



NEW JERSEY LAW REVISION COMMISSION

Draft Final Report Regarding Proposed Changes to the Charitable Registration and Investigation Act – N.J.S. 45:17A-18 *et seq.*

December 09, 2019

The work of the New Jersey Law Revision Commission is only a recommendation until enacted.

Please consult the New Jersey statutes in order to determine the law of the State.

Please send comments concerning this Report or direct any related inquiries, to:

Samuel M. Silver, Deputy Director
New Jersey Law Revision Commission
153 Halsey Street, 7th Fl., Box 47016
Newark, New Jersey 07102
973-648-4575
(Fax) 973-648-3123
Email: sms@njlrc.org
Web site: <http://www.njlrc.org>

Executive Summary

In New Jersey, the Attorney General is the chief law enforcement officer and the chief legal officer protecting the rights of New Jersey residents.¹ Currently, the Charitable Registration and Investigation Act (“CRI” or the “Act”) articulates and confirms the role of the Attorney General in protecting charitable assets.²

The Protection of Charitable Assets Act (the “PCAA” or “Model Act”) is a model act that was prepared by the Uniform Law Commission to provide the Attorney General with an inventory of basic information about each charitable organization that operates in a given state. The PCAA is based on a minimalist or basic platform so as not to overburden either the charitable organizations or the Attorney General.³

To determine whether any, or all, portions of the Model Act would assist in protecting the citizenry of New Jersey, Staff compared the PCAA to the current New Jersey statutes that encompass this area of law.⁴

The following pages contain recommendations to modify the CRI to include certain defined terms; additional exemptions for governmental entities and certain fiduciaries; the requirement that registrants report their involvement in criminal or civil proceedings to the Attorney General; and, modernization of the Act to account for technological advancements.

Background

Helping others takes innumerable forms and emanates from countless motivations.⁵ Charitable contributions may be used to provide a wide variety of services ranging from health care and education to environmental protection.⁶ Often, the benefits of a charitable contribution extend beyond the feelings experienced by the recipient. Individuals who engage in charitable behavior may receive any one of a myriad benefits, including: economic tax breaks; social recognition; or the self-satisfaction of helping others.⁷ Traditionally, charitable organizations have capitalized on the motivations for giving in an attempt to maximize fundraising dollars.⁸

In New Jersey, there are over 34,000 organizations that are considered by the Internal Revenue Service to be public charities, private foundations, or private operating foundations

¹ OFFICE OF THE ATTORNEY GENERAL, *About Us*, <https://nj.gov/oag/aboutus.htm> (last visited June 18, 2019).

² N.J.S. 45:17A-18 *et seq.*

³ MODEL PROT. OF CHARITABLE ASSETS ACT, *Prefatory Note* at *7.

⁴ N.J.S. 45:17A-18 *et seq.*

⁵ Lalin Anik, *et al. Feeling Good about Giving: The Benefits (and Costs) of Self-Interested Charitable Behavior* *3 (Harvard Bus. Sch. Research, Working Paper No. 10-012, 2009) available at https://www.hbs.edu/faculty/Publication%20Files/10-012_0350a55d-585b-419d-89e7-91833a612fb5.pdf.

⁶ MODEL PROT. OF CHARITABLE ASSETS ACT, *Prefatory Note* *1 (2011).

⁷ See Anik, *supra* note 5, at *3.

⁸ *Id.*

which are commonly referred to as 501(c)(3) organizations.⁹ The annual expenditures of these New Jersey 501(c)(3) organizations exceeds \$42 billion dollars.¹⁰ Each year, over 1.6 million individuals volunteer at New Jersey non-profit organizations, providing over 225 million hours of service valued at more than \$5.3 billion dollars.¹¹ These organizations employ approximately 321,000 people or nearly 10% of the state's private sector work force.¹² These organizations are a substantial part of New Jersey's economy.

The success of charitable sector is predicated upon the public's confidence in the various charities.¹³ Charities that engage in abuse, fraud, or other types of misbehavior erode the public's confidence in this area.¹⁴ If potential donors fear that their contribution will be misused, they will be reluctant to provide a donation.¹⁵ The New Jersey Legislature has, therefore, taken steps to protect the public from fraud and deceptive practices.¹⁶

Charitable Registration and Investigation Act

In an effort to protect the public from fraud and deceptive practices, the New Jersey Legislature determined that it was necessary to gather information concerning the charitable fund raising activities of individuals and organizations engaged in these activities.¹⁷ Under the Charitable Registration and Investigation Act,¹⁸ the Attorney General is granted the powers necessary to obtain data concerning the fund raising practices of charitable organizations, professional fund raisers, and solicitors.¹⁹ The same Act vests the Attorney General with the authority to publish and disseminate to the public the data concerning the charities that operate in New Jersey.²⁰

For a little more than two decades, New Jersey's "Charitable Fundraising Act of 1971" regulated charitable fund raising and the solicitation of funds by law enforcement organizations.²¹ In 1994, the New Jersey Legislature repealed the Charitable Fundraising Act of 1971.^{22, 23} This Act was replaced with the "Charitable Registration and Investigation Act".²⁴ The

⁹ *New Jersey's Non-Profit Community*, NJNONPROFITS.ORG, <http://www.njnonprofits.org/NJNonprofitCom.html> (last visited Dec. 11, 2018). Citing IRS Business Master File of Exempt Organizations; DataLake Nonprofit Research (www.datalake.net) 2018; DataLake, LLC; Corporation for National & Community Service; Bureau of Labor Statistics; Independent Sector; and, Johns Hopkins University.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ MODEL PROT. OF CHARITABLE ASSETS ACT, *Prefatory Note* at *1.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ N.J.S. 45:17A-19.

¹⁷ *Id.*

¹⁸ N.J.S. 45:17A-18.

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

²⁰ N.J.S. 45:17A-19. See N.J.S. 45:17A-21(g).

²¹ A839, 1994 Leg., 206th Ses., No. 1, *Assembly Commerce & Reg. Prof. Comm. Stmt.* (N.J. 1994).

²² N.J.S. 45:17A-1 – 17 was repealed effective August 9, 1994.

twofold purpose of this Act is to: (1) increase the Attorney General’s “ability to collect [and disseminate] information useful to New Jersey contributors and [(2)] take strong action against those individuals who would defraud or abuse the public’s generosity for their own personal gain.”²⁵

The passage of the Charitable Registration and Investigation Act ushered in a new era of regulating charitable organizations conducting business in New Jersey. One of the hallmarks of the CRI is the requirement that every charitable organization operating or soliciting within this State, with limited exception, is required to file a “long form registration” with the Attorney General.²⁶ In addition, the CRI makes it “unlawful for any person²⁷ to act as a fund raising counsel²⁸ or an independent paid fund raiser²⁹ unless registered annually with the Attorney General.”³⁰ Pursuant to the CRI, religious entities³¹, certain educational institutions³², and charitable organizations that do not receive gross contributions in excess of \$10,000 during a fiscal year³³ are exempt from registering with the Attorney General.³⁴ The failure of an individual or organization to comply with the statutory requirements of the CRI, may be met with strong action by the Attorney General.

In New Jersey, the Legislature vested the Attorney General with a broad range of powers believed to be necessary to preserve the integrity of New Jersey’s charitable organizations and protect the citizenry from unscrupulous actors. If it is in the public interest to inquire whether a

²³ In 2006, selected statutes within the Act would be added or amended by L.2005, c.283. *See* N.J.S. 45:17A-22; N.J.S. 45:17A-24; N.J.S. 45:17A-25; N.J.S. 45:17A-26; N.J.S. 45:17A-27; N.J.S. 45:17A-28; N.J.S. 45:17A-29; N.J.S. 45:17A-30; N.J.S. 45:17A-30.1 (added); N.J.S. 45:17A-32 (previously amended in by L., 1998, c 123); N.J.S. 45:17A-33; N.J.S. 45:17A-38.

²⁴ N.J.S. 45:17-18 *et seq.*

²⁵ A839, 1994 Leg., 206th Ses., No. 1, *Assembly Commerce & Reg. Prof. Comm. Stmt.* (N.J. 1994) (statement of Assemb. Jeffrey W. Moran).

²⁶ N.J.S. 45:17A-24. *See* N.J.S. 45:17A-25 for the four categories of organizations and individuals who are permitted to file a short form registration with the Attorney General.

²⁷ N.J.S. 45:17A-20 defines “person” as an individual, corporation, association, partnership, trust, foundation or any other entity, however established within or without this State.

²⁸ N.J.S. 45:17A-20 defines “Fund raising counsel” to mean any person, including, but not limited to, any assignee, subcontractor, independent contractor or successor in interest, who is retained by a charitable organization for a fixed fee or rate to plan, manage, advise, consult or prepare material for or with respect to the solicitation in this State of contributions for a charitable organization, but who does not solicit contributions or employ, procure or engage any compensated person to solicit contributions....

²⁹ N.J.S. 45:17A-20 defines “Independent paid fund raiser” to mean any person, including, but not limited to, any assignee, subcontractor, independent contractor or successor in interest, who for compensation performs for or on behalf of a charitable organization any service in connection with which contributions are or will be solicited in this State by that compensated person or by any compensated person he employs, procures, or engages, directly or indirectly to solicit contributions. A bona fide salaried officer, employee, or volunteer of a charitable organization shall not be deemed to be an independent paid fund raiser.

³⁰ N.J.S. 45:17A-27.

³¹ N.J.S. 45:17A-26(a).

³² N.J.S. 45:17A-26(b).

³³ N.J.S. 45:17A-26(c).

³⁴ N.J.S. 45:17A-26 *et seq.* *See infra* discussion of additional model exemptions from the model act that are worthy of consideration.

violation may exist, the Attorney General may conduct an investigation to determine whether such a transgression exists.³⁵ If it appears that an abuse of the CRI “has occurred, is occurring or will occur, the Attorney General... may seek and obtain in a summary proceeding... an injunction prohibiting the act or practice.”³⁶ In addition, the Attorney General may request that a court hold a recalcitrant registrant in contempt.³⁷

After providing the parties with notice and an opportunity to be heard, the Attorney General may revoke, or suspend the registration of a registrant upon a finding that he, or she, has engaged in any one of the forms of misconduct set forth in the statute.³⁸ In addition to any other relief authorized by the CRI, or any other law, the Attorney General may also seek the imposition of substantial civil penalties against those who “any provision of this act.”³⁹ The civil penalties under the Act are \$10,000 for a first violation, \$20,000 for a second violation, and for a third or any succeeding violation, the penalty shall not exceed \$20,000.⁴⁰

Although the CRI appears to be fairly comprehensive, there are some who believe that this area of the law could benefit from additional regulation. In January 2018, the Center for Non-Profits conducted an on-line survey to assess how New Jersey non-profits fared in 2017 and to determine their outlook for the coming year.⁴¹ Fifteen percent (15%) of those surveyed responded that charitable registration/solicitation laws and regulations were among the most important issues to be addressed to maintain and improve the non-profit sector in the next decade.⁴²

Consistent with the Commission’s mandate to consider the suggestions and recommendations of the Uniform Law Commission⁴³, Staff compared the CRI to the Model Protection of Charitable Assets Act (the “Model Act” or “PCAA”)⁴⁴ to determine whether the New Jersey statutes could benefit from the language found in the Model Act.

³⁵ N.J.S. 45:17A-33(c)(1) – (8).

³⁶ N.J.S. 45:17A-33(e).

³⁷ N.J.S. 45: 17-34(g)(1).

³⁸ N.J.S. 45:17A-33(b)(1) – (7). *See* N.J.S. 45:17A-33(g) (setting forth the consequences for the failure or refusal to file any statement or report, answer a subpoena, or grant access to premises where charitable activities are conducted. *See* N.J.S. 45:17A-33(h) (directing that an individual testifies or produce data to the Attorney General regardless if its incriminatory nature and providing for immunity from subsequent prosecution).

³⁹ N.J.S. 45:17A-34(d).

⁴⁰ N.J.S. 45:17A-33(d).

⁴¹ CENTER FOR NON-PROFITS, *New Jersey Non-Profits 2018: Trends and Outlook* (Apr. 2018) (available at <http://www.njnonprofits.org/2018AnnualSurveyRpt.pdf>).

⁴² *Id.* at *11.

⁴³ N.J.S. 1:12A-8.

⁴⁴ MODEL PROT. OF CHARITABLE ASSETS ACT (2011).

Model Protection of Charitable Assets Act

The Model Protection of Charitable Assets Act (the “Model Act”) is based on a minimalist or basic platform.⁴⁵ The basic approach of this act is to “create a model, all or part of which would be useful to all of the states.”⁴⁶ The Model Act is broken down into fourteen sections.⁴⁷ By contrast, the Charitable Registration and Investigation Act is comprised of twenty-four statutes.⁴⁸ A side-by-side comparison of the Model Act to the CRI follows.

<u>Model Act</u>	<u>Charitable Reg. & Inv. Act.</u>
Sec. 1. Short Title	N.J.S. 17A-18 Short Title
Sec. 2. Definitions	N.J.S. 17A-20 Definitions
Sec. 3. Authority of Atty. Gen.	N.J.S. 17A-21 Duties of Atty. Gen.
Sec. 4. Registration	N.J.S. 17A-23 –17A:28 Registration
Sec. 5. Annual Report	N.J.S. 17A-23 Filing of Registration N.J.S. 17A-24(d)(1) Long Form Reg. ⁴⁹ N.J.S. 17A-25(a)(1) Short Form Reg. ⁵⁰
Sec. 6. Notice to Atty. Gen. Reportable Event	No N.J. Statutory Counterpart. ⁵¹
Sec. 7. Notice to Atty. Gen. of Action	No N.J. Statutory Counterpart. ⁵²
Sec. 8. Waiver of Filing of Registration	N.J.S. 45:17A-26 Exemptions.
Sec. 9. Fees	N.J.S. 45:17A-40 Fees.
Sec. 10. Cooperation with Other Official	No N.J. Statutory Counterpart. ⁵³
Sec. 11. Public Records	N.J.S. 45:17A-26(b) Exemptions. N.J.S. 45:17A-30(c) Disclosure N.J.S. 45:17A-37 Est. of Tel. Info.
Sec. 12. Relation to Electronic Sig.	No N.J. Statutory Counterpart. ⁵⁴

⁴⁵ *Id.* See Prefatory Note at *7.

⁴⁶ *Id.*

⁴⁷ MODEL PROT. OF CHARITABLE ASSETS ACT (2011).

⁴⁸ N.J.S. 45:17A-18 – 40.

⁴⁹ N.J.S. 45:17A-24(d)(1) requires that every charitable organization required to file a long form registration shall file an annual financial report with the Attorney General.

⁵⁰ N.J.S. 45:17A-25(a)(1) provides that charitable organizations with “...gross contributions...are in excess of \$25,000 it shall...register with and report to the Attorney General as required by [N.J.S. 45:17A-24].”

⁵¹ “No statutory counterpart” pertains to similar statutory provisions in the CRI Act.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

Sec. 13. Repeals

Not Applicable

Sec. 14. Effective Date

Not Applicable

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

Reportable Events

The Model Act requires that a charitable organization notify the Attorney General about a limited number of significant events that might occur in the life of a person⁵⁵ who is working with charitable assets.⁵⁶ These noteworthy events include: dissolution⁵⁷ or termination⁵⁸ of the person; disposition of all of the charitable assets of the person⁵⁹; removal of the person⁶⁰ or significant charitable assets from this state⁶¹; or, amendment of the record that describes the organization's charitable purpose.

Under the Model Act, the onus is on the registrant to notify the Attorney General of events that raise opportunities for the misapplication of charitable assets.⁶² The purpose of this provision is to provide the Attorney General with the opportunity to “monitor the events in time to prevent problems or to correct problems that have already arisen.”⁶³ The addition of these provisions is consistent with the general purpose of the CRI.

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

Actions or Proceedings

The Model Act also requires that the Attorney General be notified of civil proceedings that may affect the assets, structure, or governance of a charitable organization.⁶⁴ Pursuant to the Model Act, the notification requirement would be triggered in an action: by, against, or on behalf of a person holding a charitable asset in which the relief sought relates to a gift of a charitable

⁵⁵ See MODEL PROT. OF CHARITABLE ASSETS ACT at §2 for the definition of “person.”

⁵⁶ *Id.* See Comment to §6 at *39.

⁵⁷ *Id.* at §6(a)(1).

⁵⁸ *Id.* at §6(a)(2).

⁵⁹ *Id.* at §6(a)(3).

⁶⁰ *Id.* at §6(a)(4).

⁶¹ *Id.* at §6(a)(5).

⁶² *Id.* at *39 (2011).

⁶³ *Id.*

⁶⁴ *Id.* See Comment to §7 at *40.

asset⁶⁵; concerning the use of a charitable asset or a breach of a fiduciary duty⁶⁶; seeking injunctive relief⁶⁷, construction⁶⁸, modification, reformation, interpretation, or termination of a record under which a charitable assets is held⁶⁹; matters concerning a trustee of a charitable trust⁷⁰; challenges to the administration or a distribution from the estate or trust in which matters affecting a charitable asset may be decided⁷¹; and bankruptcy, receivership, or insolvency proceedings.⁷²

The goals of the CRI and the Model Act are to protect the public from fraud and deceptive practices by providing both the public and the Attorney General with information about charitable organizations.⁷³ To accomplish this end, it is necessary for the Attorney General to be in receipt of information the absence of which could compromise the integrity of the charitable process.

Exemptions

The New Jersey Legislature has determined that there are several organizations that are exempt from the registration requirements of the CRI. The organizations exempt from registering with the Attorney General include: certain religious corporations⁷⁴; educational institutions⁷⁵; charitable organizations who do not receive gross contributions in excess of \$10,000 during a fiscal year⁷⁶; and, local units of parent organizations that meet specific statutory filing requirements.⁷⁷ The exemptions permitted under the Model Act are far more generous.

The Model Act, in contrast with the CRI, provides for six additional entities and individuals be granted an exemption from the charitable registration process. The exemptions suggested by the Model Act include: governmental subdivisions⁷⁸; political, lobbying and advocacy groups⁷⁹; financial institutions⁸⁰; and, wills and revocable trusts.⁸¹

⁶⁵ *Id.* at §7(a)(1).

⁶⁶ *Id.* at §7(a)(2).

⁶⁷ *Id.* at §7(a)(3)(A).

⁶⁸ *Id.* at §7(a)(3)(B).

⁶⁹ *Id.* at §7(a)(3)(C).

⁷⁰ *Id.* at §7(a)(3)(D).

⁷¹ *Id.* at §7(a)(3)(E).

⁷² *Id.* at §7(a)(4).

⁷³ See N.J.S. 45:17A-19 and MODEL PROT. OF CHARITABLE ASSETS ACT, *Prefatory Note* at *1.

⁷⁴ N.J.S. 45:17A-26(a).

⁷⁵ N.J.S. 45:17A-26(b).

⁷⁶ N.J.S. 45:17A-26(c).

⁷⁷ N.J.S. 45:17A-26(d).

⁷⁸ MODEL PROT. OF CHARITABLE ASSETS ACT, at §7(c)(1).

⁷⁹ *Id.* at §7(c)(2) and (c)(6).

⁸⁰ *Id.* at §7(c)(3).

⁸¹ *Id.* at §7(c)(4) and (c)(5).

Conclusion

The proposed revisions, contained in the attached *Appendix*, are designed to enhance the clarity and legislative purpose of the CRI. In addition, the modifications proposed by the NJLRC and are intended to be consistent with the recommendations of the Uniform Law Commission, as set forth in the PCAA.