

TITLE 48
MONOPOLIES AND TRADE PRACTICES

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."

[48-1901, added 2020, ch. 321, sec. 1, p. 921.]

48-1902. LEGISLATIVE FINDINGS AND INTENT. (1) The state of Idaho is home to thousands of charitable organizations that, collectively, hold billions of dollars in charitable assets. Charitable organizations have a legal 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 define 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.

[48-1902, added 2020, ch. 321, sec. 1, p. 921.]

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.

[48-1903, added 2020, ch. 321, sec. 1, p. 922.]

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.

[48-1904, added 2020, ch. 321, sec. 1, p. 922.]

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.

[48-1905, added 2020, ch. 321, sec. 1, p. 922.]

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.

[48-1906, added 2020, ch. 321, sec. 1, p. 922.]

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 subsections (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 organization'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 dissolution, conversion to a noncharitable organization, or termination and disposal of all or substantially all of a charitable organization's charitable assets, as set forth in the charitable organization's notice under subsections (1) and (3) of this section, the charitable organization may not proceed 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 seeking to block the charitable organization's proposed dissolution, conversion to a noncharitable organization, or termination and disposal of its charitable assets, or otherwise to resolve the matter with the affected parties pursuant to section [48-1909](#), Idaho Code.

(9) If the attorney general files a lawsuit seeking to block a charitable organization's proposed dissolution, conversion to a noncharitable organization, or termination and disposal of charitable trust assets, the district court shall review, de novo, the charitable organization's proposal to determine if it is in compliance with charitable trust law. If the attorney 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.

[48-1907, added 2020, ch. 321, sec. 1, p. 923.]

48-1908. INVESTIGATORY AUTHORITY OF ATTORNEY GENERAL. Whenever the attorney general has reason to believe that an accountable person or charitable 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; and
- (4) Retain certified fraud examiners, accountants, appraisers, and other experts to assist the attorney general with the attorney general's investigation.

[48-1908, added 2020, ch. 321, sec. 1, p. 924.]

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 assurance of voluntary compliance or consent judgment from a person who the attorney 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 comply with the provisions of section [48-610](#), Idaho Code, for assurances of voluntary 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 organization 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 pursuant to the procedures set forth in section [48-1910](#), Idaho Code.

[48-1909, added 2020, ch. 321, sec. 1, p. 924.]

48-1910. PROCEEDINGS BY ATTORNEY GENERAL. (1) Whenever the attorney general has reason to believe that a person violated or is violating the provisions 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 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 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 charitable 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.

[48-1910, added 2020, ch. 321, sec. 1, p. 925.]

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.

[48-1911, added 2020, ch. 321, sec. 1, p. 926.]

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

[48-1912, added 2020, ch. 321, sec. 1, p. 926.]

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.

[48-1913, added 2020, ch. 321, sec. 1, p. 926.]

48-1914. CHARITABLE ASSETS RECOVERED -- CY PRES -- RESTITUTION RECOVERED. (1) Any charitable assets sued for and recovered by the attorney general under this chapter shall be conveyed:

(a) To the injured charitable organization to restore its misappropriated, 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 under 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 reimburse for any actual damages he incurred as a direct result of a violation of this chapter.

[48-1914, added 2020, ch. 321, sec. 1, p. 926.]