AN ACT
RELATING TO CHARITABLE ORGANIZATIONS; AMENDING TITLE 48, IDAHO CODE, BY THE
ADDITION OF A NEW CHAPTER 19, TITLE 48, IDAHO CODE, TO PROVIDE A SHORT
TITLE, TO PROVIDE LEGISLATIVE FINDINGS AND INTENT, TO DEFINE TERMS, TO
PROVIDE THAT RIGHTS AND POWERS OF THE COURTS SHALL NOT BE IMPAIRED, TO
PROVIDE THAT CERTAIN PERSONS SHALL BE EXCLUDED, TO PROVIDE FOR CERTAIN
UNLAWFUL ACTS AND FOR EXCEPTIONS, TO PROVIDE FOR THE SALE OR TRANSFER OF
CHARITABLE ASSETS, TO PROVIDE FOR INVESTIGATORY AUTHORITY OF THE ATTORNEY
GENERAL, TO PROVIDE FOR VOLUNTARY COMPLIANCE AND A CONSENT JUDGMENT
IN CERTAIN INSTANCES, TO AUTHORIZE CERTAIN PROCEEDINGS BY THE ATTORNEY
GENERAL, TO PROVIDE FOR SERVICE OF NOTICE, TO PROVIDE PENALTIES FOR
CERTAIN VIOLATIONS, TO PROVIDE FOR THE DISPOSITION OF CERTAIN PENAL-
TIES AND FEES RECOVERED, AND TO PROVIDE FOR THE CONVEYANCE OF RECOVERED
CHARITABLE ASSETS AND FOR RESTITUTION RECOVERED; AND AMENDING SECTION
67-1401, IDAHO CODE, TO REVISE A CERTAIN DUTY OF THE ATTORNEY GENERAL
AND TO MAKE A TECHNICAL CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 48, Idaho Code, be, and the same is hereby amended
by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
ter 19, Title 48, Idaho Code, and to read as follows:

CHAPTER 19
IDAHO CHARITABLE ASSETS PROTECTION ACT

48-1901. SHORT TITLE. This chapter shall be known and may be cited as
the "Idaho Charitable Assets Protection Act."

48-1902. LEGISLATIVE FINDINGS AND INTENT. (1) The state of Idaho is
home to thousands of charitable organizations that, collectively, hold bil-
ions of dollars in charitable assets. Charitable organizations have a le-
gal duty to use their charitable assets according to the charitable purposes
designated in their governing documents. The legislature is aware, however,
that misuse or misappropriation of charitable assets occurs to the harm of
the charitable purposes for which they were donated and the communities that
were intended to be benefitted by the charitable donation.

(2) The attorney general, as the state of Idaho's chief legal officer,
has a legal duty to ensure that charitable assets are used for their intended
purposes.

(3) The current law governing the attorney general's authority over
charitable organizations holding charitable assets does not adequately de-
fine the attorney general's duties and enforcement authorities. Further,
Idaho law has not effectively defined the attorney general's authority to
address a person's unlawful misuse or misappropriation of charitable assets.

(4) Therefore, through this chapter, it is the legislature's intent to:
(a) Define the attorney general's duties to protect charitable assets from misuse or misappropriation and to provide the attorney general with the necessary authority and enforcement tools to protect charitable assets; and
(b) Provide a procedure for notifying the attorney general before certain charitable organizations dissolve, convert to a noncharitable organization, terminate, or otherwise dispose of their charitable assets.
(5) The provisions of this chapter are remedial and shall be construed and applied liberally to accomplish the purposes provided for in this section and to protect Idaho charitable assets.

48-1903. DEFINITIONS. As used in this chapter:
(1) "Accountable person" means a director, officer, executive, manager, trustee, agent, or employee of a charitable organization.
(2) "Attorney general" means the attorney general of the state of Idaho or the attorney general's designee.
(3) "Charitable asset" means any interest in real or personal property and any other article, commodity, or thing of value that is impressed with a charitable purpose but does not include private assets held in a split-interest trust, as described in section 4947(a)(2) of the Internal Revenue Code, as referenced in section 63-3004, Idaho Code.
(4) "Charitable organization" means a person who holds charitable assets regardless of the legal form.
(5) "Charitable purpose" means the relief of poverty, the advancement of knowledge, education, or religion, or the promotion of health, the environment, civic or patriotic matters, or any other purpose, the achievement of which is beneficial to the community.
(6) "Person" has the same meaning as that term is defined in section 15-1-201(34), Idaho Code.

48-1904. COURTS NOT IMPAIRED -- CONFLICT OF LAWS. Nothing in this chapter shall impair the rights and powers of the courts of this state with respect to any charitable organization.

48-1905. PERSONS EXCLUDED. The provisions of this chapter shall not apply to:
(1) A state or federally chartered bank, savings bank, savings and loan association, thrift institution, trust company, or credit union; or
(2) An individual who is acting within the scope of his position and duties as a director, officer, executive, manager, or employee of a person described in subsection (1) of this section.

48-1906. UNLAWFUL ACTS. (1) It is unlawful for an accountable person or charitable organization to knowingly use, or allow to be used, the charitable organization's charitable assets in a manner that is inconsistent with:
(a) Law applicable to the charitable asset;
(b) The restrictions contained in a gift instrument regarding the charitable assets; provided, however, that nothing in this section shall prevent a person from seeking a release or modifying the charitable purposes or restrictions contained in a gift instrument, pursuant to section 33-5006, Idaho Code, or other applicable Idaho law; or
(c) The charitable purpose of the charitable organization that holds the charitable asset.

(2) An accountable person is not liable under this section if the accountable person:
(a) Discharged his duties as an accountable person in compliance with the standards of conduct set forth in sections 30-30-618 and 30-30-623, Idaho Code, irrespective of whether the accountable person would otherwise be subject to the provisions of such sections;
(b) Acted in compliance with the applicable trust instrument and that trust instrument complies with Idaho law;
(c) Qualifies for immunity under section 6-1605, Idaho Code; or
(d) Acted in compliance with a court order regarding a matter for which the attorney general received timely notice as provided by applicable law, thereby providing the attorney general time to file any objection and be heard by the court regarding the matter.

48-1907. SALE OR TRANSFER OF CHARITABLE ASSETS. (1) A charitable organization that holds, or within the preceding twelve (12) months received or at any time held, charitable assets with a fair market value in the aggregate exceeding ten thousand dollars ($10,000) shall provide written notice to the attorney general of the charitable organization's intent to dissolve, convert to a noncharitable organization, terminate, or dispose of all of its charitable assets. In addition, a charitable organization that holds, or within the preceding twelve (12) months received or at any time held, charitable assets with a fair market value in the aggregate exceeding ten thousand dollars ($10,000) shall provide written notice to the attorney general of the charitable organization's intent to dispose of substantially all of its charitable assets if such charitable organization has no reasonable expectation it will hold charitable assets with a fair market value in the aggregate exceeding ten thousand dollars ($10,000) in the next twenty-four (24) months.

(2) This section shall not apply to a charitable organization that is subject to the provisions of:
(a) Chapter 15, title 48, Idaho Code, where notice is timely provided to the attorney general, as provided therein; or
(b) Section 68-1204, Idaho Code, where notice is timely provided to the attorney general, as provided therein.

(3) Written notice to the attorney general under this section must include, at a minimum, the following:
(a) Legal names and mailing addresses of the directors and officers of the charitable organization;
(b) A description of the charitable assets and the charitable purpose of the assets; and
(c) A copy or summary of the plan of dissolution, conversion to a non-
charitable organization, or termination and disposal of the charitable
organization's charitable assets.

(4) Subject to subsection (8) of this section, no charitable assets
shall be disposed of, transferred, or conveyed by a charitable organization
subject to this section until at least thirty (30) days after it has given
notice required by this section to the attorney general or until the attorney
general has consented in writing to the actions set forth in the charitable
organization's written notice or indicated in writing that he will take no
action with respect to the proposed dissolution, conversion, or termination
and disposal of the charitable organization's charitable assets, whichever
is earlier.

(5) Failure to comply with the notice requirements of this section
subjects the charitable organization's accountable persons to liability as
provided by this chapter.

(6) A charitable organization that has provided notice under subsec-
tions (1) and (3) of this section and has not received a written response from
the attorney general after thirty (30) days of giving such notice may proceed
with the proposed dissolution, conversion to a noncharitable organization,
or termination and disposal of charitable assets and be deemed in compliance
with subsections (1) and (3) of this section.

(7) Within ninety (90) days of completion of the proposed dissolution,
conversion to a noncharitable organization, or termination and disposal of
all or substantially all of its charitable assets, the charitable organiza-
tion's board shall deliver to the attorney general a list of who received the
assets. The list shall include the address of each person who received the
assets and indicate what assets each received.

(8) If the attorney general opposes, in writing, a proposed dissolu-
tion, conversion to a noncharitable organization, or termination and dis-
posal of all or substantially all of a charitable organization's charitable
assets, as set forth in the charitable organization's notice under subsec-
tions (1) and (3) of this section, the charitable organization may not pro-
ceed forward with the actions proposed in its written notice for at least
fourteen (14) days after the attorney general's written response has been
issued to allow the attorney general, in his discretion, to file suit seek-
ing to block the charitable organization's proposed dissolution, conversion
to a noncharitable organization, or termination and disposal of its charita-
able assets, or otherwise to resolve the matter with the affected parties pur-
suant to section 48-1909, Idaho Code.

(9) If the attorney general files a lawsuit seeking to block a charita-
table organization's proposed dissolution, conversion to a noncharitable or-
ganization, or termination and disposal of charitable trust assets, the dis-
trict court shall review, de novo, the charitable organization's proposal to
determine if it is in compliance with charitable trust law. If the attor-
ney general does not file a lawsuit within the fourteen (14) days provided
in this section, the charitable organization may proceed with the proposed
dissolution, conversion to a noncharitable organization, or termination and
disposal of charitable assets and be deemed in compliance with subsections
(1) and (3) of this section.
48-1908. INVESTIGATORY AUTHORITY OF ATTORNEY GENERAL. Whenever the
attorney general has reason to believe that an accountable person or char-
itable organization has violated or is violating the provisions of section
48-1906, 48-1907, or 48-1909, Idaho Code, the attorney general may:

(1) Serve investigative demands using the same procedures and in the
same manner as described in section 48-611, Idaho Code;

(2) Issue subpoenas and conduct hearings using the same procedures and
in the same manner as described in section 48-612, Idaho Code;

(3) Apply to the district court for compliance orders using the same
procedures and in the same manner as described in section 48-614, Idaho Code;

(4) Retain certified fraud examiners, accountants, appraisers, and
other experts to assist the attorney general with the attorney general's
investigation.

48-1909. VOLUNTARY COMPLIANCE -- CONSENT JUDGMENT -- DISTRICT COURT
APPROVAL. (1) In lieu of initiating or continuing an investigation or action
or proceeding under this chapter, the attorney general may accept an assur-
ance of voluntary compliance or consent judgment from a person who the attor-
ney general has reason to believe violated or is violating the provisions of
section 48-1906 or 48-1907, Idaho Code.

(2) Such assurance of voluntary compliance or consent decree shall com-
ply with the provisions of section 48-610, Idaho Code, for assurances of vol-
untary compliance and section 48-606(4), Idaho Code, for consent judgments
and have the same effect as set forth in those provisions with the addition
that such assurances of voluntary compliance and consent judgments may also
include provisions that require the person signing the document to report to
the attorney general concerning the charitable assets or charitable organi-
zation or to perform specific acts relating to the charitable organization.

(3) Matters closed pursuant to this section may at any time be reopened
by the attorney general for further proceedings in the public interest pur-
suant to the procedures set forth in section 48-1910, Idaho Code.

48-1910. PROCEEDINGS BY ATTORNEY GENERAL. (1) Whenever the attorney
general has reason to believe that a person violated or is violating the pro-
visions of section 48-1906, Idaho Code, the attorney general, acting in the
public interest, may bring an action in the name of the state against such
person:

(a) To enjoin any action that constitutes a violation of this chapter by
issuance of a temporary restraining order or preliminary or permanent
injunction, upon the giving of appropriate notice to the alleged viola-
tor as provided in the Idaho rules of civil procedure;

(b) To obtain appointment of a master, receiver, or escrow agent to
gather, account for, and oversee the charitable assets of the alleged
violator and prevent further the dissipation of such assets;

(c) To remove the alleged violator from his position as an accountable
person of the charitable organization;

(d) To terminate a charitable organization and liquidate its charita-
ble assets in accordance with its governing instrument or applicable
law;
(e) To recover from the alleged violator damages or restitution of any charitable assets misappropriated, lost, or diverted in violation of section 48-1906, Idaho Code;
(f) To recover from the alleged violator civil penalties of up to fifty thousand dollars ($50,000), as determined by the district court;
(g) To obtain specific performance from the alleged violator;
(h) To recover from the alleged violator the attorney general's reasonable expenses, investigative costs, and attorney's fees; and
(i) To obtain other appropriate relief.
(2) Whenever the attorney general has reason to believe that a charitable organization violated or is violating the provisions of section 48-1907, Idaho Code, the attorney general, acting in the public interest, may bring an action in the name of the state against such organization and any agents of the organization:
(a) To enjoin any action dissolving the charitable organization, or the dissolving, converting to a noncharitable organization, terminating, or disposing of all or substantially all of the charitable organization's charitable assets by issuance of a temporary restraining order or preliminary or permanent injunction, upon the giving of appropriate notice to the alleged violator as provided in the Idaho rules of civil procedure;
(b) To obtain appointment of a master, receiver, or escrow agent to gather, account for, and oversee charitable assets whenever it shall appear that all or substantially all of the charitable organization's charitable assets may be dissolved, converted, terminated, or disposed of during the course of the proceedings;
(c) To terminate a charitable organization and liquidate its charitable assets in accordance with its governing instrument or applicable law;
(d) In cases where the charitable organization's accountable person or persons knew of and intended to violate the notice provisions of section 48-1907, Idaho Code, to recover from the charitable organization's accountable persons civil penalties of up to five thousand dollars ($5,000), as determined by the district court; and
(e) To obtain other appropriate relief.
(3) The action may be brought in the district court of the county in which the alleged violator resides or, with consent of the parties, may be brought in the district court of Ada county. The action may be brought in any district court in this state if the alleged violator resides outside of the state.

48-1911. SERVICE OF NOTICE. Service of any notice, demand, or subpoena under this chapter shall be made pursuant to section 48-613, Idaho Code.

48-1912. VIOLATION OF INJUNCTION, CONSENT JUDGMENT, OR ORDER -- CIVIL PENALTY. Any person who violates the terms of a consent judgment entered pursuant to section 48-1909, Idaho Code, or an injunction issued or an order or judgment entered pursuant to section 48-1910, Idaho Code, shall forfeit and pay to the state a civil penalty of no more than ten thousand dollars ($10,000) per violation, the amount of the penalty to be determined by the
district court issuing such order, consent judgment, judgment, or injunc-

tion. For the purposes of this section, the district court issuing such or-
der, consent judgment, judgment, or injunction shall retain jurisdiction,
and the cause shall be continued, and in such cases the attorney general act-
ing in the name of the state may petition for recovery of civil penalties.

48-1913. PENALTIES AND FEES RECOVERED -- DISPOSITION. Any civil
penalties, costs, or attorney's fees sued for and recovered by the attorney
general under this chapter shall be remitted to the consumer protection fund
created in section 48-606, Idaho Code, and shall be used for the furtherance
of the attorney general's duties and activities under the provisions of this
chapter, pursuant to legislative appropriation.

48-1914. CHARITABLE ASSETS RECOVERED -- CY PRES -- RESTITUTION RECOV-
ERED. (1) Any charitable assets sued for and recovered by the attorney gen-
eral under this chapter shall be conveyed:
(a) To the injured charitable organization to restore its misappropri-
ated, lost, or diverted charitable assets; or
(b) To any charitable organization with a similar charitable purpose
as that of the charitable organization from which the charitable assets
were recovered, pursuant to a court-approved cy pres distribution.
(2) Any restitution sued for and recovered by the attorney general un-
der this chapter shall be deposited and held in the state treasury until such
time as the attorney general directs that payment be made to a person to reim-
burse for any actual damages he incurred as a direct result of a violation of
this chapter.

SECTION 2. That Section 67-1401, Idaho Code, be, and the same is hereby
amended to read as follows:

67-1401. DUTIES OF ATTORNEY GENERAL. Except as otherwise provided in
this chapter, it is the duty of the attorney general:
(1) To perform all legal services for the state and to represent the
state and all departments, agencies, offices, officers, boards, commis-
sions, institutions and other state entities in all courts and before all
administrative tribunals or bodies of any nature. Representation shall be
provided to those entities exempted pursuant to the provisions of section
67-1406, Idaho Code. Whenever required to attend upon any court or admin-
istrative tribunal, the attorney general shall be allowed necessary and actual
expenses, all claims for which shall be audited by the state board of exam-
iners.
(2) To advise all departments, agencies, offices, officers, boards,
commissions, institutions and other state entities in all matters involving
questions of law.
(3) After judgment in any of the causes referred to in this chapter, to
direct the issuing of such process as may be necessary to carry the same into
execution.
(4) To account for and pay over to the proper officer all moneys re-
ceived which belong to the state.
(5) To supervise nonprofit corporations, corporations, charitable or
benevolent societies, person or persons holding property subject to any pub-
lic or charitable trust, enforce the Idaho charitable solicitation act, chapter 12, title 48, Idaho Code; the Idaho nonprofit hospital sale or conversion act, chapter 15, title 48, Idaho Code; to supervise charitable organizations, as such term is defined in section 48-1903(4), Idaho Code; and to enforce whenever necessary any noncompliance or departure from the general charitable purpose of such trust and, in order to accomplish such purpose, said nonprofit corporations, corporations, charitable or benevolent societies, person or persons holding property subject to any public or charitable trust are subject at all times to examination by the attorney general, on behalf of the state, to ascertain the condition of its affairs and to what extent, if at all, said trustee or trustees may have failed to comply with trusts said trustee or trustees have assumed or may have departed from the general purpose for which it was formed. In case of any such failure or departure, the attorney general shall institute, in the name of the state, any proceeding necessary to enforce compliance with the terms of the trust or any departure therefrom organizations as set forth and provided in chapter 19, title 48, Idaho Code.

(6) To give an opinion in writing, without fee, to the legislature or either thereof, or any senator or representative, and to the governor, secretary of state, treasurer, state controller, and the superintendent of public instruction, when requested, upon any question of law relating to their respective offices. The attorney general shall keep a record of all written opinions rendered by the office and such opinions shall be compiled annually and made available for public inspection. All costs incurred in the preparation of said opinions shall be borne by the office of the attorney general. A copy of the opinions shall be furnished to the supreme court and to the state librarian.

(7) When required by the public service, to repair to any county in the state and assist the prosecuting attorney thereof in the discharge of duties.

(8) To bid upon and purchase, when necessary, in the name of the state, and under the direction of the state controller, any property offered for sale under execution issued upon judgments in favor of or for the use of the state, and to enter satisfaction in whole or in part of such judgments as the consideration for such purchases.

(9) Whenever the property of a judgment debtor in any judgment mentioned in subsection (8) of this section has been sold under a prior judgment, or is subject to any judgment, lien, or encumbrance, taking precedence of the judgment in favor of the state, under the direction of the state controller, to redeem such property from such prior judgment, lien, or encumbrance; and all sums of money necessary for such redemption must, upon the order of the board of examiners, be paid out of any money appropriated for such purposes.

(10) When necessary for the collection or enforcement of any judgment hereinbefore mentioned, to institute and prosecute, in behalf of the state, such suits or other proceedings as may be necessary to set aside and annul all conveyances fraudulently made by such judgment debtors; the cost necessary to the prosecution must, when allowed by the board of examiners, be paid out of any appropriations for the prosecution of delinquents.
(11) To exercise all the common law power and authority usually appertaining to the office and to discharge the other duties prescribed by law.

(12) To report to the governor, at the time required by this section, the condition of the affairs of the attorney general's office and of the reports received from prosecuting attorneys.

(13) To appoint deputy attorneys general and special deputy attorneys general and other necessary staff to assist in the performance of the duties of the office. Such deputies and staff shall be nonclassified employees within the meaning of section 67-5302, Idaho Code.

(14) To establish a medicaid fraud control unit pursuant to the provisions of section 56-226, Idaho Code, and to exercise concurrent investigative and prosecutorial authority and responsibility with county prosecutors to prosecute persons for the violation of the criminal provisions of chapter 2, title 56, Idaho Code, and for criminal offenses that are not defined in said chapter 2, title 56, Idaho Code, but that involve or are directly related to the use of medicaid program funds or services provided through the medicaid program.

(15) To seek injunctive and any other appropriate relief as expeditiously as possible to preserve the rights and property of the residents of the state of Idaho, and to defend as necessary the state of Idaho, its officials, employees and agents in the event that any law or regulation violating the public policy set forth in the Idaho health freedom act, chapter 90, title 39, Idaho Code, is enacted by any government, subdivision or agency thereof.

(16) To establish an internet crimes against children unit pursuant to the provisions of section 67-1410, Idaho Code, and to exercise concurrent investigative and prosecutorial authority and responsibility with county prosecutors to prosecute persons for the violation of the criminal provisions of sections 18-1507, 18-1509A, 18-1513 and 18-1515, Idaho Code, which may also encompass criminal offenses that are not defined in said sections but that involve or are directly related to child pornography and solicitation of minors for pornography, prostitution or sex-related offenses.

(17) To respond to allegations of violation of state law by elected county officers, to investigate such claims, to issue appropriate findings and to refer such cases for further investigation and prosecution pursuant to section 31-2002, Idaho Code.

(18) To establish a sobriety and drug monitoring program to reduce the number of people on Idaho's highways who drive under the influence of alcohol or drugs, reduce the number of repeat offenders for certain offenses in which the abuse of alcohol or drugs was a contributing factor, and increase pretrial and posttrial options for prosecutors and judges in responding to repeat DUI offenders and offenders for certain crimes in which the abuse of alcohol or drugs was a contributing factor in the commission of the crime, and to adopt such rules and establish such fees as are necessary for the operation of said program, as set forth by law.