

Appendix

The proposed modifications shown with *italics*, underlining, ~~striketrough~~ and [brackets] follow.

N.J.S. 45:17A-18. Short title; Charitable Registration and Investigation Act

This act shall be known and may be cited as the “Charitable Registration and Investigation Act.”

Credits: L.1994, c. 16, § 1, eff. Aug. 9, 1994.

N.J.S. 45:17A-19. Legislative findings and declarations

The Legislature finds and declares that in order to protect the public from fraud and deceptive practices, it is essential that information concerning charitable fund raising activities of charitable organizations, professional fund raisers, commercial co-venturers and solicitors be readily available to the people of this State. The Legislature declares that information concerning the financial ends and means of charitable fund raising in this State must be more readily available to the citizens by whose generosity such funds are raised. The Legislature declares that, to accomplish these ends, it is necessary to require the registration of charitable organizations, professional fund raisers, and solicitors with the Attorney General, and that the Attorney General have the powers necessary to obtain and disseminate to the public data concerning fund raising practices of these persons.

Credits: L.1994, c. 16, § 2, eff. Aug. 9, 1994.

N.J.S. 45:17A-20. Definitions

As used in this act:

“Attorney General” means the Attorney General of the State of New Jersey or his designee.

“Charitable asset” means property that is given, received, or held for a charitable purpose. The term does not include property acquired or held for a for-profit purpose.

“Charitable organization” means: (1) any person determined by the federal Internal Revenue Service to be a tax exempt organization pursuant to section 501(c) (3) of the Internal Revenue

Code of 1986, 26 U.S.C. s.501(c) (3); or (2) any person who is, or holds himself out to be, established for any benevolent, philanthropic, humane, social welfare, public health, or other eleemosynary purpose, or for the benefit of law enforcement personnel, firefighters or other persons who protect the public safety, or any person who in any manner employs a charitable appeal as the basis of any solicitation, or an appeal which has a tendency to suggest there is a charitable purpose to any such solicitation.

“Charitable purpose” means: (1) any purpose described in section 501(c) (3), of the Internal Revenue Code of 1986, 26U.S.C. s.501(c) (3); or (2) any benevolent, philanthropic, humane, social welfare, public health, or other eleemosynary objective, or an objective that benefits law enforcement personnel, firefighters, or other persons who protect the public safety.

“Charitable sales promotion” means an advertising or sales campaign, conducted by a commercial co-venturer, which represents that the purchase or use of goods or services offered by the commercial co-venturer will benefit a charitable organization or purpose.

“Commercial co-venturer” means any person, including, but not limited to, any assignee, subcontractor, independent contractor or successor in interest, who, for profit or other consideration is regularly and primarily engaged in trade or commerce other than in connection with the raising of funds or any other thing of value for a charitable organization, and who advertises that the purchase or use of his goods, services, entertainment or any other thing of value will benefit a charitable organization or charitable purpose.

“Contribution” means the conveyance, promise or pledge of money, credit, property, financial assistance or other thing of any kind or value in response to a solicitation. It does not include any of the following: bona fide fees, dues or assessments paid by members provided that membership is not conferred solely as consideration for making a contribution in response to a solicitation; moneys received pursuant to a governmental grant or contract; or, personal services rendered by a volunteer.

“Federated fundraising organization” means a federation of independent charitable organizations which have voluntarily joined together for purposes of raising and distributing money.

“Fund raising counsel” means 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. A bona fide salaried officer, employee, or volunteer of a charitable organization

shall not be deemed to be a fund raising counsel. No attorney, accountant or banker who renders professional services to a charitable organization or advises a person to make a charitable contribution during the course of rendering professional services to that person shall be deemed, as a result of the professional service or advice rendered, to be a fund raising counsel.

“Independent paid fund raiser” means 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. No attorney, accountant or banker who advises a person to make a charitable contribution during the course of rendering professional services to that person shall be deemed, as a result of that advice, to be an independent paid fund raiser.

“Local unit” means a charitable organization that is affiliated with a parent organization under terms specified in the parent organization’s charter, articles of organization, agreement of association, instrument of trust, constitution or other organizational instrument or bylaws.

“Membership” means a relationship which entitles a person to the privileges, professional standing, honors or other direct benefit of the organization and either the right to vote or elect officers, or hold office in the organization. Membership shall not include any relationship granted solely upon making a contribution as a result of a solicitation.

“Parent organization” means a charitable organization which charters or affiliates local units under terms specified in the charitable organization’s charter, articles of organization, agreement of association, instrument of trust, constitution or other organizational instrument or bylaws.

“Person” means an individual, corporation, association, partnership, limited liability company, joint venture, trust, business trust, statutory trust, foundation or any other legal or commercial, entity, however established within or without this State.

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

“Registrant” means any person who has filed a registration statement with the Attorney General required by this act.

“Registration statement” means an initial registration, renewal, financial report, or any other

document or report required pursuant to section 6, 7, 8, 10 or 11 of this act¹ to be filed with the Attorney General.

“Secretary of State” means the Secretary of State of the State of New Jersey.

“Solicitation” or “solicit” means the request, directly or indirectly, for money, credit, property, financial assistance, or other thing of any kind or value which will be used for a charitable purpose or benefit a charitable organization. Solicitation shall include, but not be limited to, the following methods of requesting or securing money, credit, property, financial assistance or other thing of value:

(1) Any oral or written request;

(2) The making of any announcement in the press, over the radio or television, by telephone, through the mail or any other media concerning an appeal or campaign by or for any charitable organization or purpose;

(3) The distribution, circulation, posting or publishing of any handbill, written advertisement or other publication which directly or by implication seeks to obtain a contribution;

(4) The offer of, attempt to sell, or sale of any advertising space, book, card, tag, coupon, device, magazine, membership, merchandise, subscription, flower, ticket, candy, cookies or other tangible item in connection with which any appeal is made for any charitable organization or purpose, or where the name of any charitable organization is used or referred to in any appeal as an inducement or reason for making any sale, or where any statement is made that the whole or any part of the proceeds from the sale will be used for any charitable purpose or benefit any charitable organization;

(5) The use or employment of canisters, cards, receptacles or similar devices for the collection of money or other thing of value in connection with which any appeal is made for any charitable organization or purpose.

A solicitation shall take place whether or not the person making the solicitation receives any contribution, except that a charitable organization’s use of its own name in any communication shall not alone be sufficient to constitute a solicitation.

“Solicitor” means any individual who attempts to solicit or solicits contributions for compensation. A bona fide salaried officer, employee, or volunteer of a charitable organization shall not be deemed to be a solicitor.

“State” means a state of the United States, the District of Columbia, Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes any Native American tribe or band recognized by the federal law or formally acknowledged by a state.

Credits: L.1994, c. 16, § 3, eff. Aug. 9, 1994. Amended by L.2005, c. 283, § 1, eff. July 8, 2006.

Footnotes:

¹ N.J.S.A. §§ N.J.S. 45:17A-23, N.J.S. 45:17A-24, N.J.S. 45:17A-25, N.J.S. 45:17A-27, N.J.S. 45:17A-28, respectively.

Comment

Prefatory Note

The Protection of Charitable Assets Act (“PCAA”) contains only six definitions – “Charitable Asset”, “Charitable Purpose”, “Person”, “Record”, “Responsible Individual” and “State.” To this date, the Charitable Registration and Investigation Act (“CRI”) contains eighteen definitions. Several of the definitions contained in the PCAA would be welcome additions to the CRI. In addition, the CRI would benefit from the incorporation of definitions set forth in other New Jersey Statutes.

• **Charitable Asset**

Without defining the term, the CRI utilize the term “charitable asset” in four statutes. *See* N.J.S. 45:17A-24 (Long form Registration Statement); N.J.S. 45:17A-25 (Short Form Registration); N.J.S. 45:17A-27 (Annual registration of fund raising counsel, independent paid fund raiser; fees; relationship with charitable organization to be set out in written contract); N.J.S. 45:17A-33 (Violations; Penalties). The addition of this defined term would clarify the meaning of “charitable asset” as used in this Act.

• **Charitable Purpose**

The PCAA contains a definition for the term “charitable purpose.” The definition of this term in the CRI, however, is more comprehensive. No change is recommended to the New Jersey definition of this term.

• **Person**

The word “person” is defined in the model act using the standard ULC definition and includes individuals as well as entities. *See* Comments to the PCAA at page 13. The word “person” includes individuals, it also includes corporations, business trusts, estates, trusts, partnerships, limited liability companies, associations, joint ventures, governments, governmental subdivisions, agencies or instrumentalities, public corporations or any other legal or commercial entities.

The current New Jersey statute would benefit from the addition of the following terms: limited liability company, joint venture, business trust, statutory trust, and legal or commercial entity.

• **Record**

In the CRI, the word “record” is used 27 times in 5 separate statutes. The term, however, is not defined in this Act. New Jersey has a history of defining “record” in the same manner set forth in the PCAA. *See* N.J.S. 12A:12-2

(defining “record” as information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form). *See also* N.J.S. 12A:9-102(a)(69) (defining “record” as information that inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form). *And see* N.J.S. 15:18-26 (based on the Uniform Prudent Management of Institutional Funds Act or “UPMIFA” this section defines “record” as information that inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form).

It is recommended that the definition of record as set forth in the PCAA be incorporated into the definitions section of the CRI.

• **Responsible Individual**

This term is defined in the PCAA. *See* PCAA, §2, subsection (5). This term, however, is not used in the CRI. Thus, there is no reason to recommend the addition of this term.

• **State**

The term “state” is not defined in the CRI. The definition set forth in the PCAA does not include “Native American tribes or bands recognized by the federal law or formally acknowledged by a state.” *See* PCAA, §2, subsection (6). The definition recommended by the NJLRC includes these groups.

N.J.S. 45:17A-21. Duties of attorney general

The Attorney General shall:

- a. Administer and enforce the provisions of this act;
- b. Propose and adopt rules pursuant to the “Administrative Procedure Act,” P.L.1968, c. 410 (C. 52:14B-1 et seq.), to effectuate the purposes of this act;
- c. Conduct hearings pursuant to the “Administrative Procedure Act,” P.L.1968, c. 410 (C.52:14B-1 et seq.) including the authority to administer oaths to witnesses, and shall have the power to issue subpoenas for the compulsory attendance of witnesses and the production of pertinent documents, books, records, accounts, computer data, papers, or records;
- d. Prosecute proceedings before any court of competent jurisdiction for the enforcement of the provisions of this act;
- e. Establish and maintain ~~Keep~~ a public record of the names and addresses of all registered charitable organizations, fund raising counsels, independent paid fund raisers, and solicitors subject to the provisions set forth in N.J.S. 45:17A-31 and N.J.S. 45:17A-37;

f. Prescribe the fees for all registration statements, and other filings required by this act and set all bonding amounts as necessary in accordance with the provisions of this act. All fees shall be prescribed pursuant to the “Administrative Procedure Act,” P.L.1968, c. 410 (C. 52:14B-1 et seq.);

g. Publish and disseminate information concerning ~~charities~~ charitable organizations, fund raising counsels, independent paid fund raisers and solicitors to the public subject to the provisions set forth in N.J.S. 45:17A-31 and N.J.S. 45:17A-37;

(1) Material changes that are reported to the Attorney General pursuant to N.J.S. 45:17A-31(e) shall be published and disseminated to the public within 10 business days from the date they are received by the Attorney General, or his or her designee.

h. Examine each contract, registration statement and supporting document, if any, and determine whether they satisfy the requirements of this act;

i. Perform any other functions and duties which may be necessary to carry out the provisions of this act.

Credits: L.1994, c. 16, § 4.

Comment

• Registry

The CRI was enacted to “protect the public from fraud and deceptive practices....” *See* N.J.S. 45:17A-19. In addition, the Legislature declared that, “information concerning the financial ends and means of charitable fund raising in this State must be more readily available to the citizens by whose generosity such funds are raised.” *Id.* Under the current statute, subsection e. requires the Attorney general to maintain a registry of persons who are required to register under the Act. Based upon the language found in the PCAA, subsection e. has been modified to require the Attorney General to establish and maintain the names and addresses of all registered charitable organizations, fund raising counsel, independent paid fund raisers, and solicitors. *See* Protection of Charitable Assets Act §4, subsection a. The registry will also serve as a resource for the public. In the spirit of transparency, the proposed modifications designate this information as a public record.

• Public Record

Pursuant to N.J.S. 45:17A-31(a), every charitable organization, unless exempted by a provision of the act, is required to keep “...complete and accurate records of its activities in this State....” Not all of the information that is maintained by a charitable organization is considered a matter of public record. These exemptions are also set forth in subsection a. of N.J.S. 45:17A-31. This information includes: the names, addresses and telephone numbers of contributors and the amounts contributed by them and the home addresses and home telephone numbers of any of the organization’s officers, directors, trustees, employees or vendors who are required to provide this information pursuant to N.J.S. 45:17-24 (long form registration). This information is not a matter of public record and should not

be available to members of the public via the telephone or the Internet website. Language to exempt this information has been added to this statutory section.

• **Publish and disseminate**

The recordkeeping requirements of N.J.S. 45:17A-31(e), *infra*, provide that every charitable organization must notify the attorney general of any material change in any information filed with his, or her, office within 10 business days from the date of the change. In order to protect the public from fraud and deceptive practices, it is essential that information concerning charitable fund raising activities of charitable organizations, professional fund raisers, commercial co-venturers and solicitors be readily available to the people of this State. *See* N.J.S. 45:17A-19. Consistent with the Legislative purpose of this Act, the Attorney General should be required to publish and disseminate to the public any material change to the information maintained by his office, within the same time-frame in which it is required to be received from a charitable organization.

N.J.S. 45:17A-22. Failure to satisfy registration requirements; notification; hearing

If the Attorney General determines that the registration or contract requirements established by this act are not satisfied, the Attorney General shall notify the filing party or registrant within 10 business days of receipt of the registration or contract. If notification is not sent within 10 business days: (1) a registration statement is accepted; or (2) performance may begin on a contract. Within 10 business days after receipt of a notification that the requirements have not been satisfied, the charitable organization, fund raising counsel, independent paid fund raiser, commercial co-venturer or solicitor, as appropriate, may satisfy the requirements or request a hearing pursuant to the “Administrative Procedure Act,” P.L.1968, c. 410 (C.52:14B-1 et seq.). Acceptance of a registration or performance of a contract pursuant to this section shall not foreclose the Attorney General from denying an application, enforcing the registration or contract requirements established by P.L.1994, c. 16 (C.N.J.S. 45:17A-18 et seq.) and the rules adopted pursuant thereto, or taking other appropriate action .

Credits: L.1994, c. 16, § 5, eff. Aug. 9, 1994. Amended by L.2005, c. 283, § 2, eff. July 8, 2006.

N.J.S. 45:17A-23. Filing of registration statement; fees

a. A charitable organization, unless exempted from registration requirements pursuant to section 9 of this act,¹ shall file a registration statement with the Attorney General on forms prescribed by the Attorney General.

b. It shall be unlawful for any charitable organization to solicit contributions or have contributions solicited in its behalf before the Attorney General has been given the opportunity to review the registration statement pursuant to section 5 of this act.² A renewal statement must be filed annually within six months after the close of the charitable organization's fiscal year. For good cause shown, the Attorney General may extend the time for the annual filing of the renewal statement and financial report for a period not to exceed 180 days, during which time the previous registration shall remain in effect. The request for an extension shall be in writing and received by the Attorney General before the filing deadline.

c. All registration statements shall be signed by two authorized officers, including the chief fiscal officer of the organization, who shall certify that information contained in the registration statements is correct.

d. The Attorney General shall prescribe all fees for the filing of all registration statements according to the provisions of this act. The fees for the filing of registration statements by charitable organizations may be graduated based upon the amount of contributions received during the previous fiscal year. A parent organization filing on behalf of one or more local units shall pay a single annual registration fee for itself and a fee for each local unit included in the registration statement.

Credits: L.1994, c. 16, § 6, eff. Aug. 9, 1994.

Footnotes

¹N.J.S. § 45:17A-26.

²N.J.S. § 45:17A-22.

N.J.S. 45:17A-24. Long form registration statement; contents

a. Every charitable organization operating or soliciting within this State, except for those provided for in section 8 of this act¹ or exempt pursuant to section 9 of this act,² shall file a long form registration statement with the Attorney General.

b. The long form shall contain the following:

(1) The name of the organization and any other name or names under which it intends to solicit contributions and the purposes for which it was organized;

(2) The name, street address and telephone number of each officer, director and

trustee and each principal salaried executive staff employee and whether the person has been adjudged liable in an administrative or civil action, or convicted in a criminal action, involving theft, fraud or deceptive business practices. For the purposes of this paragraph:

(a) a plea of guilty, non vult, nolo contendere or any similar disposition of alleged criminal activity shall be deemed a conviction;

(b) “each principal salaried executive staff employee” shall be limited to no more than the five most highly compensated employees in the organization; and

(c) a judgment of liability in an administrative or civil action shall include, but not be limited to, any finding or admission that the officer, director, trustee or principal salaried executive staff employee engaged in an unlawful practice or practices related to the solicitation of contributions or the administration of charitable assets, regardless of whether that finding was made in the context of an injunction, a proceeding resulting in the denial, suspension or revocation of an organization’s registration, consented to in an assurance of voluntary compliance or any similar order or legal agreement with any state or federal agency.

(3) A copy of the most recent Internal Revenue Service Form 990 and Schedule A (990) for every registrant if the organization filed these forms;

(4) A clear description of the specific programs and charitable purpose for which contributions will be used and a statement whether such programs are planned or are in existence;

(5) A statement disclosing pertinent information concerning whether any of the organization’s officers, directors, trustees or principal salaried executive staff employees as defined in subparagraph (b) of paragraph (2) of subsection b. of this section :

(a) Are related by blood, marriage or adoption to each other or to any officers, agents or employees of any fund raising counsel or independent paid fund raiser under contract to the organization, or are related by blood, marriage or adoption to any chief executive employee, any other employee of the organization with a direct financial interest in the transaction, or any partner, proprietor, director, officer, trustee, or to any shareholder of the organization with more than a two percent interest of any supplier or vendor providing goods or services to the organization and, if so, the name and business and home address and telephone number of each related party; or

(b) Have a financial interest in any activity engaged in by a fund raising counsel or independent paid fund raiser under contract to the organization or any supplier or vendor providing goods or services to the organization and, if so, the name and business address and telephone number of each interested party.

(6) The amount of any grant or financial assistance from any agency of government in its preceding fiscal year;

(7) A statement setting forth the place where and the date when the organization was legally established and the form of the organization;

(8) The principal street address and telephone number of the organization and the address and telephone number of each office in this State. If the organization does not maintain an office in this State, the name and address of the individual having custody of its financial records pertaining to operations or solicitations in this State shall be disclosed;

(9) The name, street address and telephone number of each affiliate which shares in the contributions or other revenue raised in this State;

(10) The date when the organization's fiscal year ends;

(11) A statement whether:

(a) The organization is authorized by any other state to solicit contributions and, if so, a listing of the states in which authorization has been obtained;

(b) The organization is or has ever been enjoined in any jurisdiction from soliciting contributions or has been found to have engaged in unlawful practices in the solicitation of contributions or the administration of charitable assets;

(c) The organization's registration has been denied, suspended or revoked by any jurisdiction, together with the reasons for that denial, suspension or revocation; and

(d) The organization has voluntarily entered into an assurance of voluntary compliance agreement or any similar order or legal agreement with any jurisdiction or federal agency or officer;

(12) Whether the organization intends to solicit contributions from the general public;
and

(13) Any other information as may be prescribed by rules adopted by the Attorney General. In prescribing the requirements of the long form, the Attorney General shall permit a charitable organization to incorporate by reference any information reported by the organization on its Service Form 990 and Schedule A (990).

c. With initial registration only, every charitable organization required to file a long form registration shall also file a copy of the organization's charter, articles of organization, agreement of association, instrument of trust, constitution or other organizational instrument and bylaws, and a statement setting forth the organization's tax exempt status with copies of federal or state tax exemption determination or exemption ruling letters; provided that any changes in the accuracy of this information shall be reported to the Attorney General pursuant to subsection e. of section 14 of this act.³

d. (1) Every charitable organization required to file a long form registration shall file an annual financial report with the Attorney General. The annual financial report shall include: a balance sheet; a statement of support revenue, expenses and changes in fund balance; a statement of functional expenses at least divided into program, management, general, and fund raising; and such other information as the Attorney General shall by rule require.

(2) The annual financial report of every charitable organization which received gross revenue in excess of \$250,000, or any greater amount that the Attorney General may prescribe by regulation during its most recently completed fiscal year shall be accompanied by : (a) a financial statement prepared in accordance with generally accepted accounting principles or other comprehensive basis of accounting approved for use by the Attorney General by regulation which has been audited in accordance with generally accepted auditing standards by an independent certified public accountant ; and (b) any management letters prepared by the auditor in connection with the audit commenting on the internal accounting controls or management practices of the organization.

The annual financial reports of all organizations receiving more than \$25,000 but less than \$250,000, or any greater amount that the Attorney General may prescribe by regulation shall be certified by the organization's president or other authorized officer of the organization's governing board and at the request of the Attorney General, the organization shall submit : (a) a financial statement prepared in accordance with generally accepted accounting principles or other comprehensive basis of accounting approved for use by the Attorney General by regulation which has been audited in accordance with generally accepted auditing standards by an independent certified public accountant; and (b) any management letters prepared by the auditor in connection with the audit commenting on the internal accounting controls or management practices of the organization.

(3) The Attorney General may accept a copy of a current financial report previously prepared by a charitable organization for another state agency or officer in compliance with the laws of that state, provided that the report filed with the other state agency or officer shall be substantially similar in content to the report required by this subsection.

(4) An independent member agency of a federated fund raising organization shall independently comply with the provisions of this subsection.

e. In order to register its qualified local units pursuant to subsection d. of section 9 of this act, a parent organization registered pursuant to this section shall include with its initial registration and annual renewal statement a separate statement that provides the following:

(1) The name, principal street address, and phone number of all local units within this State that it is registering;

(2) The amount of gross contributions received by each such unit and the purpose or purposes for which these funds were raised in the preceding fiscal year; and

(3) A statement asserting that each such local unit has provided the parent organization with a written statement reporting the information included on its behalf and asserting that the local unit meets all of the requirements of subsection d. of section 9 of this act.

f. Any management letters prepared by the auditor in connection with the audit commenting on the internal accounting controls or management practices of the organization submitted pursuant to paragraph (2) of subsection d. of this section shall not be considered a public record under P.L.1963, c. 73 (C.47:1A-1 et seq.) or P.L.2001, c. 404 (C.47:1A-5 et al.), shall not be made available for public inspection nor used for a purpose inconsistent with P.L.1994, c. 16 (C.N.J.S. 45:17A-18 et seq.), and shall be removed from the record in the custody of the Attorney General at such time that such information is no longer necessary for the enforcement of that act. The records required pursuant to this section shall be maintained for a period of at least three years after the end of the period of time to which they relate.

Credits: L.1994, c. 16, § 7, eff. Aug. 9, 1994. Amended by L.2005, c. 283, § 3, eff. July 8, 2006.

Footnotes

¹ N.J.S. § 45:17A-25.

² N.J.S. § 45:17A-26.

³ N.J.S. § 45:17A-31.

N.J.S. 45:17A-25. Short form registration

a. The following charitable organizations shall be required to file a short form registration on forms prescribed by the Attorney General:

(1) Charitable organizations or organizations engaging in a charitable fund raising campaign which do not receive gross contributions in excess of \$25,000 during a fiscal year, if all of their functions including fund raising activities are carried on by volunteers, members, officers or persons who are not compensated for soliciting contributions; except that, if the gross contributions, whether or not all is received by any charitable organization during any fiscal year, are in excess of \$25,000 it shall, within 30 days after the date on which it shall have received the contributions, register with and report to the Attorney General as required by section 7 of this act;¹

(2) Fraternal, patriotic, social or alumni organizations, historical societies, and similar organizations organized under the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes, when solicitation of contributions is confined to their membership and solicitation is performed by members of that organization;

(3) Persons requesting any contributions for the relief of any individual, specified by name at the time of the solicitation, if all of the contributions collected, without any deductions whatsoever, are turned over to the named beneficiary;

(4) Any local post, camp, chapter or similarly designated element, or a county unit of that element, of a bona fide veterans' organization which issues charters to the local elements throughout this State, or to any veterans' organization chartered under federal law or to any service foundation of such an organization recognized in its bylaws.

b. The short form shall contain the following:

(1) Name and street address of the organization;

(2) The name of any independent paid fund raiser, fund raising counsel or commercial co-venturer the charitable organization has engaged;

(3) The purpose for which the charitable organization is organized;

(4) The purposes for which the funds are raised;

(5) The tax status of the charitable organization;

(6) The reason the organization is eligible to file a short form registration;

(7) A copy of the organization's most recent Internal Revenue Service Form 990 and Schedule (A) 990 if the organization filed these forms;

(8) The name, street address and telephone number of each officer, director and trustee and each principal salaried executive staff employee and whether the person has been adjudged liable in an administrative or civil action, or convicted in a criminal action, involving theft, fraud or deceptive business practices. For the purposes of this paragraph:

(a) a plea of guilty, non vult, nolo contendere or any similar disposition of alleged criminal activity shall be deemed a conviction;

(b) "each principal salaried executive staff employee" shall be limited to no more than the five most highly compensated employees in the organization; and

(c) a judgment of liability in an administrative or civil action shall include, but not be limited to, any finding or admission that the officer, director, trustee or principal salaried executive staff employee engaged in an unlawful practice or practices related to the solicitation of contributions or the administration of charitable assets, regardless of whether that finding was made in the context of an injunction, a proceeding resulting in the denial, suspension or revocation of an organization's registration, consented to in an assurance of voluntary compliance or any similar order or legal agreement with any state or federal agency.

(9) A statement whether:

(a) The organization is authorized by any other state to solicit contributions and, if so, a listing of the states in which authorization has been obtained;

(b) The organization is or has ever been enjoined in any jurisdiction from soliciting contributions or has been found to have engaged in unlawful practices in the solicitation of contributions or the administration of charitable assets;

(c) The organization's registration has been denied, suspended or revoked by any jurisdiction, together with the reasons for that denial, suspension or revocation; and

(d) The organization has voluntarily entered into an assurance of voluntary compliance agreement or any similar order or legal agreement with any jurisdiction or federal agency or officer; and

(10) Any other information as may be prescribed by rules adopted by the Attorney General.

c. In order to register its qualified local units pursuant to subsection d. of section 9 of this act,² a parent organization registered pursuant to this section shall include with its initial registration, a copy of the parent organization's charter, articles of organization, agreement of association, instrument of trust, constitution or other organizational instrument and bylaws, and shall include with its initial registration and annual renewal statement a separate statement that provides the following:

(1) The name, principal street address, and phone number of all local units within this State that it is registering;

(2) The amount of gross contributions received by each such unit and the purpose or purposes for which these funds were raised in the preceding fiscal year;

(3) A statement asserting that each such local unit has provided the parent organization with a written statement reporting the information included on its behalf and asserting that the local unit meets all of the requirements of subsection d. of section 9 of this act.

d. Nothing in subsection c. of this section shall be construed to require a parent organization to register any or all of its local units.

Credits: L.1994, c. 16, § 8, eff. Aug. 9, 1994. Amended by L.2005, c. 283, § 4, eff. July 8, 2006.

Footnotes

¹ N.J.S. § 45:17A-24.

² N.J.S. § 45:17A-26.

N.J.S. 45:17A-26. Exemptions from registration requirements

a. The registration requirements of this act shall not apply to any religious corporation, trust, foundation, association or organization incorporated under the provisions of Title 15 or 16 of the Revised Statutes or Title 15A of the New Jersey Statutes or established for religious purposes. Any agency or organization incorporated or established for charitable purposes and engaged in effectuating one or more charitable purposes, which is affiliated with, operated by, or supervised or controlled by a corporation, trust, foundation, association, or organization incorporated or established for religious purposes, or any other religious agency or organization shall also be exempt.

b. The registration requirements of this act shall not apply to any educational institution, the curriculums of which in whole or in part are registered or approved by the State Department of Education or the New Jersey Commission on Higher Education, either directly or by acceptance of accreditation by an accredited body recognized by these departments; an educational institution confining its solicitation of contributions to its student body, alumni, faculty and trustees, and their families; or a library registered by the State Department of Education, provided that the annual financial report of that institution or library shall be filed with the State Department of Education where it shall be open for public inspection.

c. The registration requirements of P.L.1994, c. 16 (C.N.J.S. 45:17A-18 et seq.) shall not apply to any charitable organization or organizations engaging in a charitable fund raising campaign which do not receive gross contributions in excess of \$10,000 during a fiscal year, if all of its functions, including fund raising activities, are carried on by volunteers, members, officers or persons who are not compensated for soliciting contributions, except that if the gross contributions, whether or not all is received by any charitable organization during any fiscal year, are in excess of \$10,000 the charitable organization shall, within 30 days after the date on which it shall have received the contributions, register with and report to the Attorney General as required by section 7 of P.L.1994, c. 16 (C.N.J.S. 45:17A-24);

d. The registration requirements of this act shall not apply to any government or governmental subdivision, agency or instrumentality.

e. The registration requirements of this act shall not apply to a financial institution, attorney trust account, investment company, licensed escrow agency or storage facility holding the charitable assets that belong to another.

f. The registration requirements of this act shall not apply to a personal representative of a decedent's estate that holds a charitable asset, during the period of the administration of the estate.

g. The registration requirements of this act shall not apply to a trustee of a revocable trust that becomes irrevocable because of the settlor's death, during a period of administration following the settlor's death, not to exceed two years.

~~h.~~ h. A charitable organization that meets all of the following requirements shall be considered registered as required by this act:

(1) The charitable organization is a local unit of a parent organization which is registered pursuant to this act;

(2) The parent organization has provided all information concerning the local unit required by subsection e. of section 7 or subsection c. of section 8 of this act;¹

(3) All solicitations made by the local unit are made by members of the local unit or volunteers;

(4) The local unit does not employ a fund raising counsel or independent paid fund raiser or utilize paid staff in preparation of materials or records concerning or related to the solicitations; and

(5) (a) The local unit does not receive gross contributions in excess of \$25,000 during the fiscal year; or

(b) The local unit is an organization that limits membership to persons who are or formerly were employed as officers statutorily authorized to enforce the criminal laws of this State.

e. Nothing in subsection d. of this section shall be construed to require a parent organization to register any or all of its local units.

Credits: L.1994, c. 16, § 9, eff. Aug. 9, 1994. Amended by L.2005, c. 283, § 5, eff. July 8, 2006.

Footnotes

¹ N.J.S. 45:17A-24 or N.J.S. 45:17A-25.

Comment

Currently, three types of charitable organizations are exempt from the registration requirements of the CRI. These exemptions apply to religious organizations; educational institutions or libraries that meet certain criteria set forth by the State Department of Education or the New Jersey Commission on Higher Education; and, certain charitable organizations that do not receive gross contributions in excess of \$10,000 during a fiscal year. The PCAA provides for the exemption of governmental entities, those holding the charitable assets of another, personal representatives of an estate; and, trustees of certain revocable trusts. Proposed language has been added to this section of the CRI based upon the language found in the PCAA. The proposed modifications originate from the following sections of the PCAA:

Subsection d. reflects the addition of the language found in the PCAA, §4(c)(1).

Subsection e. reflects the addition of the language found in the PCAA, §4(c)(3).

Subsection f. reflects the addition of the language found in the PCAA, §4(c)(4).

Subsection g. reflects the addition of the language found in the PCAA, §4(c)(5).

The addition of these exemptions necessitated the re-lettering of subsection d. which now appears in this statute as subsection h. The substance of this subsection has not, however, been altered by the NJLRC.

N.J.S. 45:17A-27. Annual registration of fund raising counsel, independent paid fund raiser; fees; relationship with charitable organization to be set out in written contract

a. It shall be unlawful for any person to act as a fund raising counsel or independent paid fund raiser unless registered annually with the Attorney General. Registration statements shall be on forms prescribed by the Attorney General. A registration statement shall be signed and sworn to by the principal officer of the fundraising counsel or independent paid fund raiser and shall contain information as prescribed by rules adopted by the Attorney General.

b. The registration statements shall be accompanied by a fee prescribed pursuant to the provisions of this act, except that a fund raising counsel or independent paid fund raiser which is a partnership or corporation which registers shall pay a single fee. Each registration shall expire on June 30.

c. The Attorney General shall examine the initial registration statement and supporting documents filed by a fund raising counsel or independent paid fund raiser pursuant to section 5 of this act.¹

d. The relationship between a charitable organization and a fund raising counsel or independent paid fund raiser shall be set forth in a written contract. The relationship between a fund raising counsel or independent paid fund raiser and any other fund raising counsel or independent paid fund raiser shall be set forth in a written contract. The fund raising counsel or independent paid fund raiser shall file a copy of all such contracts with the Attorney General at least 10 business days prior to the performance by the fund raising counsel or independent paid fund raiser of any service within this State. It shall be unlawful for any solicitation pursuant to any contract to begin before the Attorney General has reviewed the contract pursuant to section 5 of this act. All such contracts shall be signed by two authorized officials of the charitable organization, one of whom must be a member of the organization's governing body, and the authorized contracting officer for the fund raising counsel or independent paid fund raiser. Performance of any contract filed for review shall not foreclose the Attorney General from enforcing the contract requirements established by P.L.1994, c. 16 (C.N.J.S. 45:17A-18 *et seq.*) and the rules adopted pursuant thereto or taking other appropriate action. For the purposes of this subsection, the term "relationship" shall include, but not be limited to, any contract, agreement, assignment or arrangement or any other obligation relating to the solicitation of contributions.

e. All contracts for a fund raising counsel or independent paid fund raiser either of whom at any time has or intends to have custody, control, possession or access to a charitable organization's solicited contributions, shall contain the following:

(1) A statement of the respective obligations of the fund raising counsel, the independent paid fund raiser, and the charitable organization;

(2) A clear statement of the fees or rate which will be paid to the fund raising counsel or independent paid fund raiser;

(3) The projected commencement and termination dates of the solicitation campaign;

(4) A statement as to whether the fund raising counsel or independent paid fund raiser will have custody, control or access to contributions;

(5) A statement as to the guaranteed minimum percentage of the gross receipts from contributions which will be remitted to the charitable organization, if any, or if the solicitation involves the sale of goods, services or tickets to a fund raising event, the percentage of the purchase price which will be remitted to the charitable organization, if any. Any stated percentage shall exclude any amount which the charitable organization is to pay as fund raising costs;

(6) A statement of the percentage of the gross revenue from which the independent paid fund raiser will be compensated and the fixed fee or rate at which the fund raising counsel will be compensated. If the compensation of the independent paid fund raiser is not contingent upon the number of contributions or the amount of revenue received, its compensation shall be expressed as a reasonable estimate of the percentage of the gross revenue, and the contract shall clearly disclose the assumptions upon which the estimate is based. If the compensation of the fund raising counsel is calculated on the basis of a rate and time, the statement shall include a reasonable estimate of the total fee and the contract shall clearly disclose the assumptions upon which the estimate is based. With respect to any such contract, the stated assumptions shall be based upon all of the relevant facts known to the fund raising counsel or independent paid fund raiser regarding the solicitation to be conducted by the independent paid fund raiser;

(7) The bank and branch where all moneys will be deposited, each account number and, for each account, all authorized signatories for withdrawals; and

(8) Any other information as may be prescribed by the Attorney General.

f. A fund raising counsel or independent paid fund raiser, either of whom at any time has or intends to have custody, control, possession or access to a charitable organization's solicited contributions, shall, if requested by the Attorney General, make available the following

information:

(1) Each location and telephone number from which the solicitation is conducted;

(2) The name, home address and telephone number of each person responsible for directing and supervising the conduct of the campaign and whether the person has been adjudged liable in an administrative or civil action or convicted in a criminal action, involving theft, fraud or deceptive business practices. For the purpose of this paragraph:

(a) a plea of guilty, non vult, nolo contendere or any similar disposition of alleged criminal activity shall be deemed a conviction; and

(b) a judgment of liability in an administrative or civil action shall include, but not be limited to, any finding or admission that the person responsible for directing and supervising the conduct of the campaign engaged in an unlawful practice or practices related to the solicitation of contributions or the administration of charitable assets, regardless of whether that finding was made in the context of an injunction, a proceeding resulting in the denial, suspension or revocation of an organization's registration, consented to in an assurance of voluntary compliance or any similar order or legal agreement with any state or federal agency; and

(3) A statement of the charitable purpose for which the solicitation campaign is being conducted.

g. If either a fund raising counsel or independent paid fund raiser at any time has or intends to have custody, control, possession or access to a charitable organization's solicited contributions, that fund raising counsel or independent paid fund raiser shall:

(1) At the time of making application for registration, file with the Attorney General a bond in which it shall be the principal obligor, which shall for the initial application be in the sum of \$20,000 and thereafter shall be an amount prescribed by a rule adopted by the Attorney General pursuant to subsection f. of section 4 of this act.2 The bond shall provide for one or more sureties whose liability in the aggregate shall at least equal that sum. The fund raising counsel or independent paid fund raiser shall maintain the bond in effect during the entire period of registration. The bond shall be payable to the Attorney General for the benefit of any person who may have a cause of action against the principal obligor of the bond for any violation of this act or for the purpose of satisfying any assessment against the principal obligor of the bond for any such violation;

(2) Deposit each contribution collected by the fund raising counsel or independent paid fund raiser, in its entirety and within five days of its receipt, in an account at a bank or other federally insured financial institution. The account shall be in the name of the charitable organization with whom the fund raising counsel or independent paid fund raiser has contracted and the charitable organization shall have sole benefit and control of the account and all withdrawals;

(3) Within 40 days after a solicitation campaign has been completed, or in the case of a campaign lasting more than 12 months, within 40 days of the end of the charitable organization's fiscal year, file with the Attorney General a financial report for the campaign on such forms as the Attorney General may prescribe. Those forms shall include, but not be limited to, gross revenues, an itemization of all expenses incurred and the bank and branch where all moneys are deposited. This report shall be signed and sworn to by two authorized officials, one from the charitable organization and one from the fund raising counsel or independent paid fund raiser ; and

(4) Maintain a copy of each advertisement, publication, solicitation or other material used as part of the charitable sales promotion to directly or indirectly induce a contribution.

Credits: L.1994, c. 16, § 10, eff. Aug. 9, 1994. Amended by L.2005, c. 283, § 6, eff. July 8, 2006.

Footnotes

¹ N.J.S. § 45:17A-22.

² N.J.S. § 45:17A-21.

N.J.S. 45:17A-28. Solicitors of independent paid fund raisers required to register annually; fees

a. It shall be unlawful for any person to act as a solicitor of an independent paid fund raiser required to register pursuant to this act unless , prior to that person acting as a solicitor of the independent paid fund raiser, the independent paid fund raiser files registration information including the name, street address, telephone number, and any other information as may be prescribed by the Attorney General, of any such solicitor and files such registration information for that solicitor annually thereafter. Registration statements shall be on forms prescribed by the Attorney General and accompanied by a prescribed fee. The Attorney General shall review the statement pursuant to section 5 of this act¹ and prescribe the fees pursuant to subsection f. of section 4 of this act².

b. It shall be unlawful for any independent paid fund raiser to engage a solicitor to solicit charitable contributions unless the independent paid fund raiser files the solicitor's registration information with the Attorney General pursuant to this section.

Credits: L.1994, c. 16, § 11, eff. Aug. 9, 1994. Amended by L.2005, c. 283, § 7, eff. July 8, 2006.

Footnotes

¹ N.J.S. § 45:17A-22.

² N.J.S. § 45:17A-21.

N.J.S. 45:17A-29. Written contract from commercial co-venturer

a. Every charitable organization which permits a charitable sales promotion to be conducted on its behalf shall obtain a written contract from the commercial co-venturer and shall file a copy of the agreement with the Attorney General at least 10 business days prior to the initiation of that charitable sales promotion. All parties to the contract shall be subject to the provisions of P.L.1994, c. 16 (C.N.J.S. 45:17A-18 et seq.) and any rules adopted pursuant thereto. Every contract shall contain a provision clearly and conspicuously stating that the parties are subject to this act and any rules adopted pursuant thereto.

b. A charitable organization shall file in writing on forms prescribed by the Attorney General the following information at the conclusion of the charitable sales promotion:

(1) A certification from an officer or principal of the commercial co-venturer attesting to the gross amount of income received by the commercial co-venturer attributable to the charitable sales promotion, solicitation or venture undertaken;

(2) The amount of money or other contribution remitted to the organization covering each event or portion of an extended charitable sales promotion;

(3) A copy of each advertisement, publication, solicitation or other material used as part of the charitable sales promotion to directly or indirectly induce a contribution; and

(4) Any other information as may be required by rules adopted by the Attorney General.

c. All filings pursuant to this section shall be accompanied by a fee prescribed pursuant to the provisions of this act.

d. The commercial co-venturer shall disclose in each advertisement for the charitable sales promotion the dollar amount or percent per unit of goods or services purchased or used that will benefit the charitable organization or purpose. If the actual dollar amount or percent cannot reasonably be determined prior to the final date of the charitable sales promotion, the commercial co-venturer shall disclose an estimated dollar amount or percent. Any such estimate shall be reasonable and shall be based upon all of the relevant facts known to the commercial co-venturer and the charitable organization regarding the charitable sales promotion.

Credits: L.1994, c. 16, § 12, eff. Aug. 9, 1994. Amended by L.2005, c. 283, § 8, eff. July 8, 2006.

N.J.S. 45:17A-30. Disclosure of required information prior to solicitation

a. Prior to soliciting a contribution, either orally or by written request, except for any in-person solicitation, any independent paid fund raiser, commercial co-venturer, solicitor, or charitable organization shall clearly and conspicuously disclose any information as prescribed by the rules adopted by the Attorney General.

b. In the case of any solicitation campaign conducted orally, whether by telephone or otherwise, except for any in-person solicitation, a written confirmation or receipt or written reminder shall, upon request of the contributor, be sent and shall include a clear and conspicuous disclosure of any information as prescribed by the rules adopted by the Attorney General.

c. Except as otherwise provided in section 14 of this act,¹ registration statements, reports, notices, contracts or agreements between charitable organizations and fund raising counsels or independent paid fund raisers and commercial co-venturers and all other documents and information required to be filed under this act with the Attorney General are public records and shall be open to the general public at such time and under such conditions as the Attorney General may prescribe.

d. In addition to all other requirements imposed by this act, a charitable organization that limits its membership to persons who are or formerly were employed as officers statutorily authorized to enforce the criminal laws of this State or that is a parent organization that includes local units that so limit membership shall:

- (1) At least 10 days prior to initiating any solicitation campaign involving

multiple solicitations, give written notice describing the nature, purpose and the proposed dates and location of the solicitations to the Attorney General and the county prosecutor of any county in which the solicitations will be made, unless the organization limits its membership to persons who are or were employed by the State, or is a parent organization with local units in more than one county, in which case notice shall be given to the Attorney General who shall notify the appropriate county prosecutors;

(2) Upon request, make any records required by this act available for inspection or provide an audited financial statement of financial records concerning the organization's fund raising activities to the Attorney General.

e. In addition to all other requirements imposed by P.L.1994, c. 16 (C.N.J.S. 45:17A-18 et seq.), any charitable organization that is or holds itself out to be soliciting contributions through the use of any name, symbol or statement which implies or that would lead a reasonable person to believe that the charitable organization is in any way affiliated with, related to, recognized by, or organized for the benefit of emergency service employees, officers statutorily authorized to enforce the criminal laws of this State or a governmental agency shall disclose to the potential contributor the nature of the affiliation, relationship, recognition or organization, if any, or shall expressly state that no affiliation, relationship, recognition or organization exists between the charitable organization and emergency service employees, officers statutorily authorized to enforce the criminal laws of this State or governmental agency, as the case may be.

Credits: L.1994, c. 16, § 13. Amended by L.2005, c. 283, § 9, eff. July 8, 2006.

N.J.S. 45:17A-30.1. Use of caller identification blocking by persons soliciting contributions

Any person soliciting contributions shall not be permitted to use technology that blocks caller identification telephone systems used by any person in this State.

Credits: L.2005, c. 283, § 13, eff. July 8, 2006.

N.J.S. 45:17A-30.2 Notice to Attorney General of Reportable Event

a. A person required to register under this Act shall give notice in a record to the Attorney General not later than [20] days before any of the following events:

(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 the person;

(4) removal of the person from the jurisdiction of this state;

(5) removal of significant charitable assets of the person from this state; or

(6) an amendment of the record that describes the charitable purposes of the person and the use and administration of charitable assets held by the person.

b. A person required to register under this Act shall give notice in a record to the Attorney General not later than [90] days before the consummation of a merger, conversion, or domestication of the person.

c. A transfer of a charitable asset in connection with an event described in subsection (a) or (b) which occurs earlier than [20] days after giving the notice required by subsection (a) or earlier than [90] days after giving the notice required by subsection (b) is a violation of this [act] unless, before the transfer, the person receives from the Attorney General in a record consent to the 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 non-residuary devise with a value of less than \$[50,000] to a named person, the personal representative shall deliver to the Attorney General not later than [90] days after the date the personal representative is appointed:

(1) a copy of the will;

(2) a copy of the petition for probate; and

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

e. If a revocable trust becomes irrevocable because of the settlor's death, has its principal place of administration in this state after the settlor's death, and provides for a distribution of property to a person holding charitable assets, unless the distribution is a non-residuary devise with a value of less than \$50,000.00 to a named person, the trustee shall deliver to the Attorney General not later than [90] days after the date of the settlor's death:

(1) a description of the charitable interests; and

(2) a statement of the value of the trust assets.

f. A person required to register under this Act 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, state or local charitable income tax exemption.

Comment

Though modified for present purposes, the comments of the Uniform Law Commission (“ULC”), as they relate to §6 of the PCAA, have been reproduced herein.¹

The Act requires notice to the Attorney General of a limited number of significant events that might occur in the life of a person holding charitable assets. The events that trigger the notice requirement are those that raise particular opportunities for misapplication of charitable assets. Notice is intended to give the Attorney General an opportunity to monitor the events in time to prevent problems or to correct problems that have already arisen.

Subsections (a) – (c). Disposition or Removal of All or Significantly All Assets. If an entity holding charitable assets will terminate, dispose of substantially all of its assets, or move to another state, the entity must notify the Attorney General before the entity 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 entity in writing. These subsections give the Attorney General the information needed to work with the entity on an appropriate plan of distribution or other transfer. If the Attorney General and the entity 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 charitable organization or creates a new organization through a gift under the will, the personal representative must notify the Attorney General. This notice is included to protect the charitable bequest because it 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 non-residuary bequest to a named charitable beneficiary in an amount less than \$50,000, because the named beneficiary will have an incentive to monitor the bequest. An exception for residuary gifts to named beneficiaries was not created because the Attorney General may need to monitor fees that would reduce the value of the residue. A beneficiary may be reluctant to challenge fees because of concerns about public goodwill or the hope of future gifts from the same family.

Subsection (e). Revocable Trust. Many property owners use a revocable trust rather than a will to distribute property at death. This subsection applies the same notice requirement that applies to property distributed under a will to property distributed through a revocable trust. Notice should be given to the Attorney General of the state in which the trust has its principal place of administration after the settlor’s death. Upon the death of the settlor of a revocable trust, a new trustee typically is appointed or succeeds to the position, and if that trustee is in a different state, the place of administration may move. The appropriate state for notice is the state in which the trust will be administered during the period immediately following the settlor’s death.

Subsection (f). Action Affecting Tax Exemption. The revocation of a federal or state tax exemption may signal problems that the Attorney General should consider. This subsection requires notice to the Attorney General of revocation or modification of an organization’s exempt status for any tax purpose. A state may want to limit notice to actions affecting only a particular state tax exemption. In some states the important state tax exemption may be an income tax exemption, but in other states the property tax exemption may be of greater importance. The Attorney General may not need notification of action affecting every state tax exemption. The notification required under this subsection does not require notice of administrative proceedings prior to revocation of exemption of tax-exempt

¹ MODEL PROT. OF CHARITABLE ASSETS ACT, Comments to §6 (2011).

status, but Section 7 requires notice of the proceeding.

N.J.S. 45:17A-30.3 Notice to Attorney General of Action or Proceeding

a. This section applies to an action or proceeding in this state in a federal or state court:

(1) by, against, or on behalf of a person holding a charitable asset in which the relief sought relates to a gift of a charitable asset;

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

(3) by, against, or on behalf of a person holding a charitable asset in which the relief sought includes:

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

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

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

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

or

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

(4) for bankruptcy under federal law, receivership under [state receivership statute] or a similar receivership statute of another state, or relief in any other insolvency proceeding.

(5) against any officer, director, trustee, principal salaried executive staff employee, solicitor, commercial co-venturer, professional fundraisers, fundraising counsel, independent paid fundraiser, or any person responsible for directing and supervising the conduction of a charitable campaign who has been arrested or charged with any criminal offense involving untruthfulness, dishonesty, theft, fraud, deceptive business practices or any criminal offense relating adversely to the registrant's fitness to perform activities regulated by this act.

(i) For purposes of this Act, a plea of guilty, non vult, nolo contendere or any similar disposition of alleged criminal activity shall be deemed a conviction.

b. If an action or proceeding to which this section applies is commenced by or brought against a person in this state, the party seeking relief shall give notice in a record to the Attorney General within 10 business days from date the action is filed in the federal or state court. The notice must include a copy of the initial pleading. An order, decree, or judgment rendered in an action in which notice is required by this section is not binding on the Attorney General if the notice has not been given.

Comment

The comments of the Uniform Law Commission (“ULC”), as they relate to §7 of the PCAA, have been somewhat modified and have been reproduced herein.²

The Attorney General ought to be made aware of a wide range of proceedings that might affect charitable assets or the structure or governance of a person holding charitable assets. At a minimum, states will benefit from requiring that the Attorney General be provided notice of and an opportunity to participate in *cypres* or deviation proceedings. State law, under the Uniform Prudent Management of Institutional Funds Act (“UPMIFA”) currently requires that notice be given to the Attorney General before a charitable organization subject to UPMIFA modifies a donor-imposed restriction or asks a court to modify a restriction. *See* N.J.S. 15:18-30 *supra*.

The 10-day time-frame within which a party seeking relief must notify the Attorney General of an action or proceeding is derived from the time-frame set forth in N.J.S. 45:17A-31(e) *infra* which deals with the time within which the Attorney General must be notified regarding material change in information that is filed with the Attorney General. *See also* N.J.S. 45:17A-33(f) which permits the Attorney General to docket a judgment against any person who, within 10 days after service of any order, fails to comply with an order directing payment of penalties, attorney’s fees, costs or restoration of moneys or property.

The adoption of notice requirements set forth in PCAA are consistent with the notice requirements that New Jersey has adopted under the UPMIFA and would benefit the CRI.

• Criminal Action or Proceeding

Neither the PCAA nor the CRI requires a registrant to proactively report his, or her, arrest or subsequent conviction to the Attorney General. The absence of such a provision makes it possible for such an individual to be convicted of a crime involving theft, fraud, or deceptive practices and for this crime to go unreported until the filing of the organization’s annual report. The absence of such a proactive reporting requirement subverts the express purpose of both the PCAA and CRI – the preservation of the integrity of New Jersey’s charitable organizations and the protection of the citizenry from unscrupulous actors. Language is proposed to mandate the reporting of criminal arrests to the Attorney General within 10 days of their occurrence.

N.J.S. 45:17A-31. Recordkeeping requirements

a. Every charitable organization, unless exempted pursuant to subsection a. or b. of

² MODEL PROT. OF CHARITABLE ASSETS ACT, Comments to §7 (2011).

section 9 of this act,¹ and every fund raising counsel, independent paid fund raiser and commercial co-venturer subject to the provisions of this act shall keep complete and accurate records of its activities in this State as may be required by this act, in such form as will enable them to accurately provide the information required by this act or regulations promulgated under the authority of this act. The records shall be made available upon demand by the Attorney General. Where such records include the names, addresses and telephone numbers of contributors and amounts contributed by them and home addresses and home telephone numbers of any of the organization's officers, directors, trustees, employees or vendors required to provide such information pursuant to paragraph (5) of subsection b. of section 7 of this act,² this information shall not be considered a matter of public record and shall not be made available for public inspection, shall not be used for a purpose inconsistent with this act, and shall be removed from the record in the custody of the Attorney General at such time that such information is no longer necessary for the enforcement of this act. The records shall be maintained for a period of at least three years after the end of the period of time to which they relate.

b. In addition to subsection a. of this section, every fundraising counsel or independent paid fund raiser subject to subsection g. of section 10 of this act³ shall maintain during each solicitation campaign and for not less than three years after its completion, the following records:

(1) A record of all contributions, including the name and address of each contributor and the date and amount of the contribution, except that record keeping with regard to donations of goods and personal property shall be limited to the dollar value received by or accruing to the charitable organization and shall be determined by regulation;

(2) The name, location and account number of each bank or other financial institution in which the fund raising counsel or independent paid fund raiser has deposited revenue from the solicitation campaign; and

(3) Any other information as may be prescribed by rules adopted by the Attorney General.

c. In addition to subsections a. and b. of this section, a fund raising counsel or independent paid fund raiser subject to subsection g. of section 10 of this act shall also maintain during each solicitation campaign, and for not less than three years after the completion of such campaign, the following records, which shall be available for inspection upon demand by the Attorney General:

(1) The name, home address and telephone number of each employee, solicitor or other person involved in the solicitation;

(2) Records of all revenue received and expenses incurred in the course of the solicitation campaign; and

(3) Records of the name, address and telephone number of each contributor donating tickets and the number of tickets donated, and of the name, address and telephone number of each organization receiving donated tickets for use by others, including the number of tickets for use by others, if an independent paid fund raiser sells tickets to an event and represents that tickets will be donated for use by another.

d. A fund raising counsel or independent paid fund raiser who performs services for a charitable organization exempt pursuant to section 9 of this act shall nonetheless be subject to the requirements of this section.

e. Any material change in any information filed with the Attorney General pursuant to this act shall be reported in writing to the Attorney General within 10 business days of the change.

Credits: L.1994, c. 16, § 14, eff. Aug. 9, 1994.

Footnotes

¹ N.J.S. § 45:17A-26.

² N.J.S. § 45:17A-24.

³ N.J.S. § 45:17A-27.

N.J.S. 45:17A-32. Statements required to be truthful; unlawful acts and practices

a. Any statement, whether oral or written, made by a charitable organization, or on behalf of a charitable organization by persons including, but not limited to commercial co-venturers, fund raising counsels, independent paid fund raisers or solicitors shall be truthful.

b. A charitable organization shall establish and exercise control over fund raising activities conducted for its benefit, including approval of all written contracts and agreements, and shall assure that fund raising activities are conducted without coercion.

c. The following acts and practices are declared unlawful as applied to the planning, conduct, or execution of any solicitation or charitable sales promotion:

(1) To misrepresent the purpose or nature of the charitable institution or the purpose or beneficiary of a solicitation; to solicit contributions for a purpose other than the charitable purpose expressed in the statement of the charitable organization or expend

contributions in a manner inconsistent with that purpose, or to fail to disclose any material fact. A misrepresentation may be accomplished by words or conduct;

(2) To violate or fail to comply with any of the applicable provisions of this act or the rules adopted under authority of this act;

(3) To violate or fail to comply with any of the applicable provisions of the consumer fraud law, P.L.1960, c. 39 (C.56:8-1 et seq.) or the regulations adopted pursuant to that act;

(4) To utilize a name, symbol or statement so closely related or similar to that used by another charitable organization and registered by that organization with the United States Patent and Trademark Office or registered pursuant to R.S.56:2-1 et seq. that its use would tend to confuse or mislead a solicited person or to solicit contributions in a manner or through representations that falsely imply or are likely to create the mistaken belief that the contributions are solicited by or on behalf of another charitable organization;

(5) To utilize or exploit registration so as to lead any person to believe that registration constitutes or implies an endorsement or approval by the State;

(6) To distribute any form of membership badges, shields, courtesy cards or cards of a similar nature identifying the organization in connection with or in any manner related to the solicitation of funds or contributions for or on behalf of the organization in the case of any charitable organization that limits its membership to persons who are or formerly were employed as officers statutorily authorized to enforce the criminal laws of this State or that is a parent organization that includes local units that so limit membership;

(7) To utilize information, statements or communications that, although literally true, are presented in a manner that has the capacity to mislead the average consumer;

(8) To utilize a name, symbol or statement so closely related or similar to that used by any organization that is affiliated with, related to, recognized by or organized for the benefit of emergency service employees, officers statutorily authorized to enforce the criminal laws of this State, or a governmental agency in such a way that its use would tend to confuse or mislead a solicited person or to create the erroneous belief that the contributions are solicited by or on behalf of an organization affiliated with, related to, recognized by or organized for the benefit of emergency service employees, officers statutorily authorized to enforce the criminal laws of this State, or a governmental

agency;

(9) To utilize a name, symbol or statement that misrepresents the geographic origin or location of a charitable organization or its intended beneficiaries; and

(10) To engage in other unlawful acts and practices as may be determined by rules adopted by the Attorney General.

d. It shall be unlawful for any charitable organization, fund raising counsel, independent paid fund raiser or commercial co-venturer to enter into any contract with any person who is required to have registered and failed to do so.

e. It shall be unlawful for any person to represent that tickets to events will be donated by another, unless the following requirements have been met:

(1) The fund raising counsel or independent paid fund raiser shall obtain commitments, in writing and notarized, from charitable organizations stating that they will accept donated tickets and specifying the number of tickets they are willing to accept and for which they are able to provide transportation; copies of such written commitments shall be filed with the Attorney General;

(2) The independent paid fund raiser has taken measures to prevent solicitation of contributions for donated tickets in excess of the number of ticket commitments received from charitable organizations; and

(3) The number of tickets sold will not be greater than the number of seats available at the facility for each event or performance.

Credits: L.1994, c. 16, § 15, eff. Aug. 9, 1994. Amended by L.1998, c. 123, § 1, eff. Nov. 9, 1998; L.2005, c. 283, § 10, eff. July 8, 2006.

N.J.S. 45:17A-33. Violations; penalties

a. For purposes of the “Administrative Procedure Act,” P.L.1968, c. 410 (C.52:14B-1 *et seq.*), the Attorney General or his or her designee shall constitute the agency head and have the final decision- making power.

b. After notice and an opportunity for a hearing, the Attorney General may revoke, or

suspend any registration upon a finding that the registrant or any officer, director, trustee or principal salaried executive staff employee of a registrant or any other person subject to the provisions of P.L.1994, c. 16 (C.N.J.S. 45:17A-18 et seq.):

(1) Has filed a registration statement containing false or misleading facts or omitting material facts;

(2) Has violated or failed to comply with any of the provisions of this act or the rules adopted under authority of this act;

(3) Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;

(4) Has been convicted of any criminal offense committed in connection with the performance of activities regulated under this act or any criminal offense involving untruthfulness or dishonesty or any criminal offense relating adversely to the registrant's fitness to perform activities regulated by this act. For the purposes of this paragraph, a plea of guilty, non vult, nolo contendere or any other similar disposition of alleged criminal activity shall be deemed a conviction;

(5) Has had the authority to engage in charitable activities denied, revoked or suspended by New Jersey or any other state or jurisdiction;

(6) Has been adjudged liable in an administrative or civil proceeding involving theft, fraud or deceptive business practices including, but not limited to, any finding of unlawful practice or practices related to the solicitation of contributions or the administration of charitable assets, regardless of whether that finding was made in the context of an injunction, a proceeding resulting in penalties, consented to in an assurance of voluntary compliance or any similar order or legal agreement with any state or federal agency;

(7) Has engaged in other forms of misconduct as may be determined by rules adopted by the Attorney General.

c. Whenever it shall appear to the Attorney General that a person has engaged in, is engaging in, or is about to engage in, any act or practice declared unlawful by this act, or when the Attorney General determines it to be in the public interest to inquire whether a violation may exist, the Attorney General may:

(1) Require any person to file, on a form to be prescribed by the Attorney

General, a statement or report in writing under oath, or otherwise, concerning any relevant and material information in connection with an act or practice subject to this act;

(2) Examine under oath any person in connection with any act or practice subject to this act;

(3) Inspect any location from which the activity regulated by this act is conducted;

(4) Examine any goods, ware or items used in the rendering of any of the services contained in this act;

(5) Require an audited financial statement of the financial records of the organization or person registered, exempted or required to be registered under this act, prepared in accordance with generally accepted accounting principles or other comprehensive basis of accounting approved for use by the Attorney General by regulation which has been audited in accordance with generally accepted auditing standards by an independent certified public accountant and any management letters prepared by the auditor in connection with the audit commenting on the internal accounting controls or management practices of the organization;

(6) Examine any book, document, account, computer data, literature, publication or paper maintained by or for any organization or person registered, exempted or required to be registered under this act, in the course of engaging in the activities regulated by this act;

(7) Apply to Superior Court for an order to impound any record, book, document, account, computer data, literature, publication, paper, goods, ware, or item used or maintained by any organization or person registered, exempted or required to be registered under this act in the regular course of engaging in the activities regulated by this act or rules adopted under this act;

(8) In order to accomplish the objectives of this act, or the rules adopted under this act, hold investigative hearings as necessary and issue subpoenas to compel the attendance of any person or the production of books, records, computer data, literature, publication or papers at any investigative hearing or inquiry.

d. Any person who engages in any conduct or an act in violation of any provision of this act and who has not previously violated this act shall, in addition to any other relief authorized by this or any other law, be liable for a civil penalty of not more than \$10,000 for the first violation of this act.

For a second violation of this act, or if a person is found liable for more than one violation of this act within a single proceeding, the liability for the second violation shall not exceed a civil penalty in the amount of \$20,000.

For a third violation of this act, or if a person is found liable for more than two violations of this act within a single proceeding, the liability for a third or any succeeding violation shall not exceed a civil penalty in the amount of \$20,000 for each additional violation.

In lieu of an administrative proceeding or an action in the Superior Court, the Attorney General may bring an action for the collection or enforcement of civil penalties for the violation of any provision of this act. The action may be brought in a summary manner, pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c. 274 (C.2A:58-10 et seq.) and the Rules Governing the Courts of the State of New Jersey governing actions for the collection of civil penalties, in the Municipal Court or Special Civil Part of the Law Division of the Superior Court in the municipality or county where the offense occurred. Process in the action may be by summons or warrant. If the defendant in the action fails to answer the action, the court shall, upon finding that an unlawful act or practice has been committed by the defendant, issue a warrant for the defendant's arrest in order to bring the person before the court to satisfy the civil penalties imposed.

In an action commenced pursuant to this section, the court may order restored to any person in interest any moneys or property acquired by means of an unlawful act or practice. An action alleging the unregistered practice of the activities regulated by this act may be brought pursuant to this section or, where injunctive relief is sought, by an action commenced in the Superior Court. In an action brought pursuant to this act, the Attorney General or the court may order the payment of attorney's fees and costs for the use of the State.

e. Whenever it shall appear to the Attorney General that a violation of this act has occurred, is occurring, or will occur, the Attorney General, in addition to any other proceeding authorized by law, may seek and obtain in a summary proceeding in the Superior Court an injunction prohibiting the act or practice. In the proceeding, the court may assess a civil penalty in accordance with the provisions of this act, order restoration to any person in interest of any moneys or property, real or personal, acquired by means of an unlawful act or practice and may enter any orders necessary to prevent the performance of an unlawful practice in the future and to remedy fully any past unlawful activity.

f. Upon the failure of any person to comply within 10 days after service of any order of the Attorney General directing payment of penalties, attorney's fees, costs or restoration of moneys or property as authorized by this act, the Attorney General may issue a certificate to the

Clerk of the Superior Court that the person is indebted to the State for the payment. A copy of the certificate shall be served upon the person against whom the order was entered. The clerk shall immediately enter upon the record of docketed judgments the name of the person so indebted and of the State, a designation of the statute under which each payment was directed, the amount of each payment, a listing of property ordered restored, and the date of the certification. The entry shall have the same force and effect as the entry of a docketed judgment in the Superior Court and the Attorney General shall have all rights and remedies of a judgment creditor, in addition to exercising any other available remedies.

g. If a person fails or refuses to file any statement or report, or fails or refuses to grant access to premises from which activities regulated by this act are conducted in any lawfully conducted investigative matter, or fails to obey a subpoena issued pursuant to this act, the Attorney General may apply to the Superior Court and obtain an order:

(1) Adjudging that person in contempt of court and assessing civil penalties in accordance with the amounts prescribed by this act;

(2) Enjoining the conduct of any practice in violation of this act; or

(3) Granting other relief as required.

h. If a person who refuses to testify or produce any computer data, book, paper, or document in any proceeding under this act for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him, or convict him of a crime, is directed to testify or to produce the computer data, book, paper, or document by the Attorney General, he shall comply with the direction.

A person who is entitled by law to and does assert a privilege, and who complies with the direction of the Attorney General, shall not thereafter be prosecuted or subject to any penalty or forfeiture in any criminal proceeding which arises out of and relates to the subject matter of the proceeding. No person so testifying shall be exempt from prosecution or punishment for perjury or false swearing committed by him in giving the testimony or from any civil or administrative action arising from the testimony.

i. In addition or as an alternative to revocation or suspension of a registration, the Attorney General may, after affording an opportunity to be heard and finding a violation of this act:

(1) Assess civil penalties in accordance with this act;

(2) Direct that any person cease and desist from any act or practice in violation of this act or take necessary affirmative corrective action with regard to any unlawful act or practice;

(3) Order any person to restore to any person aggrieved by an unlawful act or practice any money or property, real or personal, acquired by means of any unlawful act or practice, except that the Attorney General shall not order restoration in a dollar amount greater than those moneys received by the registrant or his agent or any other person violating this act;

(4) Order the payment of attorney's fees and costs for the use of the State; or

(5) Authorize the release of sums from any bond maintained pursuant to this act in satisfaction of assessments.

j. Whenever a person engages in any act or practice in violation of this act the Attorney General may, after notice and opportunity to be heard and upon a finding that the act or practice has occurred, enter an order:

(1) Directing the person to cease and desist from that unlawful act or practice;

(2) Assessing civil penalties in accordance with this act;

(3) Directing that person restore to any person aggrieved by the unlawful act or practice any money or property, real or personal, acquired by means of the unlawful act or practice, except that the Attorney General shall not order restoration in a dollar amount greater than those moneys received by the registrant, agent or any other person violating this act;

(4) Directing payment of attorney's fees and costs for the use of the State; or

(5) Authorizing the release of sums from any bond maintained pursuant to P.L.1994, c. 16 (C.N.J.S. 45:17A-18 et seq.) in satisfaction of assessments.

k. When it shall appear to the Attorney General that a person against whom an order pursuant to this section has been entered has violated the order, the Attorney General may initiate a summary proceeding in the Superior Court for enforcement of the order. Any person found to have violated such an order shall be ordered to comply with the prior administrative order and may be ordered to pay civil penalties in the amount of not more than \$25,000 for each violation of the order. If a person fails to pay a civil penalty assessed by the court for violation of an order,

the court assessing the unpaid penalty is authorized, upon application of the Attorney General, to grant any relief which may be obtained under any statute or court rule governing the collection and enforcement of penalties.

l. In any administrative proceeding on a complaint alleging a violation of this act, the Attorney General may issue subpoenas to compel the attendance of witnesses or the production of computer data, books, records, or documents at the hearing on the complaint as provided by this act.

m. In addition to any other action or remedy available under this act, a charitable organization aggrieved by a violation of paragraph (4) or (8) of subsection c. of section 151 of this act may initiate a civil action or assert a counterclaim in any court of competent jurisdiction against the violator. Upon establishing the violation, the charitable organization shall recover treble its damages or treble the violator's profits, whichever is greater. In all actions under this subsection the court shall award reasonable attorney's fees, filing fees and reasonable costs of suit.

n. Notwithstanding any other provision of this section to the contrary, a parent organization may be held accountable for actions related to information filed on behalf of a local unit only if the parent organization has filed information knowing that the information is false or misleading or knowing that material facts are omitted.

o. Notwithstanding any other provision of this section to the contrary, any local unit that has provided to its parent organization timely, truthful and complete information and otherwise conducted itself in compliance with the provisions of this act, shall not be held accountable for the misconduct of a parent organization, including, but not limited to, the failure of the parent organization to file timely reports on behalf of the local unit.

Credits: L.1994, c. 16, § 16, eff. Aug. 9, 1994. Amended by L.2005, c. 283, § 11, eff. July 8, 2006.

Footnotes

¹N.J.S. § 45:17A-32.

N.J.S. 45:17A-34. Common-law powers of Attorney General not limited

Nothing in this act shall be construed to limit, impair or modify any of the common law powers previously afforded to the Attorney General under the common law.

Credits: L.1994, c. 16, § 17, eff. Aug. 9, 1994.

N.J.S. 45:17A-34.1 Cooperation with Other Official

a. The Attorney General, or his or her designee, may cooperate with any official of this state, another state, the United States, a foreign government, or a governmental subdivision, agency, or instrumentality of any of the foregoing charged with protecting charitable assets.

b. The Attorney General, or his or her designee, may:

(1) notify an official described in subsection a. of the commencement, status, or resolution of any investigation or proceeding pursuant to this Act;

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

(3) request from the official information relevant to an investigation pursuant to N.J.S. 45:17A-21.

Comment

Though modified for present purposes, the comments of the Uniform Law Commission (“ULC”), as they relate to §10 of the PCAA, are reproduced herein.³

This section authorizes cooperation between a state Attorney General and relevant officials of other states, the federal government and foreign governments. This section allows the Attorney General to coordinate with any other state agency to provide information to other agencies as well as request information from other agencies.

N.J.S. 45:17A-35. Powers of municipalities to regulate within their jurisdiction not restricted

Nothing in this act shall be construed to limit, impair or modify the ability of any municipality to enact rules or ordinances to regulate the solicitation of contributions within its jurisdiction, provided that those rules or ordinances are in addition to and not duplicative of or in conflict with the provisions of this act. To the extent that a municipal ordinance is violative of this act it is invalid.

³ MODEL PROT. OF CHARITABLE ASSETS ACT, Comments to §10 (2011).

Credits: L.1994, c. 16, § 18, eff. Aug. 9, 1994.

N.J.S. 45:17A-36. Validity of existing registration not affected

Nothing in this act shall affect the validity of any registration previously issued by the Attorney General, but all persons currently registered shall in all other respects be subject to the provisions of this act.

Credits: L.1994, c. 16, § 19, eff. Aug. 9, 1994.

N.J.S. 45:17A-37. Establishment of telephone information line and website

a. The Attorney General, or his or her designee, shall establish and maintain a telephone information line and an internet website which shall be readily accessible to the public which shall offer information concerning the charitable organizations, fund raising counsels, independent paid fund raisers and solicitors registered in accordance with the requirements of this act.

b. Except as provided in N.J.S. 45:17A-31(a) ~~T~~the information available to the public through the telephone information line shall include:

(1) The public information, as required by this act, provided by registration statements, reports, notices, contracts or agreements, including those between charitable organizations and fund raising counsels, independent paid fund raisers, and commercial co-venturers;

(2) The information provided by a solicitor in an application for registration and reregistration in accordance with section 11 of this act¹;

(3) any other information which the Attorney General deems appropriate.

c. In addition to the requirements specified in subsection b. of this section, the Internet database shall:

(1) be accessible from the New Jersey Division of Consumer Affairs Internet website;

(2) display all of the information required by subsection b. of this section;

- (3) be searchable by the name of the charity;
- (4) be reviewed and updated at least once per month or more frequently as new information becomes available or changes are necessary; and,
- (5) provide an opportunity for the public to submit input and feedback concerning the utility of the Internet database and recommendations for its improvement.

d. All charitable organizations, fund raising counsel, independent paid fund raisers and solicitors as defined by N.J.S. 45:17A-20, are directed to submit information as required pursuant to the rules and regulations adopted by the Attorney General pursuant to the “Administrative Procedure Act,” P.L.1968, c. 410 (C. 52:14B-1 et seq.)

e. Nothing in this section shall require the disclosure of information deemed confidential by State or federal law.

Credits: L.1994, c. 16, § 20.

Footnotes

¹ N.J.S. § 45:17A-28.

Comment

• **Attorney General or his, or her, designee**

The current statute requires the Attorney General to establish a telephone line. By regulation, N.J.A.C. 13:481.1, the Director of the Division of Consumer Affairs is charged with the administration and enforcement of the Charitable Registration and Investigation Act, N.J.S. 45:17A-18 *et seq.* The proposed modification permits the Attorney General to designate an individual to establish and maintain both the telephone information line and the Internet website. *See also* N.J.S. 45:17A-21(b), (e), (g) and (g)(1).

As enacted in 1994, the CRI only requires the Attorney General to maintain a telephone information line that members of the public may utilize to ascertain information about charitable organizations. This telephone line (973) 504-6215 is available to members of the public during ordinary business hours. Two and one-half decades later, however, the internet has become the prominent instrument to store and disseminate information to members of the public. Therefore, language has been added to this section of the statute to mandate the creation of a website to facilitate the transmission of information to members of the public via the internet. In addition, the proposed modification requires that the Attorney General, or his designee, to maintain the website. *See* <https://njconsumeraffairs.state.nj.us/public-charity-search-results/>

• **Public Record**

Pursuant to N.J.S. 45:17A-31(a), every charitable organization, unless exempted by a provision of the act, is required to keep “...complete and accurate records of its activities in this State....” Not all of the information that is maintained by a charitable organization is considered a matter of public record. These exemptions are also set forth in subsection a. of N.J.S. 45:17A-31. This information includes: the names, addresses and telephone numbers of contributors and the amounts contributed by them and the home addresses and home telephone numbers of any of the organization’s officers, directors, trustees, employees or vendors who are required to provide this information

pursuant to N.J.S. 45:17-24 (long form registration). This information is not a matter of public record and should not be available to members of the public via the telephone or the Internet website. Language to exempt this information has been added to this statutory section.

• **Internet Database**

The CRI was enacted to “protect the public from fraud and deceptive practices....” See N.J.S. 45:17A-19. In addition, the Legislature declared that, “information concerning the financial ends and means of charitable fund raising in this State must be more readily available to the citizens by whose generosity such funds are raised.” *Id.* In addition, the Legislature has granted the Attorney General the power to obtain and disseminate to the public data concerning fund raising practices of charitable organizations, professional fund raisers, and solicitors who operate in this state. *Id.* In an attempt to increase transparency and provide a single location for members of the public to identify charitable organizations, language has been added to the statute in subsections c. d. and e. identifying the information that must be set forth on the website. This language is based, in part, on the language found in New Jersey’s Local Public Contracts Law. See N.J.S. 40A:11-23.4.

N.J.S. 45:17A-38. Statement regarding information on file to appear on printed material

Any printed solicitation, written confirmation, receipt or written reminder of a contribution issued by a charitable organization, independent paid fund raiser or solicitor concerning a solicitation or contribution on behalf of a charitable organization that is registered pursuant to this act shall contain the following statement which shall be conspicuously printed:

“INFORMATION FILED WITH THE ATTORNEY GENERAL CONCERNING THIS CHARITABLE SOLICITATION AND THE PERCENTAGE OF CONTRIBUTIONS RECEIVED BY THE CHARITY DURING THE LAST REPORTING PERIOD THAT WERE DEDICATED TO THE CHARITABLE PURPOSE MAY BE OBTAINED FROM THE ATTORNEY GENERAL OF THE STATE OF NEW JERSEY BY CALLING 000-000-0000¹ AND IS AVAILABLE ON THE INTERNET AT www.xxxxxxxxxx.xxx.² REGISTRATION WITH THE ATTORNEY GENERAL DOES NOT IMPLY ENDORSEMENT.”

Credits: L.1994, c. 16, § 21. Amended by L.2005, c. 283, § 12, eff. July 8, 2006.

Footnotes

¹Charities Registration Section of the New Jersey Division of Consumer Affairs, (973) 504-6215.

²www.njconsumer.gov/ocp.htm#charity.

N.J.S. 45:17A-39. Persons covered by act

The provisions of this act shall apply to any person engaging in any of the activities

regulated by this act, including persons whose principal place of business is located outside this State.

Credits: L.1994, c. 16, § 22, eff. Aug. 9, 1994.

N.J.S. 45:17A-40. Fees

Fees shall be established, prescribed or charged by the Attorney General pursuant to his regulatory authority to the extent necessary to defray all proper expenses incurred by the Attorney General and any staff employed to administer this act, provided that fees shall not be fixed at a level that will raise amounts in excess of the amount estimated to be so required and provided, further, that any fees set by the Attorney General shall not exceed the following amounts:

a. A charitable organization which is required pursuant to section 8 of this act¹ to file a short form registration statement and received gross contributions of not more than \$10,000 during the most recently filed fiscal year shall not be required to pay an annual registration fee.

b. A charitable organization which is required pursuant to section 8 of this act to file a short form registration statement and received gross contributions in excess of \$10,000 during the most recently filed fiscal year of the organization shall pay an annual registration fee of not more than \$30 a year.

c. A charitable organization which is required pursuant to section 7 of this act² to file a long form registration statement and received gross contributions of not more than \$100,000 during the most recently filed fiscal year of the organization shall pay an annual registration fee of not more than \$60 a year.

d. A charitable organization which is required pursuant to section 7 of this act to file a long form registration statement and received gross contributions of more than \$100,000 but not more than \$500,000 during the most recently filed fiscal year of the organization shall pay an annual registration fee of not more than \$150 a year.

e. A charitable organization which is required pursuant to section 7 of this act² to file a long form registration statement and received gross contributions of more than \$500,000 during the most recently filed fiscal year of the organization shall pay an annual registration fee of not more than \$250 a year.

f. Contract filing fees established pursuant to this act shall be set at not more than \$30 for each such fee.

g. A parent organization that registers local units in accordance with the provisions of subsection e. of section 7 or subsection c. of section 8 of this act shall pay an additional fee not to exceed \$10 for each local unit.

All fees payable to the Attorney General and any civil penalties imposed by the Attorney General in accordance with the provisions of this act shall be paid to the Attorney General and shall be forwarded to the State Treasurer and become part of the General Fund. These fees and penalties shall be available to the Attorney General on a non-lapsing basis to effectuate the purposes of this act.

Credits: L.1994, c. 16, § 23, eff. Aug. 9, 1994.

Footnotes

¹ N.J.S. § 45:17A-25.

² N.J.S. § 45:17A-24.

N.J.S. 45:17A-41 Relation to electronic signatures in Global and National Commerce Act

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

Comment

• **Electronic Signatures**

The federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 *et seq.* became effective in 2000. Section 102(a) of that Act provides that a State statute may modify, limit, or supersede the provisions of section 101 of that Act with respect to state law if such statute, inter alia, specifies the alternative procedures or requirements for the use or acceptance (or both) of electronic records or electronic signatures to establish the legal effect, validity, or enforceability of contracts or other records, and (i) such alternative procedures or requirements are consistent with Titles I and II of that Act, (ii) such alternative procedures or requirements do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures; and (iii) if enacted or adopted after the date of the enactment of that Act, makes specific reference to that Act. Article 1 fulfills the first two of those three criteria; this Section fulfills the third criterion listed above.

As stated in this section, however, Article 1 does not modify, limit, or supersede Section 101(c) of the Electronic Signatures in Global and National Commerce Act (requiring affirmative consent from a consumer to electronic Charitable Registration and Investigation Act – Appendix – October 07, 2019 – Page 45

delivery of transactional disclosures that are required by state law to be in writing); nor does it authorize electronic delivery of any of the notices described in Section 103(b) of that Act.

There are currently 15 statutes that reference or utilize language virtually identical to the language set forth in this proposed modification. *See* N.J.S. 2A:23B-30; N.J.S. 2A:23C-11; N.J.S. 2A:23D-1; N.J.S. 3B:14-61.1; N.J.S. 3B:31-82; N.J.S. 12A:1-108; N.J.S. 12A:7-103; N.J.S. 12A:12-22; N.J.S. 15:18-33; N.J.S. 26:6-96; N.J.S. 42:2C-89; N.J.S. 46:26A-1; N.J.S. 46:26C-2; N.J.S. 56:8-163.