



approval of model protection of charitable assets act

MSK Client Alert

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by Jeffrey D. Davine

On July 13, 2011, the Uniform Law Commission approved the "Model Protection of Charitable Assets Act" (the "Act") at the Commission's annual meeting in Colorado.

The Act replaces the Uniform Supervision of Trustees for Charitable Purposes Act that was passed in 1954 (only a small number of states adopted this model act).

According to the Uniform Law Commission, the goal of the Act is to protect the role of the states with respect to charitable assets by clarifying the role of the Attorney General.

The Uniform Law Commission issued a brief description of the Act. It provides as follows:

The Model Protection of Charitable Assets Act will articulate and confirm the role of the state Attorney General in protecting charitable assets. The Attorney General's authority is broad and this Act will not limit or narrow that authority. The Act provides the Attorney General (the term is used in the act to mean the charity regulator in the state) with an inventory of basic information without overburdening the charities or the Attorney General with excessive reporting requirements. The Act specifies which transactions and legal proceedings require notice to the Attorney General and provides for registration and annual reports for some charities.

The basic terms of the Act require all persons (which includes individuals and entities) holding or administering more than \$5,000 in charitable assets to provide certain basic information to the Attorney General within the state where the assets are held, file an annual report with the charity regulator in that state, and notify the state of any "life events," such as a merger, dissolution or

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disposition of assets.

The fact that the Act was approved by the Uniform Law Commission doesn't necessarily mean that it will be adopted by any particular state. It simply serves as a model that may be adopted (either in whole or in part) by states in order to regulate nonprofit entities. To date, no states have adopted the Act.

Unfortunately, a number of the Act's provisions are less than clear. As a result, if adopted in its current form, it is possible that the Act could be used as a fairly blunt instrument by regulators by purportedly giving them license to engage in "fishing expeditions" that go beyond the scope of what the Uniform Law Commission may have intended. On the other hand, adoption of the Act (and the imposition of its reporting obligations) may provide additional transparency into the operations of charities and may give donors added confidence that funds contributed to charities that are subject to the Act will be used efficiently and in the manner intended. This, in turn, could lead to increased contributions by donors.

It is interesting to note that some states, including California and New York, have already enacted statutes that are more robust than what is required by the Act. For these states, approval of the Act by the Uniform Law Commission is not likely to have a significant impact.

The Act may be found at the Uniform Law Commission's website - www.uniformlaws.org.

If you have any questions about this Alert, please contact the author or any member of the MSK Charitable Sector Practice Group.