LEGISLATURE OF THE STATE OF IDAHO
Sixty-fourth Legislature First Regular Session – 2017

IN THE SENATE

SENATE BILL NO. ____

BY BUSINESS AND COMMERCE COMMITTEE

AN ACT
REPEALING CHAPTER 12, TITLE 48, IDAHO CODE; AMENDING TITLE 48, IDAHO CODE, TO INCLUDE A NEW CHAPTER KNOWN AS THE IDAHO CHARITABLE ASSETS PROTECTION AND SOLICITATION ACT; MAKING LEGISLATIVE FINDINGS; DEFINING TERMS; AUTHORIZING THE ATTORNEY GENERAL TO ENFORCE THIS ACT THROUGH INVESTIGATIONS, COURT-APPROVED SETTLEMENTS AND ENFORCEMENT ACTIONS; AMENDING IDAHO CODE § 67-1401(5), RELATING TO THE DUTIES OF THE ATTORNEY GENERAL.

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

SECTION 1. That chapter 12, title 48, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That title 48, Idaho Code, be, and the same is hereby amended by the addition of a NEW CHAPTER, to be known and designated as chapter 12, title 48, Idaho Code, and to read as follows:

CHAPTER 12
IDAHO CHARITABLE ASSETS PROTECTION AND SOLICITATION ACT
PART 1
PRELIMINARY PROVISIONS

48-12-101. SHORT TITLE. - This act may be cited as the “Idaho Charitable Assets Protection and Solicitation Act.”

48-12-102. LEGISLATIVE FINDINGS AND INTENT. - (1) The state of Idaho is home to thousands of charitable organizations that hold billions of dollars in charitable assets. Charitable organizations have a duty to use their charitable assets according to the charitable purpose designated in their governing documents. The legislature is aware, however, that misuse or misappropriation of charitable assets occurs within charitable organizations.

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

(3) The current statutes governing the attorney general’s authority over charitable assets inadequately define the attorney
general’s duties and enforcement authorities. Further, Idaho law
does not effectively define the attorney general’s authority to
address a person’s misuse or misappropriation of charitable
assets.

(4) The deceptive solicitation of funds in the name of
charities negatively impacts the state of Idaho, donors,
charitable organizations, and the philanthropic community.
Generous Idahoans and legitimate charities suffer financial losses
because of misrepresentations and failures to disclose material
facts by those who falsely represent a charitable organization or
purpose.

(5) Therefore, through this act, it is the legislature’s
intent to:
(a) Define the attorney general’s duties to protect
charitable assets from misuse or misappropriation and provide the
attorney general with the necessary authority and enforcement
tools to protect charitable assets;
(b) Provide a procedure for terminating a charitable
organization or liquidating a charitable organization’s charitable
assets; and
(c) Safeguard the public from deceptive or misleading
charitable solicitations.

(6) The provisions of this chapter are remedial and shall be
construed and applied liberally to accomplish the above-stated
purposes.

48-12-103. DEFINITIONS. - Unless defined elsewhere in this
act, as used in this act:
(1) “Accountable person” means a director, officer,
executive, manager, trustee, employee, or any fiduciary 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
tangible or intangible personal property that a charitable
organization holds for 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 of 1986.
(4) “Charitable organization” means a person who holds
charitable assets for a charitable purpose, regardless of the
legal form of such organization.
(5) “Charitable purpose” means:
(a) Any purpose described in section 501(c)(3) of the
Internal Revenue Code of 1986;
(b) Any philanthropic, humane, patriotic, social welfare or
advocacy, public health, environmental, civic, veteran or other
eleemosynary purpose; or
(c) Any purpose benefitting law enforcement personnel,
firefighters or other persons who protect the public safety.

WORKING DRAFT (1/31/2017) - 2
(6) “Charitable solicitation” means any oral or written request, directly or indirectly, for money, credit, property, financial assistance or other thing of value on the plea or representation that such money, credit, property, financial assistance or other thing of value or any portion thereof, will be used for a charitable purpose or to benefit a charitable organization. No contribution need be made in order for a charitable solicitation to be deemed to have taken place.

(7) “Contribution” means the donation, grant or promise or pledge of property in response to a charitable solicitation.

(8) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

48-12-104. COURTS NOT IMPAIRED. - Nothing in this act shall impair the rights and powers of the courts of this state with respect to any charitable organization.

48-12-105. CONFLICT OF LAWS. - This act shall apply whenever a provision of this act conflicts with another Idaho law or rule concerning the attorney general’s authority over charitable assets.

48-12-106. REFERENCES TO INTERNAL REVENUE CODE OF 1986. - All references to Internal Revenue Code of 1986 in this act shall refer to that term as it is now and hereafter defined in section 63-3004(a), Idaho Code.

48-12-107. RULEMAKING AUTHORITY. - The attorney general may make rules and regulations interpreting provisions of this act. Such rules and regulations shall be promulgated as provided in chapter 52, title 67, Idaho Code.

48-12-108. PERSONS EXCLUDED. This Act 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 enumerated in subsection (1) of this section.

PART 2
CHARITABLE SOLICITATIONS

48-12-201. UNLAWFUL ACTS. - (1) It is unlawful for a person, except a religious corporation, association, educational
institution or society, to utilize any unfair, deceptive, misleading or unconscionable act or practice to solicit a contribution.

(2) It is unlawful for a religious corporation, association, educational institution or society, to knowingly or willfully utilize any unfair, deceptive, misleading or unconscionable act or practice to solicit a contribution.

48-12-202. PRIVATE CAUSE OF ACTION – LIMITATION OF ACTION. –

(1) Any person who, pursuant to a charitable solicitation, suffers damages as a result of any act, conduct or practice declared unlawful under the provisions of this part, shall have the same rights and remedies in seeking and obtaining redress under the provisions of this part as those granted under the Idaho consumer protection act, chapter 6, title 48, Idaho Code.

(2) No private action may be brought under the provisions of this part more than two (2) years after the cause of action accrues.

(3) A cause of action shall be deemed to have accrued when the person bringing the action knows or in the exercise of reasonable care should have known about the violation of the provisions of this chapter.

(4) The remedies provided for in this section are not exclusive and shall be in addition to any other procedures or remedies for any violation or conduct provided for in other law.

(5) As used in this section only, “damages” means a loss, detriment or injury, whether to person, property, reputation or rights through any act or practice declared unlawful under the provisions of this chapter.

PART 3
CHARITABLE ORGANIZATIONS

48-12-301. 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) applicable law or the terms of the donation that govern the use of the charitable asset; or

(b) the charitable purpose of the charitable organization that holds the charitable asset.

(2) An accountable person is not liable under this section if the person discharged his duties as an accountable person in compliance with the standards of conduct set forth in section 30-30-618, Idaho Code, or section 30-30-623, Idaho Code, irrespective of whether the accountable person would otherwise be subject to the provisions of such sections. An accountable person also is not liable under this section if the accountable person’s actions
comply with the applicable trust instrument and that trust instrument complies with Idaho law.

48-12-302. SALE OR TRANSFER OF ALL OR SUBSTANTIALLY ALL CHARITABLE ASSETS. - (1) A charitable organization which holds charitable assets with a fair market value of one hundred thousand dollars ($100,000) or more, shall notify the attorney general under this section at least thirty (30) days before it sells or otherwise disposes of all, or substantially all, of its charitable assets in a transaction not in the usual and regular course of the charitable organization’s activities, unless the attorney general has given the organization a written waiver or it is subject to and in compliance with the provisions of chapter 15, title 48, Idaho Code. This section does not apply if the transaction is between two or more charitable organizations with similar charitable purposes.

(2) Notification to the attorney general must be in writing and include, at a minimum, the following, if available:

(a) Legal names and mailing addresses of all parties who are participating in the proposed transaction;
(b) Description of the proposed transaction;
(c) Copy of the proposed purchase and sale agreement, if any; and
(d) Copy of the appraisal, property valuation or similar report, if any.

(3) Failure to comply with the notice requirements of this section renders transactions covered by subsection (1) voidable at the discretion of the attorney general within five (5) years of such transaction. Such discretion must be reasonable under the circumstances and exercised in a writing by the attorney general to the parties of the transaction within six months of the discovery of the occurrence of the transaction.

(4) A charitable organization that has provided notice under this subsection and has not heard from the attorney general for more than thirty (30) days after giving such notice, may proceed with the noticed transaction and be deemed in compliance with this subsection.

PART 4
ATTORNEY GENERAL’S ENFORCEMENT AUTHORITY

48-12-401. INVESTIGATORY AUTHORITY OF ATTORNEY GENERAL. - Whenever the attorney general has reason to believe that a person has violated or is violating part 2 or section 48-12-301 of this act, the attorney general may:
(1) Serve investigative demands using the same procedures and in the same manner as delineated in section 48-611, Idaho Code;
(2) Issue subpoenas and conduct hearings using the same procedures and in the same manner as delineated 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 delineated 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.

48-12-402. VOLUNTARY COMPLIANCE - CONSENT DEGREE - DISTRICT COURT APPROVAL. - (1) In lieu of instigating or continuing an investigation or action or proceeding under this Part 4, the attorney general may accept an assurance of voluntary compliance or consent decree from a person who the attorney general has reason to believe violated or is violating this act.
(2) Such assurance of voluntary compliance or consent decree shall be in writing and be filed with and subject to the approval of the district court of the county in which the person resides or has his principal place of business or in the district court of Ada County and shall be deemed an order of the court enforceable by contempt proceedings.
(3) Such assurance of voluntary compliance or consent decree shall not be considered an admission of violation for any purpose.
(4) Such assurance of voluntary compliance or consent decree shall prohibit the person from violating this act.
(5) Such assurance of voluntary compliance or consent decree may include a stipulation between the parties that requires the person to:
   (a) Reimburse the attorney general for the attorney general's reasonable expenses, investigative costs and attorney's fees;
   (b) Pay actual damages or restitution of money, property or other things received, and, for consent decrees, civil penalties;
   (c) Submit reports to the attorney general concerning the charitable assets or charitable organization; or
   (d) Perform specific acts relating to the charitable assets or charitable organization.
(6) 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 section 48-12-404, Idaho Code.

48-12-403. PROCEEDINGS BY ATTORNEY GENERAL. - (1) Whenever the attorney general has reason to believe that a person violated or is violating this act, 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 act 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 such assets may be removed, concealed, disposed of or damaged during the course of the proceedings;

(c) To remove the alleged violator from his position as a responsible party with respect to a charitable organization’s charitable assets;

(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 actual damages or restitution of money, property or other things on behalf of the state or damaged persons;

(f) To recover from the alleged violator civil penalties of up to five thousand dollars ($5,000) per violation of sections 48-12-201 or 48-12-301 of this act;

(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) 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.

(3) Unless the attorney general finds in writing that the enforcement provisions of this act will be substantially and materially impaired by delay in instituting legal proceedings, the attorney general shall, before initiating any legal proceedings as provided in this section give written notice of the contemplated proceedings to the alleged violator and allow the alleged violator a reasonable opportunity to appear before the attorney general and execute an assurance of voluntary compliance or consent decree under section 48-12-402, Idaho Code.

48-12-404. SERVICE OF NOTICE. - Service of any notice, demand or subpoena under this act shall be made personally within this state, but if such cannot be obtained, substituted service therefor may be made in the following manner:

(1) Personal service thereof without this state;

(2) The mailing thereof by registered or certified mail to the last known place of business, residence or abode within or
without this state or such person for whom the same is intended; or

(3) As to any person other than a natural person, in the manner provided in the Idaho rules of civil procedure as if a complaint which institutes a civil proceeding had been filed.

48-12-405. VIOLATION OF INJUNCTION, CONSENT DECREED OR ORDER—CIVIL PENALTY—Any person who violates the terms of a consent decree entered pursuant to section 48-12-402, Idaho Code, an injunction issued or an order or judgment entered pursuant to section 48-12-403, Idaho Code, or an order entered pursuant to sections 48-12-401(3) or 48-12-402, Idaho Code, shall forfeit and pay to the state a civil penalty of not more than ten thousand dollars ($10,000) per violation, the amount of the penalty to be determined by the district court issuing such order, judgment or injunction. For the purposes of this section, the district court issuing such order, consent decree, 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.

48-12-406. PENALTIES AND FEES RECOVERED—DISPOSITION—Any civil penalties, costs or attorney’s fees sued for and recovered by the attorney general under this act 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 act, pursuant to legislative appropriation.

48-12-407. CHARITABLE ASSETS RECOVERED—CY PRES—Any charitable assets sued for and recovered by the attorney general under this act shall be conveyed:

(1) To an injured charitable organization to restore its misappropriated, lost or diverted charitable assets; or

(2) To any charitable organization pursuant to a court-approved cy pres distribution.

48-12-408. RESTITUTION RECOVERED—DISPOSITION—Any restitution sued for and recovered by the attorney general under this act 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 act.

SECTION 3. That Idaho Code section 67-1401(5), be, and the same is hereby amended to read as follows:

(5) To supervise charitable organizations, as such term is defined in section 48-12-103, Idaho Code, and to enforce whenever
necessary any noncompliance or departure from the general purpose
of such charitable organization as set forth and provided in title
48, chapter 12, Idaho Code. 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.