applies broadly to charities. Certain sections of the Act (registration, reporting, and
30 notice) apply more narrowly. The Act does not cover governmental entities and businesses,
31 except to the extent that those non-charities hold charitable assets.

32
33 **General Authority of the Attorney General.** The Act states the broad duty of the
34 Attorney General to represent the public interest in the protection of charitable assets. The Act
35 states that the Attorney General may enforce the use of charitable assets by a charity for the
36 purposes for which the assets were given to the charity, may take action to prevent or correct a
37 breach of a fiduciary duty in connection with the administration of a charity or charitable assets,
38 and may intervene in an action brought to correct a misapplication of charitable funds, a
39 departure from the purpose of the charity, or a breach of a fiduciary duty owed the charity.

40
41 **Registration.** A charity covered by the registration section must register with the
42 Attorney General within a specified period of time after the charity receives property. The
43 charity must provide basic information about the charity (name, address, statutory agent, federal
44 identification number, and contact person) and a copy of the charity’s organizing documents
45 (articles of incorporation and bylaws or trust instrument). The Act includes a one-page statutory
46 form of registration.

1 **Annual Reports.** Charities with assets above a minimum amount will file an annual
2 report with the Attorney General. The annual report will provide basic information and will
3 require that the charity attach a copy of any report the charity files with the Internal Revenue
4 Service (e.g., a Form 990 or a Form 990-EZ).

5
6 **Notice of “Life Events.”** One of the concerns the Drafting Committee sought to address
7 was the problem that occurs when an Attorney General learns about the loss of charitable assets
8 after a charity has disposed of the assets. The Act requires a charity to file a notice of the
9 following, a specified number of days [20, 30 or 60 days] before the event occurs. Events that
10 require notice include the following:

- 11 • A dissolution or termination;
- 12 • The disposition of all or substantially all of its property;
- 13 • A merger, conversion, or domestication;
- 14 • A removal of the charity or of significant charitable assets from the state.
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- 19 • A removal of the charity or of significant charitable assets from the state.

20 The transfer of assets without providing notice and before the passage of the time
21 prescribed in the Act or the receipt of consent or notice that the Attorney General will take no
22 action will be considered a violation of the Act.

23
24 In addition, if a decedent’s estate or a revocable trust involves the distribution of property
25 to a charity, the personal representative of the estate or the trustee of the trust must send the
26 Attorney General a copy of the will or a description of the charitable interests in the trust. A
27 charity must also send notice of revocation or modification of a federal, state, or local tax
28 exemption.

29
30 Any person who asserts a claim in a proceeding involving a charity or charitable assets
31 must give written notice to the Attorney General. This may be the charity itself or some other
32 person. The notice must include a copy of the initial pleading. The proceedings that require
33 notice are the following:

- 34 • An action seeking to enforce a term relating to a gift of a charitable asset;
- 35 • An action seeking to enforce the use of charitable assets or the breach of a duty owed to
36 the charity;
- 37 • A proceeding seeking instructions relating to the management, use, or distribution of the
38 charitable assets;
- 39 • A proceeding to construe a document under which charitable assets are held or to modify
40 the terms under which charitable assets are held;
- 41 • A proceeding to remove or replace a trustee of a charitable trust;
- 42 • A proceeding to remove or replace a trustee of a charitable trust;
- 43 • A proceeding to remove or replace a trustee of a charitable trust;
- 44 • A proceeding to remove or replace a trustee of a charitable trust;
- 45 • A proceeding to remove or replace a trustee of a charitable trust;
- 46 • A proceeding to remove or replace a trustee of a charitable trust;

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- A proceeding involving a trust or decedent’s estate in which matters affecting charitable assets may be decided; or
- A proceeding for bankruptcy or receivership.

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.

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PROTECTION OF CHARITABLE ASSETS ACT

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

Protection of Charitable Assets Act.

SECTION 2. DEFINITIONS. In this [act]:

(1) “Charitable asset” means property that is [irrevocably dedicated][legally committed or held] for a charitable purpose.

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

(3) “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.

(4) “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.

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

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

(B) participates, directly or indirectly, in the control or management of the person or, in the case of a person being formed, will participate in the control or management of the person.

(6) “State” means [get standard definition].

Comment

Subsection (1). Charitable Asset. The term property includes all interest in real or tangible or intangible personal property, including remainder interests and conservation or

1 preservation easements or restrictions. The requirement that the property be “irrevocably
2 dedicated” to charitable purposes does not mean that the property must be held in perpetuity for
3 charitable purposes. Instead the term means that property will be used, whenever it is used, for
4 charitable purposes and cannot be diverted from the charitable stream. The remainder interest in
5 a charitable remainder trust is property irrevocably dedicated for a charitable purpose, as is the
6 current interest in a charitable lead trust, property held for ten years in a building fund, and
7 property given to a charity subject to a restriction on its use.

8
9 [add an explanation of the use of “dedicated” in connection with real property and conservation
10 easements]

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

15
16 The definition includes purposes “beneficial to the community,” because that concept is
17 part of the traditional definition of charitable purposes. The definition means purposes
18 considered charitable and not merely beneficial. Many activities and organizations benefit the
19 community, such as social welfare organizations, cooperative associations, and business entities.
20 The definition is limited to those beneficial purposes that are charitable in nature.

21
22 Some 17 states have created statutory definitions of charitable purpose for various
23 reasons. *See, e.g.*, 10 Pa. Cons. Stat. § 162.3 (2005) (defining charitable purpose within the
24 Solicitation of Funds for Charitable Purposes Act to include “humane,” “patriotic,” “social
25 welfare and advocacy,” and “civic” purposes). The definition in subsection (2) applies for
26 purposes of this Act and does not affect other definitions of charitable purpose.

27
28 **Subsection (3). Person.** The Act uses as the definition of person the definition approved
29 by the Uniform Law Commission. The definition includes individuals as well as entities.
30 Charities are typically organized as nonprofit corporations or charitable trusts and both are
31 included within this definition.

32
33 **Subsection (4). Record.** Record is defined, using the standard Uniform Law
34 Commission definition, in order to use one word instead of several when the act deals with
35 traditional forms of paper, as well as information in electronic form.

36
37 **Subsection (5). Responsible Individual.** This term describes someone the Attorney
38 General could contact for information about the charity. Often the Attorney General will be able
39 to resolve a question about a charity’s use of assets informally, and having someone identified as
40 a contact person for the charity will make that informal discussion more efficient and effective.
41 A responsible individual should be someone who is generally familiar with, among other things,
42 how the charity is managed but the person need not be a director or trustee. The definition is
43 based on one in the Uniform Law Enforcement Access to Entity Information Act (2009).

1 **SECTION 3. AUTHORITY OF [ATTORNEY GENERAL] TO PROTECT**
2 **CHARITABLE ASSETS.**

3 (a) The [Attorney General] represents the [public interest] [interest of the public] in the
4 protection of charitable assets.

5 (b) The [Attorney General] may:

6 (1) enforce the application and prevent the misapplication or diversion of a
7 charitable asset in accordance with:

8 (A) the purposes or terms, if any, for which the asset was given; and

9 (B) the charitable purposes of a person holding charitable assets; and

10 (2) act to prevent or remedy a breach of fiduciary or other legal duty:

11 (A) in the governance, management, or administration of a charitable
12 asset; or

13 (B) in the governance of a person organized primarily for charitable
14 purposes;

15 (3) seek declaratory, injunctive, or other equitable relief to determine that an
16 asset is a charitable asset;

17 (4) commence or intervene in an action to:

18 (A) prevent, remedy, or obtain damages for a violation of this [act]; or

19 (B) seek other remedy to enforce this [act].

20 (c) The [Attorney General] may conduct an investigation, including exercising
21 administrative subpoena power, if the [Attorney General] has reason to believe the investigation
22 is necessary to determine whether action may be advisable under this [act].

23 (d) This [act] does not limit the powers and duties of the [Attorney General] under law of

1 this state other than this [act].

2 **Comment**

3 One of the major goals of the Act is to articulate the Attorney General’s duty to protect
4 charitable assets. The duty exists in case law or statutes in almost all states, but the scope of the
5 duty is uncertain in some states. The Act will declare and clarify the scope of the duty, although
6 the Act does not limit the authority that already exists.

7
8 The Attorney General’s duty has sometimes been described as the “*parens patriae*” power
9 – the duty to protect the public interest in property that has been dedicated to charitable purposes.
10 Unlike a private corporation or a private trust, no shareholder or private beneficiary has an
11 incentive to supervise the proper management of the assets held for charitable purposes. The
12 Attorney General fills this void, providing a voice for the public’s interest in charitable assets. A
13 Massachusetts statute, first enacted in 1847, describes the duty as the duty to “enforce the due
14 application of funds given or appropriated to public charities . . . and prevent breaches in the
15 administration thereof” Mass. Gen. Laws ch. 12, §8.

16
17 Subsection (a) states the duty of the Attorney General over charitable assets. This
18 subsection follows existing law in most states and may serve as a declaration of the role of the
19 Attorney General in states in which the duty is not clear. Subsection (a) includes the duty to
20 preserve and protect charitable assets and ensure their proper use and administration.

21
22 Subsections (b) and (c) are powers within the discretion of the Attorney General.
23 Subsection (b) explains that to carry out the duty stated in subsection (a), the Attorney General
24 may take action to enforce the purposes or terms for which an asset was given to a charity and
25 may act to prevent or remedy a breach of a duty owed to a charity by a fiduciary or by another
26 person. The Attorney General may intervene in an action involving a charity and may begin an
27 action to enforce the Act.

28
29 Section (b)(1)(B) provides that although a charity’s purposes need not be static, the terms
30 of the organizing documents in effect at the time the charity receives assets constrain the use of
31 those assets. The Drafting Committee concluded that when a donor contributes to a charity, the
32 donor expects the charity to use that gift for the purposes for which the charity was organized
33 and operating at that time. A charity organized as a nonprofit corporation can change its
34 purposes by amending its articles of incorporation and bylaws, but amendments should not allow
35 the charity to change the purpose of donations already received. *See* the Uniform Prudent
36 Management of Institutional Funds Act, §2(3) (defining “gift instrument” to include governing
37 documents of the charity); *Attorney Gen. v. Hahnemann Hosp.*, 494 N.E. 2d 1011, 1020–21
38 (Mass. 1986) (stating that the charity could broaden its purposes by amending its articles, but
39 that the charity could not use unrestricted donations received prior to the amendment for the new
40 purposes); *Queen of Angels Hosp. v. Younger*, 66 Cal. App. 3d 359, 365 (Ct. App. 1977)
41 (agreeing with the Attorney General that the nonprofit corporation held assets “impressed with a
42 charitable trust” to operate as the articles provided and in the manner in which it had been
43 conducting its activities). In contrast, the Principles of the Law of Nonprofit Organizations allow
44 changes in governing instruments to change the purposes of existing assets. *See* PRINCIPLES OF

1 THE LAW OF NONPROFIT ORGS. §400, cmt. (d)(3) (The American Law Institute Preliminary Draft
2 No. 5 2009) (stating, “a facially unrestricted gift made to a charity having a single, narrow
3 purpose is not viewed as a restricted gift. Rather, a donor’s desire that the gift be used for a
4 specific purpose must be expressed, in writing, in order for the recipient charity to be bound to
5 use that gift for that purpose.”).
6

7 Subsection (c) states the authority of the [Attorney General] to conduct an investigation
8 under the Act. The [Attorney General] must have a reason to believe the investigation is
9 necessary to determine whether further action under the Act is necessary. Some observers
10 expressed concern that an [Attorney General] might use the power of investigation for political
11 purposes. While the risk of misfeasance exists with any power, the Drafting Committee
12 concluded that it could not make decisions based on an assumption or a possibility that a state
13 official would misuse authority provided in the Act. The Drafting Committee concluded that the
14 power to investigate is essential so that the [Attorney General] can determine whether further
15 action is necessary. Oftentimes, the [Attorney General] will be able to resolve an issue with a
16 charity through the exchange of information followed by discussion without the need for a court
17 proceeding. The Drafting Committee wanted to encourage non-judicial resolution of matters
18 involving charities so that more assets would be preserved for charitable purposes. The Drafting
19 Committee believes the Attorneys General will exercise the authority to investigate
20 appropriately, without overreaching.
21

22 Section 3 states the broad authority of the [Attorney General], but the authority is not
23 unlimited. The [Attorney General]’s legitimate role is to correct abuses, but not to take over
24 governance or to substitute the [Attorney General]’s judgment for the legitimate judgment of the
25 charity’s board or trustees; to protect the interests of the indefinite beneficiaries of charity, while
26 recognizing that charitable assets are private, not quasi-public property; and to protect the
27 donor’s expressed intent and hold the charity to its expressed purposes.
28

29 Subsection (d) reflects the committee’s intention that the statute not replace any common
30 law or other statutory powers the [Attorney General] may have. For example, some states
31 regulate charitable solicitation through other statutes.
32

33 A few states provide for the use of relators. A relator is a private person who sues a
34 charity on behalf of the [Attorney General]. A California statute permits persons granted relator
35 status by the California Attorney General to sue a charity on behalf of the Attorney General.
36 [cite] Pursuant to the statute, a private person can notify the Attorney General of abuse by the
37 charity or its fiduciaries. The suit must be one that the Attorney General could have brought, and
38 the Attorney General must authorize the suit before the relator can proceed. The private relator
39 pays the court costs, but the attorney general remains in control of the action.
40

41 The Act does not, either expressly or by implication, affect existing law concerning the
42 rights of persons other than the [Attorney General] to standing in connection with a matter
43 involving a charity.
44

45 ***Legislative Note:*** States vary with respect to process and procedure relating to [Attorney
46 General] investigative authority. States that detail [Attorney General] subpoena power in

1 *statutes dealing broadly with Attorney General power will have no need for additional*
2 *provisions here. States that do not provide specific statutory authority for the [Attorney*
3 *General] will need to add a section to do so. States that provide in their statutes for Attorney*
4 *General civil subpoena power specifically in connection with another [Attorney General]*
5 *function (such as consumer protection) may want to add that language to this section with any*
6 *necessary adaptations. In many states the [Attorney General] has civil jurisdiction but not*
7 *criminal jurisdiction. For example, in Connecticut the Attorney General is the civil charitable*
8 *regulator but if the Attorney General wishes to initiate a criminal proceeding the Attorney*
9 *General must do so through the chief state's attorney. In other states (e.g. Maryland) the county*
10 *state's attorney has general criminal jurisdiction.*

11
12 *[provide references to state statutes including Illinois]*
13

14 **SECTION 4. REGISTRATION.**

15 (a) The [Attorney General] shall establish and maintain a registry of persons required to
16 register under this section.

17 (b) A person is required to register under this section if the person holds or administers
18 charitable assets in excess of \$5,000 and:

19 (1) is organized under the law of this state or if it is a trust has its situs in this
20 state;

21 (2) has its principal place of business in this state;

22 (3) holds charitable assets in this state other than assets held primarily for
23 investment purposes;

24 (4) conducts activities in this state; or

25 (5) holds assets that are given or committed to the benefit of a person in this state.

26 (c) The following are exempt from the requirement in subsection (b) to register:

27 (1) a government, governmental subdivision, agency, or instrumentality;

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

29 (3) a financial institution, investment company, or storage facility that holds

- 1 charitable assets that belong to another person;
- 2 (4) an individual holding a charitable asset other than in a fiduciary capacity;
- 3 (5) a [personal representative] of a decedent's estate that holds a charitable asset,
4 during the period of administration of the estate;
- 5 (6) a trustee of a revocable trust that becomes irrevocable because of the settlor's
6 death, during a period of administration following the settlor's death not to exceed one year[.];
7 or]

8 **Alternative A**

- 9 [(7) a religious organization that holds property for religious purposes, an agency
10 or organization affiliated with and directly supervised by the religious organization, or an officer,
11 director, or trustee of the religious organization which holds property in an official capacity for
12 religious purposes.]

13 **Alternative B**

- 14 [(7) [religious organization as defined by Internal Revenue Code].]

15 **End of Alternatives**

- 16 (d) The following activities do not constitute conducting activities in this state within the
17 meaning of section (b)(4):

- 18 (1) maintaining, defending, mediating, arbitrating, or settling an action or
19 proceeding;
- 20 (2) holding a meeting of trustees, directors, or members;
- 21 (3) maintaining an account in a financial institution or an investment account;
- 22 (4) owning, without more, real or personal property;
- 23 (5) conducting an isolated transaction that is completed in not more than 30 days

1 and is not in the course of similar transactions;

2 (6) soliciting or accepting contributions; and

3 (7) making a grant to a person in this state.

4 (e) A person required to register under this section shall register with the [Attorney
5 General] not later than [three] months after the date the person receives charitable assets in
6 excess of \$[5,000].

7 (f) The registration required by subsection (b) must include:

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

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

11 (3) the name and address of a responsible individual of the person; [and]

12 (4) the federal employer identification number, if any, for the person[.][;]

13 [(5) if the person is organized primarily for charitable purposes, a copy of the
14 person's articles of incorporation and bylaws, trust instrument, or other record, if any, that serves
15 as the organizational document of the person; [and]

16 (6) if the person is not organized primarily for charitable purposes, a copy of the
17 portion of the person's articles of incorporation and bylaws, trust instrument, or other record, if
18 any, that relates to the use and administration of the charitable asset held by the person.][; and]

19 [(7) whether the person has registered under [the state's solicitation statute] and if
20 so, under what name and under what registration number, if any.]

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

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

1 [Attorney General] or with a governmental agency of this state, another state, or the United
2 States, or any governmental subdivision thereof, which is required by law to be kept confidential;
3 and

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

7 [(h) The [Attorney General] may collect a filing fee of \$[15.00] with the registration
8 required by this section and a late fee of \$[100.00]. The funds collected will be used for services
9 provided for under this [act]. The [Attorney General] may extend the time for filing for good
10 cause shown.]

11 **Comment**

12 The Act requires charities and others holding charitable assets to register with the
13 [Attorney General] so that the [Attorney General] will have basic information about the
14 charitable assets the [Attorney General] has a duty to protect. The Act directs the [Attorney
15 General] to maintain a registry of the charities who must register, and the registry will serve as a
16 resource for the public as well as for the [Attorney General]. The registration requires minimal
17 information, to avoid overburdening either charitable organizations or [Attorneys General]. The
18 registration function will likely move to an electronic system in the near future, thereby reducing
19 some of the burden. Electronic registration will be sufficient to meet the requirements of Section
20 4, and the Drafting Committee hopes that states will soon be able to accommodate electronic
21 registration. While a large organization that operates in many states will likely have an
22 obligation to register in multiple states, the Act's move toward uniformity will minimize the
23 burden of multiple registrations and electronic registration, when it comes, will further ease the
24 burden. The Act includes a statutory form of registration so that states can adopt a requirement
25 that is consistent across states.

26
27 Registration is important for several reasons. First, the list of registered charities can
28 serve as a quick resource of information for the [Attorney General] and for the public. If the
29 [Attorney General] receives a question from a member of the public, the [Attorney General] may
30 be able to answer the question simply by reviewing the information provided in the registration.
31 No further inquiry may be necessary, and both the Attorney General and the charity will save
32 time and expense.

33
34 Second, a potential donor may consult the list of registered charities to determine whether
35 a charity requesting a donation is current in its filings with the Attorney General. If the charity is

1 not registered, the donor will want to investigate further before making a donation. If the charity
2 has consistently made the required filings, that information suggests a well-managed charity,
3 with fiduciaries who comply with their duties.
4

5 Finally, the requirement to register serves as a reminder to someone organizing a charity
6 of the seriousness of the fiduciary role an individual undertakes when acting as a director or
7 trustee of a charity. If the individual does not want the responsibility of managing charitable
8 assets, the individual can give the assets to an existing charity or start a donor advised fund.
9

10 Subsection (b). Charities and others holding charitable assets in money or value in
11 excess of \$5,000 must register under the Act. The Drafting Committee chose this amount
12 because it is the same as the amount that necessitates filing a Form 1023, Recognition of Exempt
13 Status, with the Internal Revenue Service. The information required to register with the Attorney
14 General is significantly less than the information required to complete a Form 1023, so an
15 organization should not face an undue burden if required to register with the Attorney General.
16

17 A very small charity will not need to register, but the Drafting Committee decided not to
18 increase the threshold for registration above \$5,000. Often smaller charities are the ones that
19 need additional assistance from the [Attorney General] and may be more likely to encounter
20 difficulties due to the lack of adequate checks and balances within the organization or lack of
21 expertise on the part of the founding directors.
22

23 The Act requires registration of only those organizations that have significant contacts in
24 the state. The Drafting Committee believes that the threshold strikes an appropriate balance
25 between the risk of overburdening charities that have little contact with a particular state and the
26 need for the [Attorney General] to be alerted to the existence of charitable organizations and
27 assets in the state.
28

29 Although the types of contact listed in subsection (b) are not limited by the terms
30 “substantial” or “significant,” the intention is that a negligible level of activity or other contact
31 not be considered sufficient to cause an [Attorney General] to assert protection powers. The
32 state constitution will control the level of activity necessary for Attorney General protection.
33

34 Subsection (b)(1).
35
36

37 Subsection (b)(2). The term “principal place of business” is used to mean principal place
38 of administration, governance, activities, and operation. Although using the term “business” for
39 charitable activities sounds odd, the term is used to bring with it the substantial case law
40 connected with the term.
41

42 Subsection (b)(3). Simply having a bank account or investment account in the state does
43 not cause an entity to fall within the definition, and financial institutions and investment
44 companies are not included within the definition by virtue of having accounts owned by
45 charities, except as the institution serves as trustee for a charity.
46

1 Subsection (c). Subsection (c) exempts a number of entities and individuals from the
2 registration requirement.

3
4 Subsection (c)(4) excludes individuals who may hold charitable assets as volunteers but
5 not in a fiduciary capacity. For example, a volunteer might hold assets in connection with a
6 school’s PTO fundraiser. The PTO will register, but a volunteer who holds assets connected
7 with the fundraiser does not need to register.

8
9 Subsection (c)(7). The Act indicates by placing (c)(7) in brackets that a state may choose
10 to exempt religious organizations from registration or a state may provide that religious
11 organizations must register. Religious organizations fall within the scope of the [Attorney
12 General]’s duty to protect charitable assets, but a state may decide not to require religious
13 organizations to register or report. A state that has a statute that defines religious organization
14 may want to reference that statute here. [e.g. Minn.- add cite] The language in this subsection is
15 intended to include a corporation sole in a state that has that organizational form. The language
16 is broad and includes religious organizations as well as houses of worship. In many religions
17 operating a food bank, a school, or other activity is a way to carry out religious purposes, so the
18 provision is not limited to houses of worship.

19
20 The Constitutional protections of the free exercise of religion mean that the government
21 cannot interfere with the exercise of tenets of religious doctrine. The Constitution does not
22 prohibit registration and reporting by religious organizations.

23
24 Subsection (f). The Act requires minimal registration information. The registration must
25 include an address, which can be the address of the charity and need not be the address of an
26 individual. In addition to the statutory agent for the charity, the charity must provide the name of
27 a “responsible individual.” If the Attorney General has a question or receives a complaint, the
28 [Attorney General] can often resolve the issue with a phone call if the [Attorney General] is able
29 to reach a person who is knowledgeable about the charity. The charity also must provide a copy
30 of the charity’s organizing documents. These documents provide basic information about the
31 charity, and in addition the [Attorney General]’s records may be a useful source of copies of
32 these documents for the charity itself. Directors of charities change over time, and sometimes
33 charities lose track of their documents, especially bylaws that are amended over the years. If the
34 [Attorney General] maintains a registry with these organizing documents, a charity will be able
35 to get copies of its documents if needed.

36
37 A person holding charitable assets may not be a charity. For example, a business
38 corporation may set aside assets in a charitable fund. If the business corporation registers
39 because it holds charitable assets, the business need only furnish the portions of its
40 organizational documents that relate to the charitable assets. The business corporation need not
41 provide its articles and bylaws in their entirety because most of the content of those documents
42 will not apply to the charitable assets. The same is true for a trust if part of the trust applies to
43 private beneficiaries and part has a charitable purpose. Only the portions of the trust applicable
44 to the charitable assets need be provided and the rest of the trust instrument can be redacted.

45
46 *Legislative Note to Subsection (g): In some states an amendment to the state’s Freedom*

1 *of Information Act may be necessary, and in some states the state Freedom of Information Act*
2 *may require additional statutory language in subsection (g). In other states subsection (g) will*
3 *be unnecessary because the state's Freedom of Information Act will apply without a provision in*
4 *this statute.*
5

6 **SECTION 5. ANNUAL REPORT.**

7 (a) A person required to register under Section 4 which holds charitable assets valued in
8 excess of \$[5,000] at the end of the person's most recent accounting period or has total revenue
9 in excess of \$[--] for the person's most recent accounting period shall file with the [Attorney
10 General], not later than 5 months and 15 days after the end of the person's accounting period, a
11 report providing and certifying the accuracy of the following information:

12 (1) a current list of the names of the individuals responsible for the management
13 of the person;

14 (2) the person's total revenue for its most recent accounting period;

15 (3) the person's total assets as of the last day of its most recent accounting period;

16 (4) a description of the person's most significant program activities, not
17 exceeding three activities, during the accounting period;

18 (5) a copy of any amendment during the accounting period of the person's
19 articles of incorporation and bylaws, trust instrument, or other record that serves as the person's
20 organizational documents;

21 (6) whether during the accounting period the person:

22 (A) engaged in a reportable event under Section 6;

23 **Alternative A**

24 [(B) entered into a contract, loan, lease, or other financial transaction with
25 an officer, director, trustee, or other fiduciary, either directly or with an entity in which the

1 officer, director, trustee, or other fiduciary had a material financial interest;]

2 **Alternative B**

3 [(B) entered into a financial transaction that materially benefits an officer,
4 director, trustee, or other fiduciary, other than a transaction related to the individual's role as a
5 fiduciary, or entered into a financial transaction that materially benefits an entity in which the
6 fiduciary had a material financial interest;]

7 **End of Alternatives**

8 (C) became aware of a material embezzlement, theft, or diversion of the
9 person's charitable assets;

10 (D) became aware of use of a charitable asset to pay any penalty, fine, or
11 judgment;

12 (E) became aware of the payment by an officer, director, trustee, or other
13 fiduciary of a penalty, fine, or judgment with respect to the person; and

14 (F) became aware of the use of restricted funds for a purpose other than
15 the purpose specified in the restriction;

16 (7) an explanation of any affirmative answer reported under paragraph (6); and

17 (8) a change to any information provided under Section 4.

18 (b) If the person is required to file a Form 990, Form 990-PF, or Form 990-EZ with the
19 Internal Revenue Service, then the person shall attach a copy of the form to the annual report.

20 **Comment**

21
22 A charity with assets in excess of \$5,000 or annual revenue in excess of \$ [--] will file an
23 annual report providing basic information about revenue, assets, and activities during the year.
24 The Act requires that all charities that meet the filing requirements file a short annual report and
25 attach a copy of the charity's federal tax filing. The Drafting Committee concluded that having
26 an annual report form in addition to the federal form would allow the [Attorney General] to
27 review quickly the information provided by the charity. The annual report requires minimal

1 information, and if states adopt the annual report form uniformly, the burden on charities
2 required to file in multiple states will be reduced.

3 Subsection (a)(2) asks for the charity's total revenue for the most recent accounting
4 period. The intention here is to have the charity report the same number reported on line [--] of
5 the Form 990, so that only one computation is necessary.

6
7 States that require annual reporting under a statute that regulates charitable solicitation
8 will want to coordinate the report required here with that required by the solicitation statute and
9 may find the reporting requirement in Section 5 duplicative and unnecessary.

10
11 The Drafting Committee noted that the reporting requirement can encourage good
12 governance, and some committee members also noted that the small organizations are often the
13 ones that get into trouble. The annual report can serve an educational purpose, providing a
14 reminder of some of the duties owed with respect to charitable assets. The Attorney General
15 needs to receive information in a timely fashion to be able to address problems before charitable
16 assets are lost. The registration and reporting requirements are important in promoting
17 appropriate protection of charitable assets. Further, timely filing of annual reports will give the
18 public confidence that a charity is managed properly.

19
20 The [Attorney General] can agree to accept another required filing in lieu of an annual
21 report. For example, in a state that requires an annual report in connection with solicitation, that
22 filing may satisfy the requirement of an annual report under this section.

23
24 **SECTION 6. NOTICE TO [ATTORNEY GENERAL] OF REPORTABLE**
25 **EVENT.**

26 (a) A person required to register under Section 4 shall give notice in a record to the
27 [Attorney General] not later than [20] [30] days before a reportable event occurs.

28 (b) The following are reportable events under this section:

29 (1) a dissolution of the person;

30 (2) a termination of the person;

31 (3) a disposition by the person of all or substantially all of the person's charitable
32 assets;

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

34 (5) a removal of the person from the jurisdiction of this state; or

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

2 (c) A transfer of a charitable asset in connection with an event described in subsection
3 (b) which occurs earlier than [20] days after delivery of the notice required by subsection (a) to
4 the [Attorney General] shall be a violation of this [act] unless before the transfer the person
5 receives the consent of the [Attorney General] in a record to a proposed transfer or the person
6 receives notice in a record that the [Attorney General] will take no action regarding the transfer.

7 (d) If a decedent's estate opened by a court in this state involves, or may involve, the
8 distribution of property to a person holding or authorized to hold charitable assets, the [personal
9 representative], not later than [ninety] days after the date the [personal representative] is
10 appointed, shall deliver to the [Attorney General] a copy of the will; a copy of the petition for
11 probate or application for unsupervised probate; and a copy of the inventory, or if none is filed
12 with the court, then a statement of the estimated value of the estate, unless the distribution is a
13 specific devise with a value of less than \$100,000 to a named person holding charitable assets.

14 (e) If a revocable trust having its principal place of administration in this state becomes
15 irrevocable [because of the settlor's death] and if it provides for a distribution of property to a
16 person holding or authorized to hold charitable assets, the trustee, not later than [ninety] days
17 after the date of the settlor's death, shall deliver to the [Attorney General] a description of the
18 charitable interests and a statement of the estimated value of the trust assets, unless the
19 distribution is a specific distribution with a value of less than \$100,000 to a named person
20 holding charitable assets.

21 (f) A person required to register under Section 4 shall give notice in a record to the
22 [Attorney General] not later than [20] days after receipt of any notice of revocation,
23 modification, or denial of its federal or state [income] tax exemption.

1 **Comment**

2 The Act requires notice to the [Attorney General] of a variety of transactions and events
3 that raise particular opportunities for misapplication of charitable assets, so that the [Attorney
4 General] has an opportunity to monitor the events in time to prevent problems and to correct
5 problems that have already arisen.
6

7 **Subsections (a) – (c). Disposition or Removal of All or Significantly All Assets.** If
8 the charity will terminate, dispose of substantially all of its assets, or move to another state, the
9 charity must notify the [Attorney General] before the charity gives up control of the assets or
10 removes them from the jurisdiction. This notice provision gives the Attorney General time to
11 review the proposed transaction and recommend changes if necessary while the assets can still be
12 reached. If the Attorney General objects to the proposed transaction, the Attorney General must
13 deliver the objection to the charity in writing. This subsection gives the [Attorney General] the
14 information needed to work with the charity on an appropriate plan of distribution or other
15 transfer. If the [Attorney General] and the charity cannot reach agreement, they can request a
16 court determination to resolve the issue.
17

18 **Subsection (d) Decedent’s Estate.** If a decedent’s estate contains a gift to a charity or
19 creates a charity through a gift under the will, the personal representative must notify the
20 [Attorney General]. This notice is necessary to protect the charitable bequest which could be
21 adversely affected if an heir contests the will or if the personal representative or others take
22 excessive fees in managing the estate. An exception exists for a specific bequest to a named
23 charity in an amount less than \$100,000, because the named charity will have an incentive to
24 monitor the bequest. The Drafting Committee did not create an exception for residuary gifts to
25 named charities because the [Attorney General] may need to monitor fees that would reduce the
26 value of the residue, A charity may be reluctant to challenge fees because of concerns about
27 public goodwill or the hope of future gifts from the same family.
28

29 **Subsection (e). Revocable Trust.** Many property owners use a revocable trust rather
30 than a will to distribute property at death. This subsection applies the same notice requirement
31 for property distributed through a revocable trust that applies to property distributed under a will.
32

33 **Subsection (f). Action Affecting Tax Exemption.** The revocation of a federal or state
34 tax exemption may signal problems with a charity that the Attorney General should consider.
35 This subsection requires provides for notification to the Attorney General of revocation or
36 modification of a charity’s exempt status for any tax purpose. A state may want to require
37 notification for action affecting only a particular state tax exemption. In some states the
38 important state tax exemption may be an income tax exemption, but in other states the property
39 tax exemption may be of greater importance. The [Attorney General] may not need notification
40 of action affecting every state tax exemption.
41

1 **SECTION 7. NOTICE TO ATTORNEY GENERAL OF ACTION OR**
2 **PROCEEDING.**

3 (a) This section applies to:

4 (1) an action against or on behalf of a person holding a charitable asset seeking to
5 enforce a term relating to a gift of a charitable asset;

6 (2) an action concerning the use of a charitable asset or a breach of duty or other
7 obligation owed to a person holding a charitable asset;

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

10 (A) instruction, injunction, or declaratory relief relating to the
11 management, use, or distribution of a charitable asset;

12 (B) construction of a record under which a charitable asset is held;

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

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

17 (E) a challenge to the administration of or a distribution from a decedent's
18 estate or a trust in which matters affecting a charitable asset may be decided; and

19 (F) bankruptcy under Title 11 of the United States Code, receivership
20 under [state receivership statute] or a similar receivership statute of another state, or any other
21 insolvency proceeding.

22 (b) When a person commences an action or proceeding to which this section applies, the
23 person shall give notice in a record to the [Attorney General]. The notice must include a copy of

1 the initial pleading. An order, decree, or judgment rendered in an action in which notice is
2 required by this section is not binding on the [Attorney General] if the notice has not been given.

3 **Comment**

4 The Drafting Committee concluded that the Attorney General ought to be made aware of
5 a wide range of proceedings that might affect charitable assets or the structure or governance of a
6 charity. However, some states may not have the resources to handle this level of reporting. The
7 information will be beneficial to the [Attorney General], but a state without the resources to
8 receive and review the notices provided for in this section may not want to adopt this section or
9 every part of this section.

10
11 The intention of this section is for the applicable Statute of Limitations to control. This
12 Act does not change the Statute of Limitations.

13
14 *Legislative Note: In states where the Attorney General is a necessary party to any or all of the*
15 *kinds of actions addressed in this section, parts or all of the section will be unnecessary.*
16

17 **SECTION 8. EQUITABLE RELIEF.** If a person required to register under Section 4,
18 file an annual report under Section 5, provide notice of a reportable event under Section 7, or
19 provide notice of an action or proceeding under Section 8 fails to do so, the [Attorney General]
20 may seek appropriate equitable relief.

21 **Comment**

22 This section articulates [Attorney General] authority to bring an action or intervene in a
23 proceeding brought by someone else. The committee intends to make the [Attorney General] a
24 proper party to a wide array of proceedings involving charities, charitable fiduciaries, or
25 charitable assets, so that the [Attorney General] may exercise the discretion to participate or
26 refrain from participating in court proceedings that relate to the [Attorney General's] duties
27 under this Act.
28

29 **SECTION 9. COOPERATION WITH OTHER OFFICIAL.**

30 (a) The [Attorney General] may cooperate with an official of this state, another state, or
31 the United States, or any political subdivision or agency of any of the foregoing, charged with
32 the protection of charitable assets.

1 (b) The [Attorney General] may:

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

4 (2) make available to the official information relating to a charitable asset which
5 is relevant to the official's protection of charitable assets; or

6 (3) request from the official information relevant to an investigation pursuant to
7 Section 3.

8 **Comment**
9

10 This section authorizes cooperation between a state Attorney General and relevant
11 officials of other states and the federal government. In some states a charity submits reports to
12 the Secretary of State or to other state offices. This section allows the [Attorney General] to
13 coordinate with any other state agency and permits an [Attorney General] to agree to accept
14 reports filed with another state agency in lieu of a report required by this Act.
15

16 **SECTION 10. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
17 applying and construing this uniform act, consideration must be given to the need to promote
18 uniformity of the law with respect to its subject matter among the states that enact it.

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

25 **SECTION 12. REPEALS.** The following are repealed:

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