

D R A F T

FOR APPROVAL

MODEL PROTECTION OF CHARITABLE ASSETS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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MODEL PROTECTION OF CHARITABLE ASSETS ACT

WITH PREFATORY NOTE AND COMMENTS

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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June 2, 2011

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MODEL PROTECTION OF CHARITABLE ASSETS ACT

PREFATORY NOTE

The Charitable Sector. American charities provide a diversity of services and benefits, ranging from the promotion of art, to health care, the relief of poverty, education, and environmental protection. The sector continues to grow, and the reported total number of U.S. charities in 2009, 1,581,111, represents a 31.5% increase in 10 years. *See* Urban Institute, National Center for Charitable Statistics, Number of Public Charities in the United States, 2010, <http://nccsdataweb.urban.org/PubApps/profile1.php>. Charities manage substantial funds in conjunction with carrying out their charitable purposes, over \$3 trillion in assets in 2010. *See id.* at <http://nccsdataweb.urban.org/PubApps/profileDrillDown.php?state=US&rpt=PC>; <http://nccsdataweb.urban.org/PubApps/profileDrillDown.php?state=US&rpt=PF>. Charities carry out important functions, lessening the role of government in some cases and improving the quality of life for many people.

Charitable organizations and funds are formed and operate under state law. Although many are large and operate across state lines like the American Red Cross, the Ford Foundation and many others, most are local and regional in nature. These local charities provide a significant opportunity for our citizens to participate in many ways in the improvement of local community life. They represent an integral and key component of our culture, unique in the world today.

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 protection for the assets entrusted to charities. In the charitable sector, self-regulation has always been important and will continue to be important. *See* Panel on the Nonprofit Sector: Principles for Good Governance and Ethical Practice: A Guide for Charities and Foundations (2007), www.nonprofitpanel.org/Report/principles/Principles_Guide.pdf (outlining 33 recommendations for good governance by charitable organizations).

The Internal Revenue Service (IRS) has begun to increase its role in charitable supervision, and in 2008 the IRS redesigned its annual report form (Form 990) to request more governance information. The IRS, however, has neither the authority (it can only revoke Federal tax exempt status), the resources, or the ability to protect the assets of these myriad charitable entities. Historically, the states have had that central authority. The goal of this act is to protect the role of the states with respect to charitable assets, by clarifying the role of the Attorney General.

The Role of the Courts and the Attorney General under Existing Law. The broad equity powers of the courts mean that the judiciary has long played an important role in

determining the scope of charitable purposes and powers in the United States. Marion R. Fremont-Smith, *Governing Nonprofit Organizations* 302-3 (2004). The duty of the Attorney General to protect assets given to charities or held for charitable purposes “is stated in the legal texts as an absolute duty and is recognized in almost all of the states either by statute or judicial decision.” *Id.* at 306. As Professor Fremont-Smith explains: “Both the enforcement power, exercised by the attorney general, and the regulatory power, exercised by the courts, extend to all assets dedicated to charitable purpose, regardless of the legal form – corporation, trust, or voluntary association – in which they are held.” *Id.* at 301.

Thirty-seven states have statutes related to the Attorney General’s duty with respect to charitable assets. In a few states – Florida, Mississippi, Missouri, Nebraska, and Wyoming -- the statutory authority is limited to corporate transactions or nonprofit corporations, and in Indiana the authority of the Attorney General is limited to petitioning for a trust accounting. In all six of those states, the power to enforce charitable trusts is recognized in the case law. *See id.* at 306. When the Supreme Court of Virginia held that the Attorney General did not have power to enforce charitable corporations but only to enforce charitable trusts, *Virginia v. The JOCO Foundation*, 558 S.E.2d 280 (Va. 2002), the legislature responded quickly to clarify that the assets of a charitable corporation “shall be deemed to be held in trust for the public” and that “[t]he attorney general shall have the same authority to act on behalf of the public with respect to such assets as he has with respect to assets held by unincorporated charitable trusts and other charitable entities, including the authority to seek such judicial relief as may be necessary to protect the public interest in such assets.” Va. Code Ann. §2.2-507.1 (2010). The legislature confirmed that the courts had jurisdiction over charitable corporations as well as other charitable entities. Va. Code Ann. §17.1-513.01 (2010). In Louisiana no case or statute describes the Attorney General’s role with respect to charitable assets, although the statute providing for cy pres proceedings requires notice to the Attorney General. In all other states the duty to protect charitable funds exists either in the Attorney General or in another public official. *See Marion R. Fremont-Smith, Governing Nonprofit Organizations* 306-7 (2004).

The authority of the Attorney General to protect charitable assets exists throughout the country, but a procedure for reporting the existence and even minimally overseeing the administration of charities has been lacking. In 1954 the Uniform Law Commission approved the Uniform Supervision of Trustees for Charitable Purposes Act, an attempt to rectify the problem by creating registration and reporting requirements. The Act defines “trustee” to mean anyone, including a corporation, holding assets for charitable purposes. The Act excluded government agencies, and, in an alternative provision, excluded charities organized and operated exclusively for educational or religious purposes. The Act provided that all covered charities (with no threshold amount) had to register and provide annual reports. The Act also gave the Attorney General authority to investigate charities and request information from the persons managing them.

California, Illinois, Massachusetts, Michigan, Minnesota, New Hampshire, New York, Ohio, Oregon, Pennsylvania, Rhode Island, and Washington all have registration statutes separate from solicitation statutes. Some of the registration statutes are based on the Uniform Supervision of Trustees for Charitable Purposes Act (1954), which this Act replaces. *See CAL. [GOV’T] CODE § 12580 et seq. (West 2011)* (no threshold amount; exempts religious

organizations, educational institutions, hospitals, health care service plans, and cemetery corporations); 760 IL. COMP. STAT. 55/1 et seq. (2011) (more than \$4,000 in assets); MASS. GEN. LAWS ch. 12, § 8E (2010) (no threshold amount); MICH. COMP. LAWS § 14.251 et seq. (2010) (no threshold amount; exempts religious organizations, educational institutions, and hospitals); MINN. STAT. § 501B.33 et seq. (2011) (assets of \$25,000 or more; exempts religious associations, split-interest trusts); N.H. REV. STAT. ANN. § 7:19 (2011) (no threshold amount); N.Y. [EST. POWERS & TRUSTS] LAW § 8-1.4 (2011) (total receipts or total assets more than \$25,000); OHIO REV. CODE ANN. § 109.26 (West 2011) (no threshold amount; exempts charitable remainder trusts and agricultural societies); OR. REV. STAT. ANN. § 128.610 et seq. (2011) (no threshold amount; exempts religious organizations, cemeteries, and certain child care agencies); 10 PA. CONS. STAT. ANN. § 379 (2011) (\$25,000 or more of contributions a year or program service revenue equal to or exceeding \$5 million; exempts religious institutions and organizations forming an integral part of a religious institution); R.I. GEN. LAWS § 18-9-6 (2010) (no threshold amount); WASH. REV. CODE ANN. § 11.110.051 (2011) (no threshold amount; exempts religious organizations and educational institutions with programs of instruction comparable to Washington public schools and universities).

The states have generally provided minimal protection of charitable assets. According to one source, in 2007 attorneys staffing state (generally attorneys general) offices varied from 20.5 attorneys in New York, 12 in California and Pennsylvania, to 17 with no attorneys assigned to this function. Some 79% of the states had one or fewer full-time equivalent attorneys devoted to charitable oversight. Garry W. Jenkins, Incorporation Choice, Uniformity, and the Reform of Nonprofit State Law, 41 Ga. L. Rev. 1113, 1128-1129 (2007). These officials are dedicated professionals operating with funding inadequate to meaningful review, or even ability to respond to complaints. The National Association of State Charity Officials (NASCO) was formed by state charity officials and provides an important means of exchanging information and promoting professional education and upgrading of procedures. They have participated actively in the work of the ULC Drafting Committee, providing invaluable advice and information based on their experience. Together with private non-profit assistance from the charitable community itself, they represent the key components necessary to a healthy and productive charitable community in our states. Without increasing attention by our states to these issues, increased regulatory activity on the federal level is likely: a healthy federal system requires the states to clarify and exercise their responsibilities. This act is designed to provide a minimal statutory framework necessary to this effort.

Private rights of action are also an important traditional means of protecting charitable assets. These rights are not addressed in this work. These rights and the duties of Trustees, directors and officers of charitable trusts and organizations are the subject of important recent works of the Uniform Law Conference, notably the Uniform Trust Code (2000) and the Revised Uniform Prudent Management of Institutional Funds Act (2006). Important new efforts by the American Law Institute concerning state law are contained in the new Restatement of the Law Third Trusts and its ongoing effort to prepare Principles of the Law of Nonprofit Organizations.

Many states require charities to register if they intend to solicit. Alabama: ALA. CODE § 13A-9-71 (2010); Alaska: ALASKA STAT. § 45.68.010 (2010); Arizona: ARIZ. REV. STAT. ANN. § 44-6552 (2010); Colorado: COLO. REV. STAT. ANN. § 6-16-104 (West 2010); Connecticut:

CONN. GEN. STAT. §21a-190b (2011); Florida: FLA. STAT. ANN. § 496.405 (West 2011); Georgia: GA. CODE ANN. § 43-17-5 (West 2010); Hawaii: HAW. REV. STAT. § 467B-2.1 (2010); Illinois: 225 ILL. COMP. STAT. 460/2 (2010); Kansas: KAN. STAT. ANN. § 17-1761 (2010); Kentucky: KY. REV. STAT. ANN. § 367.657 (West 2010); Maryland: MD. CODE ANN., [BUS. REG.] § 6-401 (West 2011); Maine: ME. REV. STAT. ANN. tit. 9, § 5004 (2010); Massachusetts: MASS. GEN. LAWS ch. 68, § 19 (2011); Michigan: MICH. COMP. LAWS § 14.303 (2010); Minnesota: MINN. STAT. § 309.50 et seq. (2010); Mississippi: MISS. CODE ANN. § 79-11-503 (West 2010); Missouri: MO. ANN. STAT. § 407.462 (West 2011); New Jersey: N.J. STAT. ANN. § 45:17A (West 2010); New Mexico: N.M. STAT. ANN. § 57-22-6 (West 2010); New York: N.Y. [Executive] LAW § 172 (2011); North Carolina: N.C. GEN. STAT. ANN. § 131F-5 (West 2010); North Dakota: N.D. CENT. CODE § 50-22-02 (2009); Ohio: OHIO REV. CODE ANN. § 1716.01 et seq. (West 2011); Oklahoma: OKLA. STAT. ANN. tit. 18, § 552.3 (West 2011); Oregon: OR. REV. STAT. ANN. § 128.802 (West 2011); Pennsylvania: PA. CONS. STAT. ANN. § 162.1 et seq. (West 2010); Rhode Island: R.I. GEN. LAWS § 5-53.1-1 et seq. (2010); South Carolina: S.C. CODE ANN. § 33-56-10 et seq. (2010); Utah: UTAH CODE ANN. § 13-22-1 et seq. (West 2010); Virginia: VA. CODE ANN. § 57-48 et seq. (West 2011); Washington: WASH. REV. CODE ANN. § 19.09.010 et seq. (West 2011); West Virginia: W. VA. CODE ANN. § 29-19-1 et seq. (West 2011); Wisconsin: WIS. STAT. ANN. § 440.42 (West 2011).

A few states require those who solicit for charities, but not the charities themselves, to register. Delaware: DEL. CODE ANN. tit. 6, § 2594 (2011); Indiana: IND. CODE § 23-7-8-2(a) (West 2010); Iowa: IOWA CODE § 13C.2 (2010); Louisiana: LA. REV. STAT. ANN. §51:1901.1 (2010) (the charity must furnish information to substantiate claims that it is charitable if requested by the Attorney General, *id.* at § 51:1902).

Although Idaho does not require registration, it provides by statute that the Attorney General has the duty to supervise any person holding property subject to a charitable or public trust, to enforce the purpose of the trust, and that each person holding charitable assets is subject to examination by the Attorney General “to ascertain the condition of its affairs and to what extent, if at all, said trustee or trustees may have failed to comply with trusts said trustee or trustees have assumed or may have departed from the general purpose for which it was formed.” IDAHO CODE ANN. § 67-1401 (2010). *See also* NEV. REV. STAT. ANN. § 82.536 (West 2010); N.H. REV. STAT. ANN. § 7:24 (2010); S.D. CODIFIED LAWS § 55-9-5 (2010); TEX. [GOV’T] CODE ANN. § 402.021 (Vernon 2011) (*See Hill v. Lower Colo. River Auth.*, 568 S.W.2d 473 (Tex. Civ. App. 1978) for case law that affords the Texas Attorney General authority to protect public charity trusts); VT. STAT. ANN. tit. 9, § 2479(b) (2011); WYO. STAT. ANN. § 17-19-170 (2010).

Registration is a common requirement in the four separate legal jurisdictions comprising the Islands of Britain and Ireland. Their registration and administration of charities acts have all been redone in the past ten years. In addition to broad registration requirements they require, with certain exceptions, detailed financial accounts to be filed with a central regulatory agency that is separate from the taxing authorities. In England and Wales the Charities Act of 2006 is the governing statutory authority, and in Scotland the Charities and Trustee Investment Act of 2005. Northern Ireland has the Charities Act of 2008, and Ireland the Irish Charities Act of 2009. The four jurisdictions maintain arrangements for informal cooperation since many charities in the British Isles operate across regulatory boundaries. Basically, all four jurisdictions

require all charities to keep proper accounting records, to publish annual statement of accounts, and to register with the relevant regulator. There are income thresholds applicable in England and Wales for the filing of an annual report and accounts and higher levels of activity required for accounts to be independently examined by a lay examiner. Higher thresholds are required for full audits in all four jurisdictions. See generally “Cross-Border Issues in the Regulation of Charities Experiences from the UK and Ireland”, Vol. 11 International Journal for Not for Profit Law, Issue 3 (May 2009).

Goals of the Act.

The Protection of Charitable Assets Act will articulate and confirm the role of the state Attorney General in protecting charitable assets. The Attorney General’s existing authority is broad and this Act will not limit or narrow that authority, while providing in many the first clear statutory articulation of that authority.

The Act will provide the Attorney General with at least an inventory of basic information 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. It is based on a rather minimalist or basic platform, designed for those states that lack any significant legislation, although all states can benefit from its concepts and clarity.

The term “Attorney General” is used to mean the office in each state that is charged with protecting charitable assets. 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.

It is useful to remember that the Attorney General has an educational role and a facilitative role as well as a regulative role. Currently Attorneys General 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.

Model v. Uniform Act

Given the fact that some states have very sophisticated statutes in this area of the law, while others have practically no statutory authority at all, and given the great disparity among the states in the availability of public assets to perform the functions required of the Attorney General or other protector under this Act, the prospect of uniformity in statutory language is limited. The approach of this statute is to create a model, all or part of which would be useful to all of the states. As a whole, it is designed to produce a minimalist structure for those states without significant structures at present. While uniformity is desirable, adoption by all the states of at least this framework should enhance further cooperation between the states, and, hopefully a later opportunity to design a uniform approach acceptable to the great majority of states.

Which Charities Does the Statute Cover? The Attorney General has a duty to protect charitable assets located and used in a state and all assets held by charities registered in a state,

so the Act logically applies broadly to charities. Certain sections of the Act (registration, reporting, and notice) apply more narrowly. The Act does not cover governmental entities and private businesses, except to the extent that those non-charities hold charitable assets. The Act does not use the term “charity,” because the Act defines the entities subject to the Act in specific ways. The Comments use the term “charity” in a general sense, because most of the entities subject to the Act will be charities, in the sense the term is typically used.

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 receives property. The charity must provide basic information about the charity (name, address, statutory agent, federal identification number, and contact person) and information about the charity’s purpose and restrictions on the use of assets. The Act includes a one-page statutory form of registration.

Annual Reports. Charities with assets or receipts above a threshold amount will file an annual report with the Attorney General. The annual report will provide basic information and will require that the charity attach a copy of any report the charity files with the IRS (e.g., a Form 990 or a Form 990-EZ).

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 before the event occurs. Events that require notice include the following:

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

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

In addition, if a decedent’s estate or a revocable trust after the settlor’s death involves the distribution of property to a charity, the personal representative of the estate or the trustee of the

trust must send the Attorney General a copy of the will or a description of the charitable interests in the trust. A charity must also send notice of revocation or modification of a federal, state, or local tax exemption.

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

- An action seeking to enforce a term relating to a gift of a charitable asset;
- An action 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 management, 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 to remove, appoint, or replace a trustee of a charitable trust;
- 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.

Waiver of Filing Requirements. The Attorney General can decide to waive filing requirements under the Act if other statutes in the state require similar filings. The Drafting Committee addressed concerns about excessive filing requirements in two ways. First, the Act limits registration and annual report requirements to charities with more than \$50,000 of assets. This threshold is significantly higher than that used by existing state registration statutes and should serve to remove a significant number of charities from the reporting requirements of the Act. Second, the Act permits the Attorney General to waive filing requirements that duplicate other filings. In a state with a solicitation statute, a charity may be required to register and report under that statute. One filing may be sufficient for both purposes. The Act does not attempt to coordinate with solicitation statutes, but a state may choose to do so.

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.

MODEL PROTECTION OF CHARITABLE ASSETS ACT

2 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Model Protection of
3 Charitable Assets Act.

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

5 (1) "Charitable asset" means property that is received or held for a charitable purpose.

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

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

12 (4) "Record" means information that is inscribed on a tangible medium or that is stored
13 in an electronic or other medium and is retrievable in perceivable form.

14 (5) "Responsible individual" means an individual who, with respect to a person holding
15 charitable assets:

20 (6) "State" means a state of the United States, the District of Columbia, Puerto Rico,
21 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
22 of the United States.

Comment

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

1 preservation easements or restrictions. The property need not be held in perpetuity for a
2 charitable purpose but must be irrevocably committed to a charitable purpose. The term
3 “charitable asset” means that property will be used, whenever it is used, for charitable purposes
4 and cannot be diverted from the charitable stream. The remainder interest in a charitable
5 remainder trust is property held for a charitable purpose, as is the current interest in a charitable
6 lead trust, property held for ten years in a building fund, and property given to a charity subject
7 to a restriction on its use. Property held in a revocable trust that provides a remainder interest for
8 a charitable purpose is not a charitable asset because the settlor can revoke or change the interest.
9

10 The word “asset” does not have the meaning it would have in an accounting context, for
11 example on a balance sheet.

12 **Subsection (2). Charitable Purposes.** The definition of charitable purposes follows
13 that of UTC § 405, Restatement (Third) of Trusts § 28 (2003), and UPMIFA § 2(1) (2006). This
14 long-familiar standard in U.S. trust law derives from the English Statute of Charitable Uses,
15 enacted in 1601. As used in this Act the definition means the definition of charitable that has
16 developed under the common law.

17 The definition includes purposes “beneficial to the community,” because that concept is
18 part of the traditional definition of charitable purposes. The definition means purposes
19 considered charitable and not merely beneficial. Many activities and organizations, such as
20 social welfare organizations, cooperative associations, and business entities, benefit the
21 community. Nonetheless, these organizations and the activities they carry on are not charitable
22 within the meaning of the Act. The definition of charitable has long been limited to those
23 beneficial purposes that are charitable in nature. By using the standard definition in the Act, the
24 Drafting Committee intended to include the case law that has developed around the term
25 “charitable” in trust law.

26 Case law has distinguished between purposes that are charitable and those that are merely
27 beneficial. For example, in *Shenandoah Valley National Bank v. Taylor*, 63 S.E.2d 786 (1951), a
28 settlor attempted to create a trust to provide small amounts of money to children just before
29 winter and spring holidays. The distributions were not restricted in their purpose and were not
30 limited based on the financial need of the recipients. The court concluded that the purpose was
31 beneficial and not charitable. As the court explained, “charitable” means either distributions in
32 response to financial need or distributions that support an educational purpose or one of the other
33 identified purposes.

34 An example of something that is now considered charitable but does not fit neatly in one
35 of the other delineated categories is environmental protection. An organization that protects a
36 watershed and improves water quality will be considered charitable even though it does not
37 provide for the relief of poverty, the advancement of education or religion, the promotion of
38 health (except, perhaps, tangentially), or the promotion of a governmental purpose (although
39 local governments may become involved in local water quality). The phrase “beneficial to the
40 community” allows some development of the term charitable in the case law, but the phrase
41 should not be read to mean that anything that benefits the community is charitable for purposes
42 of this Act. Thus, the Act does not apply to community, social welfare, issue advocacy, and
43 political advocacy organizations, unless and only to the extent that, an organization holds assets
44 for a charitable purpose. Further, the definition of charitable purpose does not include property
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48 for a charitable purpose. Further, the definition of charitable purpose does not include property

1 held in benefit corporations or in low profit, limited liability companies (L3Cs) unless an L3C
2 has a purpose that is primarily charitable.
3

4 Some states have created statutory definitions of charitable purpose for various reasons.
5 See, e.g., 10 Pa. Cons. Stat. § 162.3 (2005) (defining charitable purpose within the Solicitation of
6 Funds for Charitable Purposes Act to include “humane,” “patriotic,” “social welfare and
7 advocacy,” and “civic” purposes). The definition in subsection (2) applies for purposes of this
8 Act and does not affect other definitions of charitable purpose. If a state has another definition
9 of charitable purpose, the state may consider substituting the other definition for the definition in
10 the Act. However, because definitions in different contexts serve different purposes, the state
11 should consider any substitution carefully. For example, some states have narrowed the
12 definition of charity for tax purposes, but protection of assets devoted to a charitable purpose
13 might be appropriate even if the purpose does not qualify for tax exemption under state law.
14

15 **Subsection (3). Person.** The Act uses as the definition of person the definition approved
16 by the Uniform Law Commission. The definition includes individuals as well as entities.
17 Charities organized as nonprofit corporations, charitable trusts or unincorporated associations are
18 included within this definition.
19

20 **Subsection (4). Record.** Record is defined, using the standard Uniform Law
21 Commission definition, in order to use one word instead of several when the act deals with
22 traditional forms of paper, as well as information in electronic form.
23

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

32 **SECTION 3. AUTHORITY OF [ATTORNEY GENERAL] TO PROTECT
33 CHARITABLE ASSETS.**

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

36 (b) The [Attorney General] may:

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

39 (A) the purpose for which the asset was given;

- (B) the terms under which the asset was given; and
 - (C) the charitable purpose of the person holding the asset;

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

 - (A) in the governance, management, or administration of a charitable
 - (B) in the governance of a person organized primarily for a charitable

(3) seek declaratory, injunctive, or other equitable relief to determine that an
itable asset; and

(4) commence or intervene in an action to:

 - (A) prevent, remedy, or obtain damages for a violation of this [act]; or
 - (B) seek equitable relief or other remedy to enforce this [act].

the [Attorney General] has reason to believe an investigation is necessary to
whether action may be advisable under this [act], the [Attorney General] may conduct
on, including exercising administrative subpoena power under [section of the law
providing for administrative subpoena power].

This [act] does not limit the powers and duties of the [Attorney General] under law of
or than this [act].

Legislative Note: States vary with respect to process and procedure relating to Attorney General investigative authority. States that detail Attorney General subpoena power in statutes dealing broadly with Attorney General power will have no need for additional provisions here. States that do not provide specific statutory authority for the Attorney General will need to add a section to do so. States that provide in their statutes for Attorney General civil subpoena power specifically in connection with another Attorney General function (such as consumer protection) may want to add that language to this section with any necessary adaptations. In many states the Attorney General has civil jurisdiction but another agency has criminal jurisdiction. For example, the Connecticut Attorney General is the civil charitable regulator but if the Attorney General wishes to initiate a criminal proceeding, the Attorney General must do so through the chief state's attorney. In other states (e.g. Maryland), the county state's attorney has general criminal jurisdiction.

For examples of state statutes that provide for the power to issue subpoenas or orders with the effect of subpoenas in connection with investigations of charities, see HAW. REV. STAT. § 467B-9.3 (2010); MICH. COMP. LAWS § 400.291 (2010); N.H. REV. STAT. ANN. § 7:24 (2011). If a state gives an official other than the Attorney General the authority to protect charitable assets and limits that official's duties to those under this Act, the state should not adopt subsection (d).

Comment

One of the major goals of the Act is to articulate the Attorney General's duty to protect charitable assets. The duty exists in the common law and in statutes in many states, but the scope of the duty is sometimes uncertain. The Act will declare and clarify the scope of the duty, although the Act does not limit the authority that already exists.

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

The Commonwealth has parens patriae standing whenever it asserts quasi-sovereign interests, which are interests that the Commonwealth has in the well-being of its populace. Here, the Commonwealth's interest in the well-being of the public that Citizens was created to serve is a clear example of such a quasi-sovereign interest. In fact, "*in every proceeding which affects a charitable trust*, whether the action concerns invalidation, administration, termination or enforcement, the attorney general must be made a party of record because the public as the real party in interest in the trust is otherwise not properly represented." *In re Pruner's Estate*, 390 Pa. 529, 532-33, 136 A.2d 107, 110 (1957) (emphasis added). It is the duty of the Attorney General to ensure that the purpose of the charity remains charitable.

The Attorney General's authority over charitable assets does not depend on the organizational form of the charity. Charitable assets may be held by nonprofit corporations as well as by trustees of charitable trusts, and the Attorney General will protect the interests of the public in these assets, however held. In a recent case a defendant tried to distinguish between cases involving charitable trusts and the defendant's organization, a nonprofit corporation. Applying Massachusetts law, the court simply noted: "Charitable corporations and trusts are both considered 'public charities' under Massachusetts law and, as such, are subject to the Attorney General's supervisory authority." Lifespan Corp. v. New England Medical Center, 2010 WL 3718952, at 3. The Attorney General's authority extends over a charity organized as a nonprofit corporation as well as one organized as a charitable trust.

The Attorney General protects the public interest in charitable assets, but assets held by a

1 charity are not converted to public (governmental) assets. Restrictions imposed by donors and
2 the governing documents of the charity control the use of the assets and the government will not
3 take over and manage the charity. Rather, the Attorney General will provide oversight to enforce
4 the donor's intent with respect to the property and to prevent self-dealing and mismanagement of
5 the property. In *Dartmouth College v. Woodward*, the U.S. Supreme Court held that the
6 constitutional restriction on the impairment of contracts applied to the "contract" that created
7 Dartmouth College – the granting of its corporate charter by the Crown. The opinion by Justice
8 Marshall explains that because Dartmouth College is a charitable organization the legislature
9 cannot change the use of the funds held by the trustees. The fact that the government had
10 granted the charter did not make the college a government-controlled entity. A concurrence by
11 Justice Story explains:

12 A private donation, vested in a trustee, for objects of a general nature, does not thereby
13 become a public trust, which the government may, at its pleasure, take from the trustee,
14 and administer in its own way. . . .The only authority remaining to the government is
15 judicial, to ascertain the validity of the grant, to enforce its proper uses, to suppress
16 frauds, and, if the uses are charitable, to secure their regular administration, through the
17 means of equitable tribunals, in cases where there would otherwise be a failure of justice.
18 *Dartmouth College v. Woodward*, 17 U.S. 518 (1819). [697-98 – correct page references
19 needed].

20 Thus, the role of the state in protecting charitable assets has long been recognized. The
21 state cannot substitute its own judgment as to how a charity should be managed or who should
22 manage it, and the legislature cannot convert charitable assets to government assets, but the state
23 can, and should, protect assets from mismanagement. The Attorney General is charged with this
24 authority. If the Attorney General finds a breach of fiduciary duty or identifies mismanagement
25 of charitable assets, a court can impose sanctions.

26 **Subsection (a). Duty of Attorney General.** Subsection (a) states the duty of the
27 Attorney General concerning charitable assets. This subsection follows existing law in most
28 states and may serve as a declaration of the role of the Attorney General in states in which the
29 duty is not clear. Subsection (a) includes the duty to preserve and protect charitable assets and
30 ensure their proper use and administration.

31 **Subsection (b). Powers.** Subsection (b) states the powers within the discretion of the
32 Attorney General. Subsection (b) explains that to carry out the duty stated in subsection (a), the
33 Attorney General may take action to enforce the purposes or terms for which an asset was given
34 to a charity and may act to prevent or remedy a breach of a duty owed to a charity by a fiduciary
35 or by another person. The Attorney General may intervene in an action involving a charity and
36 may begin an action to enforce the Act.

37 **Purpose Restrictions.** Subsection (b)(1)(B) provides that although a charity's purposes
38 need not be static, the terms of the organizing documents in effect at the time the charity receives
39 assets constrain the use of those assets. The Drafting Committee concluded that when a donor
40 contributes to a charity, the donor expects the charity to use that gift for the purposes for which
41 the charity was organized and operating at that time. A charity organized as a nonprofit
42 corporation can change its purposes by amending its articles of incorporation and bylaws, but
43 amendments should not allow the charity to change the purpose of donations already received.

1 See the Uniform Prudent Management of Institutional Funds Act, §2(3) (defining “gift
2 instrument” to include governing documents of the charity); Attorney Gen. v. Hahnemann Hosp.,
3 494 N.E. 2d 1011, 1020–21 (Mass. 1986) (stating that the charity could broaden its purposes by
4 amending its articles, but that the charity could not use unrestricted donations received prior to
5 the amendment for the new purposes); Queen of Angels Hosp. v. Younger, 66 Cal. App. 3d 359,
6 365 (Ct. App. 1977) (agreeing with the Attorney General that the nonprofit corporation held
7 assets “impressed with a charitable trust” to operate as the articles provided and in the manner in
8 which it had been conducting its activities).

9

10 The Drafting Committee recognizes that whether governing documents create purpose
11 restrictions for gifts will depend on evolving case law. The Principles of the Law of Nonprofit
12 Organizations allow changes in governing instruments to change the purposes of existing assets.
13 See PRINCIPLES OF THE LAW OF NONPROFIT ORGS. §400, cmt. (d)(3) (The American Law Institute
14 Preliminary Draft No. 5 2009) (stating, “a facially unrestricted gift made to a charity having a
15 single, narrow purpose is not viewed as a restricted gift. Rather, a donor’s desire that the gift be
16 used for a specific purpose must be expressed, in writing, in order for the recipient charity to be
17 bound to use that gift for that purpose.”).

18

19 Whether an Attorney General will enforce a purpose restriction based on governing
20 instruments will depend on specific facts. An Attorney General is not likely to seek to enforce
21 the original purpose where the change in the governing documents is minor or necessary to
22 comply with changing laws. For example, an Attorney General might not be concerned about
23 donor intent when a charity established to provide care for boys is expanded to cover girls.
24 However, the court in *Hahnemann* notes a different sort of example: “As the Attorney General,
25 colorfully, but no doubt correctly, observes in his reply brief, ‘those who give to a home for
26 abandoned animals do not anticipate a future board amending the charity’s purpose to become
27 research vivisectionists.’” Attorney Gen. v. Hahnemann Hosp., 494 N.E. 2d 1011, 1021 n. 18
28 (Mass. 1986).

29

30 **Subsection (c). Power to Investigate.** Subsection (c) states the authority of the
31 Attorney General to conduct an investigation under the Act. The Attorney General must have a
32 reason to believe the investigation is necessary to determine whether further action under the Act
33 is appropriate. In conducting investigations, an Attorney General will be bound the scope of the
34 authority of the office. [more here]

35

36 Oftentimes, the Attorney General will be able to resolve an issue with a charity through
37 the exchange of information followed by discussion without the need for a court proceeding.
38 The Attorney General’s authority to investigate will make non-judicial resolution of matters
39 involving charities more likely, so that more assets will be preserved for charitable purposes. Of
40 course, if the Attorney General and the charity cannot agree on appropriate steps, a court will be
41 the final arbiter.

42

43 **Subsection (d). Other Authority.** Subsection (d) reflects the Drafting Committee’s
44 intention that the statute not replace any common law or other statutory powers the Attorney
45 General may have. For example, some states regulate charitable solicitation through other
46 statutes.

47

48 **Relators.** A few states provide for the use of relators. A relator is a private person who

1 sues a charity on behalf of the Attorney General. A California statute permits persons granted
2 relator status by the California Attorney General to sue a charity on behalf of the Attorney
3 General. Cal. Corp. Code §5142(a)(5) (2011). Pursuant to the regulations, Cal. Code Regs.
4 Tit.11 §§ 1-10 (2011), a private person can notify the Attorney General of abuse by the charity or
5 its fiduciaries. The suit must be one that the Attorney General could have brought, and the
6 Attorney General must authorize the suit before the relator can proceed. The private relator pays
7 the court costs, but the attorney general remains in control of the action. The Act does not
8 provide for relators, but states are free to add such provisions.

9

10 **Standing of Others.** The Act does not, either expressly or by implication, affect existing
11 law concerning the rights of persons other than the Attorney General to standing in connection
12 with a matter involving a charity. As stated in the Prefatory Note, limited standing has been
13 recognized by courts and other authorities.

14

15 **Religious Organizations.** The Act does not exclude religious organizations from
16 oversight by the Attorney General. Due to Constitutional protections, the Attorney General
17 would not determine whether property was used for a religious purpose. For example, if a rabbi
18 kept paintings in the offices used by the rabbi and others, it would not be appropriate for the
19 Attorney General to try to determine whether the paintings had religious significance and were
20 used for religious purposes. In contrast, if a religious body decided to divide into two and a
21 dispute developed between the two factions about property owned by the original body, the
22 Attorney General might be involved to ensure that the property stayed with the two successor
23 organizations and did not end up in private hands. The Attorney General is properly concerned
24 that property committed to religious purposes not be taken for an individual's personal purposes.

25

26 **SECTION 4. REGISTRATION.**

27

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

29

30 (b) Except as otherwise provided in subsection (c), a person is required to register if the
person holds, or within the preceding 12 months has received, charitable assets with a value in
31 excess of \$[50,000] and:

32

33 (1) is formed under the law of this state, or if the person is a trust, has its
principal place of administration in this state;

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

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

36

37 (4) subject to subsection (d), conducts activities in this state for a charitable

1 purpose.

2 (c) The following are exempt from subsection (b):

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

4 (2) an organization the primary purpose of which is to influence elections or

5 legislation;

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

7 charitable assets that belong to another person;

8 (4) an individual holding a charitable asset other than in a fiduciary capacity;

9 (5) a [personal representative] of a decedent's estate that holds a charitable asset,

10 during the period of administration of the estate; [and]

11 (6) a trustee of a revocable trust that becomes irrevocable because of the settlor's

12 death, during a period of administration following the settlor's death not to exceed two years[.][;

13 and]

14 [(7) a person that has as its primary activity advocacy on issues of public or

15 governmental policy][.][; and]

16 **Alternative A**

17 [(8) a religious organization, an organization operated, supervised, or controlled

18 by or in connection with a religious organization, or an officer or director of, or a trustee that

19 holds property in an official capacity for,either.]

20 **Alternative B**

21 [(8) a [church][house of worship], a convention or association of

22 [churches][houses of worship], or an integrated auxiliary of a [church][house of worship.]

23 **Alternative C**

24 [(8) a religious organization as defined by law of this state other than this [act].]

End of Alternatives

(d) The following activities, without more, do not constitute conducting activities in this

state within the meaning of subsection (b)(4):

(1) maintaining, defending, mediating, arbitrating, or settling an action or

5 proceeding;

(2) holding a meeting of trustees, directors, or members;

(3) maintaining an account in a financial institution or an investment account;

(4) owning real or personal property;

(5) engaging in an insubstantial and isolated activity that is not in the course of

10 similar activities; [and]

(6) making a grant to a person in this state[.][; and]

(7) soliciting or accepting contributions.]

(e) A person required to register under this section shall register with the [Attorney

14 General] not later than [three] months after the date the person receives charitable assets that

15 have a value in excess of \$[50,000] or such later date as the [Attorney General] authorizes.

16 (f) The registration required by subsection (b) must provide:

(1) the name and address of the person;

(2) the name and address of the statutory agent of the person or the individual on

19 whom service of process may be made;

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

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

(5) information concerning the federal tax status of the person[.][]; and]

[6] a copy of the record, however denominated, that describes the charitable

25 purposes of the person and the use and administration of charitable assets held by the person[.]

[; and]

[7] the name under which the person has registered under [the state's solicitation
statute] and the registration number, if any.]

Legislative Note: If the state has a solicitation statute, the state should include Section 4(f)(7). If the state does not have a solicitation statute, the state should not include the section.

*7 A state without the resources to manage the filings required under Sections 4-7 may want
8 to adopt only Sections 1-3. The Act will still provide valuable guidance if the state adopts only
9 Section 3, providing clarification of Attorney General authority. A state may also choose to
10 require registration but not require annual reports. If a state does not adopt Section 4, the state
11 will want to delete Section 2(5), the definition of responsible person, used only in Section 4.*

Comment

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

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

36 Second, a potential donor may consult the list of registered charities to determine whether
37 a charity requesting a donation is current in its filings with the Attorney General. If the charity is
38 not registered, the donor will want to investigate further before making a donation. If the charity
39 has consistently made the required filings, that information suggests the charity is more likely to
40 be well managed, with fiduciaries who comply with their duties.

Finally, the requirement to register serves as a reminder to someone organizing a charity of the seriousness of the fiduciary role an individual undertakes when acting as a director or trustee of a charity. If the individual does not want the responsibility of managing charitable

1 assets, the individual can give the assets to an existing charity or start a donor advised fund.
2

3 **Subsection (b). Threshold Amount.** Charities and others holding charitable assets in
4 money or value in excess of \$50,000 must register under the Act. The Act suggests \$50,000 as
5 the floor for requiring registration, but places that amount in brackets to indicate that a state may
6 use a larger or smaller number.
7

8 The Drafting Committee considered using \$5,000 as the threshold because that amount
9 necessitates filing a Form 1023, Recognition of Exempt Status, with the Internal Revenue
10 Service. The information required to register with the Attorney General is significantly less than
11 the information required to complete a Form 1023, so an organization should not face an undue
12 burden if required to register with the Attorney General. The advantage of a threshold as low as
13 \$5,000 is that a smaller charity may be more likely to encounter difficulties due to the lack of
14 adequate checks and balances within the organization or lack of expertise on the part of the
15 founding directors. The Attorney General can provide education and other assistance that may
16 be particularly beneficial for smaller charities.
17

18 After much discussion, the Drafting Committee decided to use \$50,000 rather than
19 \$5,000, to minimize the burdens on smaller charities and in recognition of the limited resources
20 in some Attorney General offices. The committee chose the larger number because that number
21 is the threshold for charities filing annual information reports with the Internal Revenue Service
22 (a charity with annual gross receipts of more than \$50,000 must file a Form 990-EZ).
23

24 The National Center for Charitable Statistics reports that in 2008, 1,071,851 charities had
25 registered with the IRS. Of that number, fewer than half (458,963) filed annual returns reporting
26 financial information. See <http://nccsdataweb.urban.org/PubApps/reports.php?rid=35>. In 2008,
27 the filing threshold for reporting financial information was \$25,000, so with the increase in the
28 threshold to \$50,000, the number of returns filed should decrease. The National Center for
29 Charitable Statistics reports the number of charities filing returns by state, so a state can get an
30 idea of the number of potential filers by examining that data. Illinois, which currently requires
31 annual returns for charities with assets in excess of \$4,000, receives about – returns a year.
32

33 Of the states that have registration requirements apart from solicitation requirements,
34 California, Michigan, New Hampshire, Oregon, Rhode Island and Washington have no threshold
35 amount. Illinois requires registration when a charity has more than \$4,000 in assets; Minnesota
36 requires registration when assets exceed \$25,000; New York requires registration when assets or
37 receipts exceed \$25,000, and Pennsylvania requires registration when contributions exceed
38 \$25,000. Registration requirements in England and Wales, Scotland, the Irish Republic and
39 Northern Ireland generally require registration without regard to annual receipts. See Prefatory
40 Note.
41

42 A state enacting Section 4 and the other sections requiring reports to the Attorney
43 General (Sections 5-7) should make its decision on the appropriate threshold amount by
44 considering the resources available in that state for managing the filings. States should be aware
45 that the \$50,000 amount in the Act is a higher number than the number used in existing statutes.
46

47 **Fair Market Value.** The valuation of assets held for charitable purposes, should be
48 made based on the fair market value of the assets, reasonably determined. The Act does not use
49

1 the term “fair market value” because the Drafting Committee did not want to suggest that
2 appraisals were required to determine value. A person holding charitable assets can estimate the
3 value, as long as the estimate is reasonable. Because the determination of value is used only for
4 deciding whether a charity meets the thresholds for registration and reporting, a reasonable
5 estimate of value is sufficient. The value determined for purposes of the Act should be the value
6 to the charity and not the value on the market. For example, a conservation easement has a
7 negative effect on the valuation of the underlying property, but the easement has a positive value
8 in the hands of the charity that controls the easement.

9

10 **Subsection (b). Significant Contacts.** The Act requires registration of only those
11 organizations that have significant contacts in the state. The Drafting Committee believes that
12 the inclusions and exclusions strike an appropriate balance between the risk of overburdening
13 charities that have little contact with a particular state and the need for the Attorney General to
14 be alerted to the existence of charitable organizations and assets in the state.

15

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

20

21 **Subsection (b)(1).** A nonprofit corporation must register in its state of incorporation,
22 even if the nonprofit corporation conducts all of its activities in another state (the nonprofit will
23 need to register in the other state, too). A trust must register in its principal place of
24 administration. A trust’s principal place of administration is typically where the trustee is
25 located. If the trust has trustees located in more than one jurisdiction, then other factors,
26 including the location of assets and activities, will be used to determine the principal place of
27 administration. *See* UTC §108, cmt. UTC §108 provides that the terms of a trust can name the
28 place of administration, so long as the trustee’s principal place of business or residence is in the
29 state named or all or part of the administration of the trust occurs in that state. If a trustee moves
30 the principal place of administration, the trustee would have to register in the new state.

31

32 The trustee of an irrevocable trust with a charity as a beneficiary must register. For
33 example, the trustee of a charitable remainder trust or a charitable lead trust must register if the
34 value of the charitable interest exceeds \$50,000. The charity named in the trust is not required to
35 register because the trustee, and not the charity is the person holding the charitable assets.

36

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

41

42 **Subsection (b)(3).** If a charity holds investment assets located in a state and has no other
43 contacts with the state, the charity need not register. If a charity holds assets used for its
44 charitable purposes, however, the charity must register. In most cases, if the charity holds assets
45 for its charitable purposes it will also be likely to be conducting charitable activities in the state.
46 For example, a charity organized in Chicago might own land in Wisconsin that it uses as a
47 summer camp for disadvantaged children.

1 **Subsection (b)(4).** If a charity conducts its principal activities in one state but also
2 conducts activities in another state, the charity must register in both states (under (b)(2) and
3 (b)(4)). A charity with minimal contacts in a state does not need to register there, but if the
4 charity conducts significant activities, the charity should register. For example, a charity
5 organized in Philadelphia might operate homeless shelters in Philadelphia and across the state
6 border in New Jersey and Delaware. The charity would register in Pennsylvania, New Jersey,
7 and Delaware.

8

9 **Subsection (c). Exemptions.** Subsection (c) exempts a number of entities and
10 individuals from the registration requirement.

11

12 **Subsection (c)(1).** The Attorney General already supervises government subdivisions, so
13 the Act excludes government subdivisions and agencies from registration. This exemption
14 applies even if a government agency holds a fund for charitable purposes that are not usually
15 governmental purposes, for example a scholarship fund.

16

17 **Subsections (c)(2) and (c)(7). Political, Lobbying and Advocacy Groups.**
18 Organizations created primarily to influence elections, to lobby, or as policy or issue advocacy
19 organizations are not primarily charitable organizations. These exclusions may be unnecessary,
20 because these organizations would not be included under (b) in most circumstances. The
21 Drafting Committee decided to provide these exclusions in the Act to clarify that organizations
22 engaged primarily in these activities are not required to register, even if they hold assets for a
23 charitable purpose.

24

25 **Subsection (c)(3). Financial Institutions.** Financial institutions and investment
26 companies are not included within the definition by virtue of having accounts owned by
27 charities. If a bank or trust company serves as trustee for a charity, the trustee must register
28 based on the other subsections of Section 4(b).

29

30 **Subsection (c)(4). Volunteers.** The Act excludes individuals who may hold charitable
31 assets as volunteers but not in a fiduciary capacity. For example, a volunteer might hold assets
32 in connection with a school's PTO fundraiser. The PTO will register, but a volunteer who holds
33 assets connected with the fundraiser does not need to register.

34

35 **Subsections (c)(5), (c)(6). Wills and Revocable Trusts.** If an individual provided a gift
36 to charity under a will or through a revocable trust that acts as a will substitute at death, the
37 personal representative of the decedent's estate or the trustee of the trust must notify the
38 Attorney General after the individual's death under Section 6, but they do not need to register
39 under Section 5. The exclusion for a decedent's estate applies for the period of administration of
40 the estate, and the exclusion for a revocable trust applies for two years from the date of the
41 settlor's death. Because a revocable trust does not have an identifiable period of administration,
42 the two year time period serves as an approximation of the time needed for administration.

43

44 **Subsection (c)(8). Religious Organizations.** Religious organizations fall within the
45 scope of the Attorney General's duty to protect charitable assets, but a state may decide not to
46 require religious organizations to register or report. The Act provides three alternatives for use if
47 a state chooses to exempt religious organizations from registration. Alternative A uses a broad
48 definition for this exemption and includes religious organizations as well as houses of worship.

1 Under Alternative A, a Jewish temple would be exempt, as would a Catholic K-12 school and a
2 Muslim food pantry, whether or not the school and pantry were under the control of a particular
3 religious entity or freestanding with a religious connection. In many religions operating a food
4 bank, a school, or other activity is a way to carry out religious purposes, so the provision is not
5 limited to houses of worship. The second alternative limits the exemption to houses of worship
6 and “integrated auxiliaries.” The term ”integrated auxiliaries” comes from the tax definition of
7 “house of worship.” The intention is to include a K-12 school run by a particular church, but not
8 to include a free-standing school. The third alternative suggests that a state use its own state
9 definition of religious organization or cross-reference that definition. All three alternatives are
10 intended to include a corporation sole in a state that has that organizational form.

11
12 The Act provides two alternative terms, “church” and “house of worship.” The term
13 “church” is the term used in the Internal Revenue Code, and a state may decide to use that term
14 to be consistent with the I.R.C. Although “church” suggests a Christian religious body, the
15 I.R.C. uses the term to include temple, synagogue, mosque, and any other place used for
16 worship. The Act also provides the term “house of worship,” because that term seems more
17 inclusive. Either term is intended to mean an organized religion that is carrying out religious
18 practices. The terms do not mean merely a building, but instead mean a group of people
19 organized to practice a religion. In some religions, “congregation” would convey the meaning,
20 but that term cannot be used for all religions. Therefore, “church” and “house of worship” are
21 used as stand-ins for the idea of a group of people engaged in a religion.

22
23 Although the Internal Revenue Code does not require houses of worship to register, the
24 I.R.C. does require religious organizations that are not houses of worship to establish their
25 exempt status and report.

26
27 The Constitutional protections of the free exercise of religion mean that the government
28 cannot interfere with the exercise of tenets of religious doctrine. The Constitution does not
29 prohibit registration and reporting by religious organizations.

30
31 **Subsection (d). Minimal Activities.** This subsection lists a number of activities a
32 charity might engage in that do not rise to the level of activity that requires registration. The
33 goal is to limit registration to states in which the charity has sufficient activity or assets for the
34 Attorney General to be concerned about proper administration.

35
36 **Subsection (f). Registration Information.** The Act requires minimal registration
37 information. Some states that currently provide for registration of charities ask for more
38 information. If a state wants to consider more extensive registration requirements, the state can
39 look at California, Illinois, Massachusetts, or New York for examples.

40
41 **Subsections (f)(1)-(3).** The registration must include an address, which can be the
42 address of the charity and need not be the address of an individual. In addition to the statutory
43 agent for the charity, the charity must provide the name of a “responsible individual” who can
44 answer questions about the charity. If the Attorney General has a question or receives a
45 complaint, the Attorney General can often resolve the issue with a phone call if the Attorney
46 General is able to reach a person who is knowledgeable about the charity. Resolving issues
47 quickly in this way saves time and resources for both the Attorney General and the charity.

48

1 **Subsection (f)(4).** The registration includes the federal employer identification number
2 for the charity. This number should be the EIN for the charity (the nonprofit corporation,
3 charitable trust or some other organizational structure) and not for an individual associated with
4 the charity. If the charity for some reason does not have an EIN, the individual filing the
5 registration should so indicate and should not provide a social security number.

6

7 **Subsection (f)(5).** Most new charities will need to register before they receive their
8 determination letters from the IRS, indicating that they are tax exempt. The registration can state
9 that the organization has applied for recognition of its tax-exempt status and the request is
10 pending.

11

12 **Subsection (f)(6)** is in brackets to indicate that some states will not want to include this
13 provision. Subsection (f)(6) requires the charity to provide documents that describe the
14 charitable purposes of the charity and how the charity will use and administer its assets. Most
15 charities will provide articles and bylaws or a copy of the trust instrument. The Drafting
16 Committee decided not to require organizing documents specifically, because those documents
17 depend on the organizational structure of the charity, and because not all persons who hold
18 charitable assets are charities. The intent is for the person holding charitable assets to provide
19 documents that indicate the charitable purposes for the assets and any restrictions on use of the
20 assets so the Attorney General will have information to determine whether the assets are being
21 used impermissibly.

22

23 If a person holding charitable assets is a business corporation that has set aside assets in a
24 charitable fund, the business need only furnish the portions of its documents that relate to the
25 charitable assets. The business corporation need not provide its articles and bylaws in their
26 entirety because most of the content of those documents will not apply to the charitable assets.
27 The same is true for a trust if part of the trust applies to private beneficiaries and part has a
28 charitable purpose. Only the portions of the trust applicable to the charitable assets need be
29 provided and the rest of the trust instrument can be redacted.

30

31 **Website Benefits.** A charity required to register in a state may benefit from posting its
32 registration on its website. Although registration by itself does not indicate Attorney General
33 approval, knowing that an organization is registered and current with its annual reports may
34 make potential donors more likely to contribute.

35

36 **SECTION 5. ANNUAL REPORT.**

37

38 (a) A person required to register under Section 4 which holds charitable assets with a
39 value in excess of \$[50,000] at the end of the person's most recent annual accounting period or
40 receives charitable assets with a value in excess of \$[50,000] during the period shall file with the
41 [Attorney General], not later than four months and 15 days after the end of the period or such
later date as the [Attorney General] authorizes, an annual report providing [and verifying][and

- 1 certifying the accuracy of] the following information:
- 2 (1) the name and address of the person;
- 3 (2) the name and address of the statutory agent of the person or the individual on
- 4 whom service of process may be made;
- 5 (3) a list of the names of the individuals responsible for the management of the
- 6 person during the period;
- 7 (4) the person's total revenue for the period;
- 8 (5) the value of the person's assets as of the last day of the period;
- 9 (6) a description of the person's most significant program activities, not
- 10 exceeding three activities, during the period;
- 11 (7) a copy of any amendment, during the period, of the record that describes the
- 12 charitable purpose of the person and the use and administration of charitable assets held by the
- 13 person;
- 14 (8) whether during the period the person:
- 15 (A) engaged in an event described in Section 6(a) or (b);
- 16 (B) entered into a contract, loan, lease, or other financial transaction with
- 17 an officer, director, trustee, or other fiduciary of the person, or a spouse, sibling, descendant or
- 18 ascendant of an officer, director, trustee, or other fiduciary of the person, either directly or with
- 19 an entity in which the officer, director, trustee, other fiduciary, spouse, sibling, descendant or
- 20 ascendant had a material financial interest;
- 21 (C) became aware of an embezzlement, theft, or diversion of a charitable
- 22 asset of the person;
- 23 (D) became aware of use of a charitable asset of the person to pay any
- 24 penalty, fine, or judgment;

9 (b) If a person required to file an annual report under subsection (a) is required to file a
10 federal information return with the Internal Revenue Service, the person shall attach to the
11 annual report a copy of the most recently filed return.

Comment

A charity with assets in excess of a suggested \$50,000 or which receives assets in excess of \$50,000 during the accounting period, will file an annual report providing basic information about revenue, assets, and activities during the year. The Act requires that all charities that meet the filing requirements file a short annual report and attach a copy of the charity's federal tax filing. The Drafting Committee concluded that having an annual report form in addition to the federal form would allow the Attorney General to review quickly the information provided by the charity. The annual report requires minimal information, and if states adopt the annual report form uniformly, the burden on charities required to file in multiple states will be reduced. The report is due four months and 15 days after the end of the accounting period, the due date for the annual reporting to the IRS. The Act adds "or such later date as the Attorney General authorizes" because many charities receive extensions for filing their annual forms with the IRS. The assumption is that the Attorney General will authorize extensions for state filings to match due dates for federal filings.

28 The Drafting Committee noted that the reporting requirement can encourage good
29 governance. The annual report can serve an educational purpose, providing a reminder of some
30 of the duties owed with respect to charitable assets. The Attorney General needs to receive
31 information in a timely fashion to be able to address problems before charitable assets are lost.
32 The registration and reporting requirements are important in promoting appropriate protection of
33 charitable assets. Further, timely filing of annual reports will give the public confidence that a
34 charity is managed properly.

36 The Drafting Committee decided to make the filing threshold for the annual report
37 consistent with the threshold for registration. Although some committee members noted that

1 small organizations are often the ones that get into trouble, the committee decided on the
2 \$50,000 threshold to minimize the impact on charities and the Attorneys General. If a state
3 decides to lower the threshold for registration, the state can choose to keep the threshold for the
4 annual report at \$50,000 or lower it.

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

10 Subsection (a)(3) asks for a list of the names of the managers of the charity. This list
11 could include the directors, the trustees, the executive director, and high-level officers or
12 employees.
13

14 Subsection (a)(4) asks for the charity's total revenue for the most recent accounting
15 period. The intention here is to have the charity report the same number reported on line 12 of
16 Part I of the Form 990, so that only one computation is necessary.
17

18 Subsection (7) requires the charity to attach copies of amendments to the documents filed
19 pursuant to Section 4(f)(6). If a state deletes that requirement for registration, the state should
20 also delete subsection (5).
21

22 Subsection (8) asks the charity to indicate whether the charity engaged in certain
23 activities or became aware of certain incidents, any of which might indicate a problem in the
24 management or use of the charitable assets. The charity checks "yes" or "no" on the annual
25 report form for each item, so in most cases this part of the report will take little time. If the
26 charity answers "yes" for any item, then subsection (9) asks the charity to explain. The
27 information will give the Attorney General a quick way to determine whether the Attorney
28 General should take a closer look at something involving the charity.
29

30 Subsection (9) asks the charity to attach to the annual report a copy of its federal filing.
31 Although federal filings are public records and are eventually posted on Guidestar, obtaining a
32 copy of the form immediately after it is filed can be difficult. The Drafting Committee
33 concluded that the benefits to the Attorney General of having immediate access to the federal
34 form outweighed the burden on charities of a requirement to file a photocopy of the federal form.
35

36 **SECTION 6. NOTICE TO [ATTORNEY GENERAL] OF REPORTABLE**

37 **EVENT.**

38 (a) A person required to register under Section 4 shall give notice in a record to the
39 [Attorney General] not later than [20] days before the occurrence of any of the following
40 proposed events:

41 (1) dissolution of the person;

- (2) termination of the person;
- (3) disposition by the person of all or substantially all of the charitable assets of
- (4) removal of the person from the jurisdiction of this state; or
- (5) removal of significant charitable assets of the person from this state.

(b) A person required to register under Section 4 shall give notice in a record to the Attorney General] not later than [90] days before the proposed consummation of a merger, acquisition, or domestication of the person.

9 (c) A transfer of a charitable asset in connection with an event described in subsection

10 (a) or (b) which occurs earlier than [20] days after delivery of the notice required by subsection

11 (a) or [90] days after delivery of the notice required by subsection (b) is a violation of this [act]

12 unless before the transfer the person receives from the [Attorney General] in a record consent to

13 the proposed event or notice that the [Attorney General] will take no action regarding the event.

(d) If a decedent's estate opened by a court in this state involves, or may involve, the distribution of property to a person holding charitable assets, unless the distribution is a nonresiduary devise with a value of less than \$[50,000] to a named person holding charitable assets, the [personal representative] shall deliver to the [Attorney General] not later than [90] days after the date the [personal representative] is appointed:

19 (1) a copy of the will;

20 (2) a copy of the [application] [petition] for probate; and

21 (3) a copy of the inventory or, if none is filed with the court, a statement of the

22 value of the estate.

23 (e) If a revocable trust becomes irrevocable because of the settlor's death, has its
24 principal place of administration in this state after the settlor's death, and provides for a

1 distribution of property to a person holding charitable assets, unless the distribution is a
2 nonresiduary devise with a value of less than \$[50,000] to a named person holding charitable
3 assets, the trustee shall deliver to the [Attorney General] not later than [90] days after the date of
4 the settlor's death:

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

Comment

The Act requires notice to the Attorney General of a limited number of significant events that might occur in the life of a charity. The events that trigger the notice requirement are those that raise particular opportunities for misapplication of charitable assets. Notice will give the Attorney General an opportunity to monitor the events in time to prevent problems and to correct problems that have already arisen. There are other significant events not included, for example, notice of a proposed change to an agreed gift restriction. Some states have required notice of certain proposed changes which could trigger concerns over breach of the Charitable Trust Doctrine or application of the *Cy Pres* Doctrine (e.g., see action of the Attorney General of New Hampshire in requiring notice of certain proposed amendments to restrictions in conservation easements [cite]). States may wish to consider such additions, but adequate staffing is a significant issue in many states.

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

Subsection (d). Decedent's Estate. If a decedent's estate contains a gift to a charity or creates a charity through a gift under the will, the personal representative must notify the Attorney General. This notice is necessary to protect the charitable bequest which could be adversely affected if an heir contests the will or if the personal representative or others take excessive fees in managing the estate. An exception exists for a nonresiduary bequest to a

1 named charity in an amount less than \$50,000, because the named charity will have an incentive
2 to monitor the bequest. The Drafting Committee did not create an exception for residuary gifts
3 to named charities because the Attorney General may need to monitor fees that would reduce the
4 value of the residue. A charity may be reluctant to challenge fees because of concerns about
5 public goodwill or the hope of future gifts from the same family.

6

7 **Subsection (e). Revocable Trust.** Many property owners use a revocable trust rather
8 than a will to distribute property at death. This subsection applies the same notice requirement
9 for property distributed through a revocable trust that applies to property distributed under a will.
10 Notice should be given to the Attorney General of the state in which the trust has its principal
11 place of administration after the settlor's death. A revocable trust typically gets a new trustee
12 after the settlor's death, and if the trustee is in a different state, the place of administration may
13 move. The appropriate state for notice is the state in which the trust will be administered during
14 the period immediately following the settlor's death.

15

16 **Subsection (f). Action Affecting Tax Exemption.** The revocation of a federal or state
17 tax exemption may signal problems with a charity that the Attorney General should consider.
18 This subsection requires notice to the Attorney General of revocation or modification of a
19 charity's exempt status for any tax purpose. A state may want to limit notice to actions affecting
20 only a particular state tax exemption. In some states the important state tax exemption may be an
21 income tax exemption, but in other states the property tax exemption may be of greater
22 importance. The Attorney General may not need notification of action affecting every state tax
23 exemption.

24

25 **SECTION 7. NOTICE TO ATTORNEY GENERAL OF ACTION OR
26 PROCEEDING.**

27 (a) This section applies to an action or proceeding in this state:
28 (1) by, against or on behalf of a person holding a charitable asset in which the
29 relief sought relates to a gift of a charitable asset;
30 (2) concerning the use of a charitable asset or a breach of duty or other obligation
31 owed to a person holding a charitable asset;
32 (3) by, against, or on behalf of a person holding a charitable asset in which the
33 relief sought includes:
34 (A) instruction, injunction, or declaratory relief relating to the
35 management, use, or distribution of a charitable asset;
36 (B) construction of a record under which a charitable asset is held;

(C) modification, interpretation, or termination of the terms of a record

2 under which a charitable asset is held;

(D) removal, appointment, or replacement of a trustee of a charitable

4 trust; or

(E) a challenge to the administration of or a distribution from a decedent's

6 estate or a trust in which matters affecting a charitable asset may be decided; and

(4) for bankruptcy under federal law, receivership under [state receivership]

⁸ statute] or a similar receivership statute of another state, or relief in any other insolvency

9 proceeding.

10 (b) If an action or proceeding to which this section applies is commenced by or brought
11 against a person in this state, the party seeking relief shall give notice in a record to the [Attorney
12 General]. The notice must include a copy of the initial pleading. An order, decree, or judgment
13 rendered in an action in which notice is required by this section is not binding on the [Attorney
14 General] if the notice has not been given.

15 Legislative Note: In states where the Attorney General is a necessary party to any or all of the

16 actions addressed in this section, parts or all of the section may be unnecessary.

Comment

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

State law may already require notice to the Attorney General for some of the actions identified in this section. For example, the Uniform Prudent Management of Institutional Funds Act, adopted in all but two states, requires notice to the Attorney General before a charity modifies a donor-imposed restriction or asks a court to modify a restriction. UPMIFA §6. If other law requires notice to the Attorney General under certain circumstances, a state should remove the requirement of notice for those circumstances from this section.

The intention of this section is for the applicable Statute of Limitations, if any, to control.

1 In some states, the common law bars the application of a statute of limitations to the Attorney
2 General's enforcement of fiduciary duties in connection with charities. *See, e.g., Lifespan*
3 *Corp. v. New England Medical Center, Inc.*, 731 F.Supp.2d 232 (D.R.I. 2010), clarification order
4 2010 WL 3718952 (Sept. 20, 2010)(applying Massachusetts law); *Com. ex. rel. Corbett v.*
5 *Citizens Alliance for Better Neighborhoods, Inc.*, 983 A.2d 1274, 1278 (Pa. Cmwlth. Ct. 2009).
6 The equitable doctrine of laches may apply if the delay in bringing a suit is inexcusable and
7 would significantly prejudice the defendant. *Com. Ex rel. Corbett*, at 1279.
8

9 **SECTION 8. WAIVER OF FILING.**

10 (a) The [Attorney General] may waive a filing required under Section 4 if a person
11 required to register only by Section 4(b)(3) or (4) is registered in another state under a law that is
12 substantially similar to this [act] and files with the [Attorney General] a copy of the registration
13 filed in the other state.

14 (b) The [Attorney General] may waive a filing required under Section 5 if a person
15 required to register only by Section 4(b)(3) or (4) files, pursuant to law of this [state] other than
16 this [act], a report substantially similar to the report required to be filed under Section 5.

17 **Comment**

18 The Attorney General can agree to accept another required filing in lieu of an annual
19 report. For example, in a state that requires an annual report in connection with solicitation, that
20 filing may satisfy the requirement of an annual report under this section. This Section waives the
21 requirement to register (subsection (a)) and to file annual reports (subsection (b)), but it does not
22 waive the requirements to notify the Attorney General under Sections 6 and 7.
23

24 **SECTION 9. FEES.**

25 (a) A person required to register under Section 4 shall pay a fee of \$[15] with the
26 registration and, if the registration is not filed timely, a late fee of \$[100].

27 (b) A person required to file reports under Section 5 shall pay a fee of \$[15] with the
28 report and, if the report is not filed timely, a late fee of \$[100].

29 **Comment**
30

31 The Act provides limited provisions for fees, and a state may want to delete these
32 requirements or add more. Some states with current registration statutes use a sliding scale based
33 on ---

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

2 (a) The [Attorney General] may cooperate with an official of this state, another state, or
3 the United States, or any governmental subdivision, agency, or instrumentality of any of the
4 foregoing, charged with the protection of charitable assets.

5 (b) The [Attorney General] may:

- 6 (1) notify an official described in subsection (a) of the commencement, status, or
7 resolution of an investigation or proceeding pursuant to this [act];
8 (2) make available to the official information relating to a charitable asset which
9 is relevant to the official's protection of charitable assets; or
10 (3) request from the official information relevant to an investigation pursuant to

11 Section 3.

12 **Comment**

13 This section authorizes cooperation between a state Attorney General and relevant
14 officials of other states and the federal government. In some states a charity submits reports to
15 the Secretary of State or to other state offices. This section allows the Attorney General to
16 coordinate with any other state agency and provide information to other agencies as well as
17 request information from other agencies.
18

20 **SECTION 11. PUBLIC RECORDS.** A registration filed under Section 4 and an
21 annual report filed under Section 5 are public records. The [Attorney General], on the written
22 request of a person required to register under Section 4, shall withhold from public inspection
23 any part of the person's registration or annual report which does not relate to a charitable purpose
24 or charitable assets and is not otherwise a public record.

25 *Legislative Note: In some states an amendment to the state's Freedom of Information Act may
26 be necessary, and in some states, the state's Freedom of Information Act may require additional
27 statutory language in Section 11. In other states this section will be unnecessary because the
28 state's Freedom of Information Act will apply without a provision in this statute.*
29

30 **SECTION 12. FORM OF REGISTRATION.** Completion of the following form is

1 sufficient to comply with the requirements of Section 4:

2 **REGISTRATION OF CHARITY**

3 **Name of Organization:** _____

4 Federal Employer Identification Number (EIN): _____

5 Street Address: _____

6 City, State, and ZIP Code: _____

7 Phone number: _____ Website: _____

8 **Name of Statutory Agent or Individual on Whom Service of Process May Be Made:**

9 _____

10 Street Address: _____

11 City, State, and ZIP Code: _____

12 **Name of Individual to Contact with Questions:** _____

13 Street Address: _____

14 City, State, and ZIP Code: _____

15 Phone number: _____ E-mail address: _____

16 **Tax-Exempt Status**

17 Which of the following describes the organization's tax-exempt status application with the

18 Internal Revenue Service? Please note that an application for tax-exempt status is different from

19 an application for an employer identification number.

- 1 () The organization holds IRS tax-exempt status.
- 2 () The organization applied for tax-exempt status on ____/____/____ but a
3 determination letter has not been received from the IRS.
- 4 () The organization has not applied for tax-exempt status. Explain the reason for not
5 applying on an attached page.

6 **[Registration Under Charitable Solicitation Act**

7 If the organization is registered under [the state's solicitation statute]:

8 Name registered: _____

9 Registration number: _____]

10 **Required Documents**

11 Attach to this registration form a copy of the document (articles of incorporation, bylaws, articles
12 of association, trust agreement, or other document) that describes the organization's charitable
13 purpose and the use and administration of its charitable assets.

14

15 **SECTION 13. FORM OF ANNUAL REPORT.** Completion of the following form is
16 sufficient to comply with the requirements of Section 5.

17 **ANNUAL REPORT OF CHARITY**

18 **Name of Organization:** _____

19 Federal Employer Identification Number (EIN): _____

20 Street Address: _____

21 City, State, and ZIP Code: _____

1 Phone number: _____ Website: _____

2 **Name of Statutory Agent or Individual on Whom Service of Process may Be Made:**

3 _____

4 Street address: _____

5 City, State, and ZIP Code: _____

6 Check if:

7 () Change of name

8 () Change of address

9 () Change in statutory agent

10 () Change in individual for questions

11 () Amendment of document (articles of incorporation, bylaws, articles of association, trust
12 agreement, or other document) changing charitable purpose or use and administration of
13 charitable assets (attach copy of amendment)

14 () Registered Under Charitable Solicitation Act, Registration Number _____

15 **Name of Individual to Contact with Questions:** _____

16 Street Address: _____

17 City, State, and ZIP Code: _____

18 Phone number: _____ E-mail address: _____

19 **PART A – ACTIVITIES**

20 For your most recent full accounting period beginning ____/____/____ and ending
21 ____/____/____, list:

22 Individuals responsible for management (directors, officers, key employees): _____

1 _____

2 _____

3 Total revenue: \$ _____ Total assets at end of period: \$ _____

4 Description of most significant program activities, not to exceed three:

5 _____

6 _____

7 _____

8 _____

9

10 **PART B – STATEMENTS ABOUT ORGANIZATION DURING THE PERIOD OF THIS
11 REPORT**

12 Note: If you answer “yes” to any of the questions below, attach an explanation of each “yes”
13 response. During this accounting period:

	Yes	No
14		
15		
16 1. Were there any contracts, loans, leases, or other financial	()	()
17 transactions between the organization and an officer, director,		
18 trustee, or other fiduciary or a spouse, sibling, child, grandchild, or		
19 parent of an officer, director, trustee, or other fiduciary of the		
20 organization, either directly or with an entity in which the fiduciary		
21 or family member had a material financial interest?		
22 2. Did the organization become aware of any embezzlement,	()	()
23 theft, or diversion of the organization’s charitable assets?		
24 3. Did the organization become aware of the use of a charitable	()	()

- 1 asset of the organization to pay any penalty, fine, or judgment?
- 2 4. Did the organization become aware of the payment by an () ()
- 3 officer, director, trustee, or other fiduciary of the organization of
- 4 a penalty, fine, or judgment with respect to the organization?
- 5 5. Did the organization become aware of the use of restricted () ()
- 6 funds of the organization for a purpose other than the purpose
- 7 specified in the restriction?
- 8 6. Did the organization dissolve? () ()
- 9 7. Did the organization terminate? () ()
- 10 8. Did the organization dispose of all or substantially all of () ()
- 11 its charitable assets?
- 12 9. Did the organization leave the jurisdiction of this state? () ()
- 13 10. Did the organization remove significant charitable assets () ()
- 14 of the organization from this state?
- 15 11. Did the organization enter into or begin the process of entering () ()
- 16 into a merger, conversion, or domestication?
- 17
- 18 I declare [under penalty of perjury] that I have examined this report, including accompanying
- 19 documents, and to the best of my knowledge and belief, it is true, correct, and complete.
- 20 Signature of authorized individual: _____
- 21 Name and Title: _____
- 22 Date: _____

Comment

2 Sections 12 and 13 contain statutory forms. The Drafting Committee decided to include
3 forms in the Act itself, rather than in the Comments, in the hope that states will adopt the forms
4 as part of the statutory language. Uniformity of forms will substantially decrease the burden on
5 charities that need to register and file annual reports in more than one state. The forms should be
6 simple to complete.

The form for registration should fit on one side of one page, if it is formatted with single spacing in the tax-exempt status section. For registration, a state may want to require the charity to submit a copy of its IRS determination letter. If so, the form can add, under “Required Documents,” “IRS Determination letter, if applicable.”

11 The form for the annual report will fit on two pages and can be printed as one page,
12 double-sided. The form should be formatted so that Part B is single-spaced, with double spaces
13 between items.

SECTION 14. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND

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

20 SECTION 15. REPEALS. The following are repealed:

SECTION 16. EFFECTIVE DATE. This [act] takes effect