

Introduced by

(Commission on Uniform State Laws)

1 A BILL for an Act to create and enact chapter 10-37 of the North Dakota Century Code, relating
2 to the Model Protection of Charitable Assets Act; and to provide a penalty.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** Chapter 10-37 of the North Dakota Century Code is created and enacted as
5 follows:

6 **10-37-01. Definitions.**

- 7 1. "Charitable asset" means property that is given, received, or held for a charitable
8 purpose. The term does not include property acquired or held for a for-profit purpose.
9 2. "Charitable purpose" means the relief of poverty, the advancement of education or
10 religion, the promotion of health, the promotion of a governmental purpose, or any
11 other purpose the achievement of which is beneficial to the community.
12 3. "Record" means information that is inscribed on a tangible medium or that is stored in
13 an electronic or other medium and is retrievable in perceivable form.
14 4. "Responsible individual" means an individual who, with respect to a person holding
15 charitable assets:
16 a. Is generally familiar with the affairs of the person; and
17 b. Participates, directly or indirectly, in the control or management of the person.
18 5. "State" means a state of the United States, the District of Columbia, Puerto Rico, the
19 United States Virgin Islands, or any territory or insular possession subject to the
20 jurisdiction of the United States.

21 **10-37-02. Authority of attorney general to protect charitable assets.**

- 22 1. The attorney general shall represent the public interest in the protection of charitable
23 assets and may:
24 a. Enforce the application of a charitable asset in accordance with:

- 1 (1) The law and terms governing the use, management, investment,
2 distribution, and expenditure of the charitable asset; and
3 (2) The charitable purpose of the person holding the asset;
4 b. Act to prevent or remedy:
5 (1) The misapplication, diversion, or waste of a charitable asset; or
6 (2) A breach of fiduciary or other legal duty in the governance, management, or
7 administration of a charitable asset; and
8 c. Commence or intervene in an action to:
9 (1) Prevent, remedy, or obtain damages for:
10 (a) The misapplication, diversion, or waste of a charitable asset; or
11 (b) For a breach of fiduciary or other legal duty in the governance,
12 management, or administration of a charitable asset;
13 (2) Enforce this chapter; or
14 (3) Determine that an asset is a charitable asset.
15 2. In an action commenced by the attorney general pursuant to this section, the court
16 may remove any officer, director, or responsible individual who has engaged in:
17 a. The misapplication, diversion, or waste of a charitable asset;
18 b. A breach of fiduciary or other legal duty in the governance, management, or
19 administration of a charitable asset; or
20 c. Fraudulent or dishonest conduct, or gross abuse of authority or discretion, with
21 respect to a charitable asset.
22 3. Whenever it appears to the attorney general that a person has engaged in, or is
23 engaging in, any practice in violation of this chapter or other provisions of law, or when
24 the attorney general believes it to be in the public interest to investigate whether a
25 person has in fact engaged in, is engaging in, or is about to engage in, any unlawful
26 practice under this chapter, or it is otherwise necessary to protect charitable assets,
27 the attorney general may conduct an investigation, and in enforcing this chapter, has
28 all the powers provided in this chapter or chapter 50-22 or 51-15, and may seek all
29 remedies in this chapter or chapter 50-22 or 51-15.
30 4. This chapter does not impair the rights and powers of the attorney general or courts of
31 this state with respect to any charitable assets. This chapter is in addition to, and does

1 not supersede, any other authority of the attorney general established by statute, case
2 law, or common law.

3 5. The attorney general may bring an investigation or action pursuant to this chapter in
4 the county in which the charitable assets are held, in the county in which the person
5 holding the assets is located, or in Burleigh County.

6 **10-37-03. Notice to attorney general of action or proceeding.**

- 7 1. This section applies to an action or proceeding in this state in a federal or state court:
- 8 a. By, against, or on behalf of a person holding a charitable asset in which the relief
9 sought relates to a gift of a charitable asset;
- 10 b. Concerning the use of a charitable asset or a breach of duty or other obligation
11 owed to a person holding a charitable asset;
- 12 c. By, against, or on behalf of a person holding a charitable asset in which the relief
13 sought includes:
- 14 (1) Instruction, injunction, or declaratory relief relating to the management, use,
15 or distribution of a charitable asset;
- 16 (2) Construction of a record under which a charitable asset is held;
- 17 (3) Modification, reformation, interpretation, or termination of the terms of a
18 record under which a charitable asset is held;
- 19 (4) Removal, appointment, or replacement of a trustee of a charitable trust; or
20 (5) A challenge to the administration of or a distribution from a decedent's
21 estate or a trust in which matters affecting a charitable asset may be
22 decided; and
- 23 d. For bankruptcy under federal law, receivership under applicable state
24 receivership law, or a similar receivership law of another state, or relief in any
25 other insolvency proceeding.
- 26 2. If an action or proceeding to which this section applies is commenced by or brought
27 against a person in this state, the party seeking relief shall give notice in a record to
28 the attorney general. The notice must include a copy of the initial pleading. An order,
29 decree, or judgment rendered in an action in which notice is required by this section is
30 not binding on the attorney general if the notice has not been given.

1 **10-37-04. Civil penalties - Costs recoverable.**

2 In any action brought under this chapter or under other provisions of law, including chapter
3 50-22 or 51-15, the court shall award to the attorney general reasonable attorney's fees,
4 investigation fees, costs, and expenses for any investigation and action brought under this
5 chapter, or under other provisions of law, including chapter 50-22 or 51-15. The court shall
6 award the attorney general a civil penalty of not more than five thousand dollars for each
7 violation of this chapter or for each violation of chapter 50-22 or 51-15. A violation of this chapter
8 constitutes a violation of chapter 51-15. The remedies, duties, prohibitions, and penalties of this
9 chapter are not exclusive and are in addition to all other causes of action, remedies, and
10 penalties as provided in chapter 50-22 or 51-15, and as otherwise provided by law. All civil
11 penalties, attorney's fees, investigation fees, costs, and expenses received by the attorney
12 general under this chapter must be deposited into the attorney general refund fund.

13 **10-37-05. Cooperation with other official.**

- 14 1. The attorney general may cooperate with an official of this state, another state, the
15 United States, a foreign government, or a governmental subdivision, agency, or
16 instrumentality of any of the foregoing charged with protecting charitable assets.
- 17 2. The attorney general may:
- 18 a. Notify an official described in subsection 1 of the commencement, status, or
19 resolution of an investigation or proceeding pursuant to this chapter;
- 20 b. Make available to the official information relating to a charitable asset which is
21 relevant to the official's protection of charitable assets; or
- 22 c. Request from the official information relevant to an investigation pursuant to
23 section 10-37-02.

24 **10-37-06. Relation to Electronic Signatures in Global and National Commerce Act.**

25 This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global
26 and National Commerce Act [15 U.S.C. 7001 et seq.] but does not modify, limit, or supersede
27 section 101(c) of that Act [15 U.S.C. 7001(c)] or authorize electronic delivery of any of the
28 notices described in section 103(b) of that Act [15 U.S.C. 7003(b)].