

To: New Jersey Law Revision Commission
From: Samuel M. Silver
Re: Charitable Registration and Investigation Act
Date: March 11, 2018

MEMORANDUM

Executive Summary

In an effort to protect the public from fraud and deceptive practices, the New Jersey Legislature determined that it was necessary to gather information concerning the charitable fund raising activities of individuals and organizations engaged in these activities.¹ Under the Charitable Registration and Investigation Act² (“CRI Act” or “Act”) the Attorney General has been granted the powers necessary to obtain data concerning the fund raising practices of charitable organizations, professional fund raisers and solicitors.³ The same Act vests the Attorney General with the authority to publish and disseminate to the public the data concerning charities the charities that operate in New Jersey.⁴

Consistent with the Commission’s mandate to consider the suggestions and recommendations of the Uniform Law Commission⁵, Staff began a review of the Model Protection of Charitable Assets Act (the “Model Act”).⁶ The Model Act is a minimalist or basic platform that recognizing that a number of states already have substantial statutes in this area of law.⁷ Thus, the Model Act was drafted to allow state legislatures to draw upon those aspects that may enhance the state’s current body of law.⁸

To determine whether any, or all, portions of the Model Act would better protect the citizenry, Staff examined the New Jersey statutes that encompass this area of law.⁹

Background

In New Jersey, there are over 34,000 organizations that are considered by the Internal Revenue Service to be public charities, private foundations, or private operating foundations which are commonly referred to as 501(c)(3) organizations.¹⁰ The annual expenditures of these

¹ N.J.S. 45:17A-19.

² N.J.S. 45:17A-18.

³ N.J.S. 45:17A-19. *See* N.J.S. 45:17A-21(a) – (i).

⁴ N.J.S. 45:17A-19. *See* N.J.S. 45:17A-21(g).

⁵ N.J.S. 1:12A-8.

⁶ MODEL PROT. OF CHARITABLE ASSETS ACT (2011).

⁷ *See* MODEL ACT, *supra* note 6 (prefatory note at 6-7).

⁸ *Id.*

⁹ N.J.S. 45:17A-18 *et seq.*

¹⁰ *New Jersey’s Non-Profit Community*, NJNONPROFITS.ORG, <http://www.njnonprofits.org/NJNonprofitCom.html> (last visited Dec. 11, 2018). *Citing* IRS Business Master File of Exempt Organizations; DataLake Nonprofit Research (www.datalake.net) 2018; DataLake, LLC; Corporation for National & Community Service; Bureau of Labor Statistics; Independent Sector; and, Johns Hopkins University.

New Jersey 501(c)(3) organizations exceeds \$42 billion dollars.¹¹ Each year, over 1.6 million individuals volunteer at New Jersey non-profit organizations, providing over 225 million hours of service valued at more than \$5.3 billion dollars.¹² These organizations employ approximately 321,000 people or nearly 10% of the state’s private sector work force.¹³ These organizations are a substantial part of the New Jersey’s economy.

Helping others takes innumerable forms and emanates from countless motivations.¹⁴ Charitable contributions may be used to provide a wide variety of services ranging from health care and education to environmental protection.¹⁵ Often, the benefits of a charitable contribution extend beyond the feelings experienced by the recipient. Individuals who engage in charitable behavior may receive any one of a myriad benefits, including: economic tax breaks; social recognition; or the self-satisfaction of helping others.¹⁶ Traditionally, charitable organizations have capitalized on the motivations for giving in an attempt to maximize fundraising dollars.¹⁷

The success of charitable sector is predicated upon the public’s confidence in the various charities.¹⁸ Charities that engage in abuse, fraud, or other types of misbehavior erode the public’s confidence in this area.¹⁹ If potential donors fear that their contribution will be misused, they will reluctant to provide a donation.²⁰ The New Jersey Legislature has, therefore, taken steps to protect the public from fraud and deceptive practices.²¹

Charitable Registration and Investigation Act

For a little more than two decades, New Jersey’s “Charitable Fundraising Act of 1971” regulated charitable fund raising and the solicitation of funds by law enforcement organizations.²² In 1994, the New Jersey Legislature repealed the Charitable Fundraising Act of 1971.^{23, 24} This Act was replaced with the “Charitable Registration and Investigation Act”.²⁵ The twofold purpose of this Act is to: (1) increase the Attorney General’s “ability to collect [and

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Lalin Anik, *et al.* Feeling Good about Giving: The Benefits (and Costs) of Self-Interested Charitable Behavior *3 (Harvard Bus. Sch. Research, Working Paper No. 10-012, 2009) *available at* https://www.hbs.edu/faculty/Publication%20Files/10-012_0350a55d-585b-419d-89e7-91833a612fb5.pdf

¹⁵ MODEL PROT. OF CHARITABLE ASSETS ACT, *Prefatory Note* *1 (2011).

¹⁶ *See* Anik, *supra* note 13, at *3.

¹⁷ *Id.*

¹⁸ MODEL PROT. OF CHARITABLE ASSETS ACT, *Prefatory Note* at *1.

¹⁹ *Id.*

²⁰ *Id.*

²¹ N.J.S. 45:17A-19.

²² A839, 1994 Leg., 206th Ses., No. 1, *Assembly Commerce & Reg. Prof. Comm. Stmt.* (N.J. 1994).

²³ N.J.S. 45:17A-1 – 17 was repealed effective August 9, 1994.

²⁴ In 2006, selected statutes within the Act would be added or amended by L.2005, c.283. *See* N.J.S. 45:17A-22; N.J.S. 45:17A-24; N.J.S. 45:17A-25; N.J.S. 45:17A-26; N.J.S. 45:17A-27; N.J.S. 45:17A-28; N.J.S. 45:17A-29; N.J.S. 45:17A-30; N.J.S. 45:17A-30.1 (added); N.J.S. 45:17A-32 (previously amended in by L., 1998, c 123); N.J.S. 45:17A-33; N.J.S. 45:17A-38.

²⁵ N.J.S. 45:17-18 *et seq.*

disseminate] information useful to New Jersey contributors and [(2)] take strong action against those individuals who would defraud or abuse the public's generosity for their own personal gain.”²⁶

The passage of the Charitable Registration and Investigation Act ushered in a new era of regulating charitable organization conducting business in New Jersey. One of the hallmarks of the CRI Act is the requirement that every charitable organization, with limited exception, operating or soliciting within this State is required to file a “long form registration” with the Attorney General.²⁷ In addition, the CRI Act makes it “unlawful for any person²⁸ to act as a fund raising counsel²⁹ or an independent paid fund raiser³⁰ unless registered annually with the Attorney General.”³¹ Pursuant to the CRI Act, religious entities³², certain educational institutions³³, and charitable organizations that do not receive gross contributions in excess of \$10,000 during a fiscal year³⁴ are exempt from registering with the Attorney General.³⁵ The failure of an individual or organization to comply with the statutory requirements of the CRI Act, may be met with strong action by the Attorney General.

In New Jersey, the Legislature vested the Attorney General with a broad range of powers believed to be necessary to preserve the integrity of New Jersey's charitable organizations and protect the citizenry from unscrupulous actors. If it is in the public interest to inquire whether a violation may exist, the Attorney General may conduct an investigation to determine whether such a transgression exists.³⁶ If it appears that an abuse of the CRI Act “has occurred, is occurring or will occur, the Attorney General... may seek and obtain in a summary proceeding...

²⁶ A839, 1994 Leg., 206th Ses., No. 1, *Assembly Commerce & Reg. Prof. Comm. Stmt.* (N.J. 1994) (statement of Assemb. Jeffrey W. Moran).

²⁷ N.J.S. 45:17A-24. *See* N.J.S. 45:17A-25 for the four categories of organizations and individuals who are permitted to file a short form registration with the Attorney General.

²⁸ N.J.S. 45:17A-20 defines “person” as an individual, corporation, association, partnership, trust, foundation or any other entity, however established within or without this State.

²⁹ N.J.S. 45:17A-20 defines “Fund raising counsel” to mean any person, including, but not limited to, any assignee, subcontractor, independent contractor or successor in interest, who is retained by a charitable organization for a fixed fee or rate to plan, manage, advise, consult or prepare material for or with respect to the solicitation in this State of contributions for a charitable organization, but who does not solicit contributions or employ, procure or engage any compensated person to solicit contributions....

³⁰ N.J.S. 45:17A-20 defines “Independent paid fund raiser” to mean any person, including, but not limited to, any assignee, subcontractor, independent contractor or successor in interest, who for compensation performs for or on behalf of a charitable organization any service in connection with which contributions are or will be solicited in this State by that compensated person or by any compensated person he employs, procures, or engages, directly or indirectly to solicit contributions. A bona fide salaried officer, employee, or volunteer of a charitable organization shall not be deemed to be an independent paid fund raiser.

³¹ N.J.S. 45:17A-27.

³² N.J.S. 45:17A-26(a).

³³ N.J.S. 45:17A-26(b).

³⁴ N.J.S. 45:17A-26(c).

³⁵ N.J.S. 45:17A-26 *et seq.* *See infra* discussion of additional model exemptions from the model act that are worthy of consideration.

³⁶ N.J.S. 45:17A-33(c)(1) – (8).

an injunction prohibiting the act or practice.”³⁷ In addition, the Attorney General may request that a court hold a recalcitrant registrant in contempt.³⁸

After providing the parties with notice and an opportunity to be heard, the Attorney General may revoke, or suspend the registration of a registrant upon a finding that he, or she, has engaged in any one of the forms of misconduct set forth in the statute.³⁹ In addition to any other relief authorized by the CRI Act, or any other law, the Attorney General may also seek the imposition of substantial civil penalties against those who “any provision of this act.”⁴⁰ The civil penalties under the act range from \$10,000 first violation, \$20,000.00 for a second violation and for a third or any succeeding violation shall not exceed \$20,000 for each additional violation.⁴¹

Although the CRI Act appears to be fairly comprehensive, there are some who believe that this area of the law could benefit from additional regulation. In January of 2018, the Center for Non-Profits conducted an on-line survey to assess how New Jersey non-profits fared in 2017 and to determine their outlook for the coming year.⁴² Fifteen percent (15%) of those surveyed responded that charitable registration/solicitation laws and regulations were among the most important issues to be addressed to maintain and improve the non-profit sector in the next decade.⁴³ An examination of the Model Protection of Charitable Assets Act (the “Model Act”) provides insight into how to improve the CRI Act.

Model Protection of Charitable Assets Act

The Model Protection of Charitable Assets Act (the “Model Act”) is based on a minimalist or basic platform.⁴⁴ The basic approach of this act is to “create a model, all or part of which would be useful to all of the states.”⁴⁵ The Model Act is broken down into fourteen sections.⁴⁶ By contrast, the Charitable Registration and Investigation Act is comprised of twenty-four statutes.⁴⁷ A side-by-side comparison of the Model Act to the CRI Act follows.

Model Act

Charitable Reg. & Inv. Act.

Sec. 1. Short Title

N.J.S. 17A-18 Short Title

³⁷ N.J.S. 45:17A-33(e).

³⁸ N.J.S. 45: 17-34(g)(1).

³⁹ N.J.S. 45:17A-33(b)(1) – (7). *See* N.J.S. 45:17A-33(g)(setting forth the consequences for the failure or refusal to file any statement or report, answer a subpoena, or grant access to premises where charitable activities are conducted. *See* N.J.S. 45:17A-33(h)(directing that an individual testify or produce data to the Attorney General regardless if its incriminatory nature and providing for immunity from subsequent prosecution).

⁴⁰ N.J.S. 45:17A-34(d).

⁴¹ *Id.*

⁴² CENTER FOR NON-PROFITS, NEW JERSEY NON-PROFITS 2018: TRENDS AND OUTLOOK (April 2018)(available at <http://www.njnonprofits.org/2018AnnualSurveyRpt.pdf>).

⁴³ *Id.* at *11.

⁴⁴ MODEL PROT. OF CHARITABLE ASSETS ACT, *Prefatory Note* at *7.

⁴⁵ *Id.*

⁴⁶ MODEL PROT. OF CHARITABLE ASSETS ACT (2011).

⁴⁷ N.J.S. 45:17A-18 – 40.

Sec. 2. Definitions	N.J.S. 17A-20 Definitions
Sec. 3. Authority of Atty. Gen.	N.J.S. 17A-21 Duties of Atty. Gen.
Sec. 4. Registration	N.J.S. 17A-23 –17A:28 Registration
Sec. 5. Annual Report	N.J.S. 17A-23 Filing of Registration N.J.S. 17A-24(d)(1) Long Form Reg. ⁴⁸ N.J.S. 17A-25(a)(1) Short Form Reg. ⁴⁹
Sec. 6. Notice to Atty. Gen. Reportable Event	No N.J. Statutory Counterpart. ⁵⁰
Sec. 7. Notice to Atty. Gen. of Action	No N.J. Statutory Counterpart. ⁵¹
Sec. 8. Waiver of Filing of Registration	N.J.S. 45:17A-26 Exemptions.
Sec. 9. Fees	N.J.S. 45:17A-40 Fees.
Sec. 10. Cooperation with Other Official	No N.J. Statutory Counterpart. ⁵²
Sec. 11. Public Records	N.J.S. 45:17A-26(b) Exemptions. N.J.S. 45:17A-30(c) Disclosure N.J.S. 45:17A-37 Est. of Tel. Info.
Sec. 12. Relation to Electronic Sig.	No N.J. Statutory Counterpart. ⁵³
Sec. 13. Repeals	Not Applicable
Sec. 14. Effective Date	Not Applicable

The juxtaposition of the Model Act with the CRI Act confirms that the CRI Act may benefit from the consideration of certain sections of the Model Act.

Reportable Events

The Model Act requires that a charitable organization notify the Attorney General about a limited number of significant events that might occur in the life of a person⁵⁴ who is working with charitable assets.⁵⁵ These noteworthy events include: dissolution⁵⁶ or termination⁵⁷ of the of

⁴⁸ N.J.S. 45:17A-24(d)(1) requires that every charitable organization required to file a long form registration shall file an annual financial report with the Attorney General.

⁴⁹ N.J.S. 45:17A-25(a)(1) provides that charitable organizations with “...gross contributions...are in excess of \$25,000 it shall...register with and report to the Attorney General as required by [N.J.S. 45:17A-24].”

⁵⁰ “No statutory counterpart” pertains to similar statutory provisions in the CRI Act.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ See MODEL PROT. OF CHARITABLE ASSETS ACT at §2 for the definition of “person.”

⁵⁵ See n. 53 *supra*, comment at *39.

person; disposition of all of the charitable assets of the person⁵⁸; removal of the person⁵⁹ or significant charitable assets from this state⁶⁰; or, amendment of the record that describes the organization's charitable purpose.

Under the Model Act, the onus is on the registrant to notify the Attorney General of events that raise opportunities for the misapplication of charitable assets.⁶¹ The purpose of this provision is to provide the Attorney General with the opportunity to “monitor the events in time to prevent problems or to correct problems that have already arisen.”⁶² The addition of these provisions is consistent with the general purpose of the CRI Act.

Absent from both the CRI Act and the Model Act is a provision that requires a fiduciary of a charitable organization to proactively report his or her arrest, or subsequent conviction, to the Attorney General. The absence of such a provision makes it possible for the operator of a charitable organization to be convicted of a crime involving theft, fraud, or deceptive practices and for this crime to go unreported until the next filing of the organization's annual report. The absence of such a proactive reporting requirement subverts the purpose of both Acts.

Actions or Proceedings

The Model Act also requires that the Attorney General be notified of civil proceedings that may affect the assets, structure, or governance of a charitable organization.⁶³ Pursuant to the Model Act, the notification requirement would be triggered in an action: by, against, or on behalf of a person holding a charitable asset in which the relief sought relates to a gift of a charitable asset⁶⁴; concerning the use of a charitable asset or a breach of a fiduciary duty⁶⁵; seeking injunctive relief⁶⁶, construction⁶⁷, modification, reformation, interpretation, or termination of a record under which a charitable assets is held⁶⁸; matters concerning a trustee of a charitable trust⁶⁹; challenges to the administration or a distribution from the estate or trust in which matters affecting a charitable asset may be decided⁷⁰; and bankruptcy, receivership, or insolvency proceedings.⁷¹

⁵⁶ *Id.* at §6(a)(1).

⁵⁷ *Id.* at §6(a)(2).

⁵⁸ *Id.* at §6(a)(3).

⁵⁹ *Id.* at §6(a)(4).

⁶⁰ *Id.* at §6(a)(5).

⁶¹ *Id.* at *39 (2011).

⁶² *Id.*

⁶³ *Id.* See Comment at §8.

⁶⁴ *Id.* at §7(a)(1).

⁶⁵ *Id.* at §7(a)(2).

⁶⁶ *Id.* at §7(a)(3)(A).

⁶⁷ *Id.* at §7(a)(3)(B).

⁶⁸ *Id.* at §7(a)(3)(C).

⁶⁹ *Id.* at §7(a)(3)(D).

⁷⁰ *Id.* at §7(a)(3)(E).

⁷¹ MODEL PROT. OF CHARITABLE ASSETS ACT, at §7(a)(4).

The goals of the CRI Act and the Model Act are to protect the public from fraud and deceptive practices by providing both the public and the Attorney General with information about charitable organizations.⁷² To accomplish this end, it is necessary for the Attorney General to be in receipt of information the absence of which could compromise the integrity of the charitable process.

Exemptions

The New Jersey Legislature has determined that there are several organizations that are exempt from the registration requirements of the CRI Act. The organizations exempt from registering with the Attorney General include: certain religious corporations⁷³; educational institutions⁷⁴; charitable organizations who do not receive gross contributions in excess of \$10,000 during a fiscal year⁷⁵; and, local units of parent organizations that meet specific statutory filing requirements.⁷⁶ The exemptions permitted under the Model Act are far more generous.

The Model Act, in contrast with the CRI Act, provides for six additional entities and individuals be granted an exemption from the charitable registration process. The exemptions suggested by the Model Act include: governmental subdivisions⁷⁷; political, lobbying and advocacy groups⁷⁸; financial institutions⁷⁹; and, wills and revocable trusts.⁸⁰ For clarity and completeness, it may be worthwhile to discuss the necessity and viability of these exemptions with stakeholders.

Conclusion

Staff's anticipated next step is additional research and outreach to determine whether the New Jersey Statutes would benefit from the inclusion of language based, in part, on the language found in the Model Act. Any suggestions or directions that the Commission may wish to provide at this juncture would be very helpful to Staff.

⁷² See N.J.S. 45:17A-19 and MODEL PROT. OF CHARITABLE ASSETS ACT, *Prefatory Note* at *1.

⁷³ N.J.S. 45:17A-26(a).

⁷⁴ N.J.S. 45:17A-26(b).

⁷⁵ N.J.S. 45:17A-26(c).

⁷⁶ N.J.S. 45:17A-26(d).

⁷⁷ MODEL PROT. OF CHARITABLE ASSETS ACT, at §7(c)(1).

⁷⁸ *Id.* at §7(c)(2) and (c)(6).

⁷⁹ *Id.* at §7(c)(3).

⁸⁰ *Id.* at §7(c)(4) and (c)(5).