

D R A F T
FOR DISCUSSION ONLY

FUNDRAISING THROUGH PUBLIC APPEALS ACT
[Name under consideration:
CROWDFUNDED DONATION PROTECTION ACT]

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

March 13-14, 2020 Drafting Committee Meeting

Clean draft incorporating edits from the January 2020 Committee on Style Meeting



Copyright © 2020
By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the drafting committee. They do not necessarily reflect the views of the Conference and its commissioners and the drafting committee and its members and reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.

March 10, 2020

FUNDRAISING THROUGH PUBLIC APPEALS ACT

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this act consists of the following individuals:

TERRY J. CARE	Nevada, <i>Chair</i>
LEVI J. BENTON	Texas
TURNEY P. BERRY	Kentucky
LARRY T. GARVIN	Ohio
MARTIN W. HEALY	Massachusetts
STEVEN N. LEITESS	Maryland
KIMBERLY LOWE	Minnesota
CASSANDRA B. ROBERTSON	Ohio
JAMES P. SPICA	Michigan
KEVIN P. SUMIDA	Hawaii
DAVID S. WALKER	Iowa
SUZANNE B. WALSH	Connecticut
ANTHONY WENDTLAND	Wyoming
CARL H. LISMAN	Vermont, <i>President</i>
JOHN T. McGARVEY	Kentucky, <i>Division Chair</i>

OTHER PARTICIPANTS

KAREN E. BOXX	Washington, <i>Reporter</i>
MARY ELIZABETH ANDERSON	Kentucky, <i>American Bar Association</i> <i>Advisor</i>
JOANNE M. PEPPERL	Nebraska, <i>Style Liaison</i>
TIM SCHNABEL	Illinois, <i>Executive Director</i>

Copies of this act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
312/450-6600
www.uniformlaws.org

FUNDRAISING THROUGH PUBLIC APPEALS ACT

TABLE OF CONTENTS

SECTION 1. SHORT TITLE.	3
SECTION 2. DEFINITIONS.....	3
SECTION 3. SCOPE.	6
SECTION 4. FUND MANAGER APPOINTMENT.	7
SECTION 5. CROWDFUNDED APPEAL BENEFITING ORGANIZER.....	8
SECTION 6. CROWDFUNDED APPEAL BENEFITTING PERSON OTHER THAN CROWDFUNDED-APPEAL ORGANIZER.....	8
SECTION 7. CROWDFUNDED APPEAL BENEFITTING PROJECT.....	9
SECTION 8. CROWDFUNDED-APPEAL FUND INTERMEDIARY.....	10
SECTION 9. DUTIES AND POWERS OF FUND MANAGER.	10
SECTION 10. UNUSED BALANCE.....	12
SECTION 11. ENFORCEMENT.	13
SECTION 12. UNIFORMITY OF APPLICATION AND CONSTRUCTION.....	14
SECTION 13. TRANSITIONAL PROVISION.....	14
SECTION 14. REPEALS; CONFORMING AMENDMENTS.....	14
SECTION 15. EFFECTIVE DATE.....	14

FUNDRAISING THROUGH PUBLIC APPEALS ACT

Prefatory Note

This Act was conceived as an approach for dealing with funds raised for benevolent purposes that do not qualify as charitable and solicited through online platforms and other public appeals. Online fundraising has become very simple to initiate, and the person raising funds this way usually receives little if any legal or financial advice and may be unsophisticated in administering funds intended to benefit others. The intention of this Act is to provide guidance and protections for these fundraisers, donors and intended recipients. The term “crowdfunding” is also used to refer to equity fundraising campaigns for business ventures that can involve securities offers. Further, *Merriam-Webster* defines crowdfunding as “the practice of obtaining needed funding (as for a new business) by soliciting contributions from a large number of people especially from the online community.” This Act addresses only funds raised for specific donative purposes, not for commercial endeavors, but crowdfunding has become synonymous with this type of fundraising, so the term is used in the title of the Act and modified by “donations” to exclude commercial projects. (The Act also exempts recognized charities subject to existing regulatory schemes.) The Act’s scope extends beyond fundraising through online platforms and includes fundraising by more traditional avenues, such as pleas for funds communicated through television, radio and print media.

The type of fundraising contemplated under this Act surfaced more than a decade ago. Hardly a day passes without news of yet another public appeal for money, usually made online or through social media. Notable recent efforts have included \$20-million raised (and later subject to refund) to help with construction of a wall along the southern border of the United States, and an appeal for furloughed federal workers seeking financial help during the most recent government shutdown. Activists raised funds for newspaper ads in support of the woman who accused Supreme Court Nominee Brett Kavanaugh of sexual misconduct, while others produced dollars for the benefit of a 13-year-girl whose parents were murdered and who had gone missing for 88 days. Flood victims have benefited as have people needing surgery. More than \$9-million generated through online appeals went to assist the victims of the Pulse nightclub mass killing in Orlando, and protestors of the Dakota Access Pipeline benefitted from a drive that garnered almost \$8-million. According to GoFundMe CEO Rob Solomon, in an interview with CBS News in January of 2019, one-third of the donations made through the site help people pay for medical care.

There is scant civil case law arising from online public appeals, though prosecutors have made headlines where criminal conduct is involved. One well-publicized example is the case in New Jersey where a man and woman began a fundraising drive for a homeless ex-marine who supposedly turned over his last \$20 to the couple portrayed as having run out of gas. All three, it turned out, had concocted the story that succeeded in collecting in excess of \$400,000.

State legislatures have been slow to react. In recent legislative sessions, at least three bills, two in New Jersey and one in Maine, address theft by crowdfunding. Another, also New Jersey, would permit government entities to conduct fundraising for certain government projects. No state statutes contemplate a fundamental question addressed in this Act: what to do

1 with unused funds? Also unclear is the extent of the duties of a fundraiser who has collected
2 funds for another person or persons.
3

4 The Uniform Law Conference of Canada addressed the issue in 2011, promulgating its
5 Uniform Informal Public Appeals Act.

1 **FUNDRAISING THROUGH PUBLIC APPEALS ACT**

2 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Fundraising through
3 Public Appeals Act.

4 **Comment**

5 The Act covers fundraising for specific individuals or projects through appeals to the
6 public. It is not limited to appeals through online platforms, usually called “crowdfunding.”
7 However, as the terms of the Act clarify, it does not apply to fundraising for business purposes
8 and fundraising by organized charities.
9

10 **SECTION 2. DEFINITIONS.** In this [act]:

11 (1) “Crowdfunded appeal” means a solicitation directed at the public or a part of the
12 public for a donation for an intended subject. The term includes a solicitation through a media
13 outlet, social medium, or online fundraising platform. The term does not include a solicitation:

14 (A) made directly to a person with whom the solicitor has a pre-existing
15 relationship; or

16 (B) communicated as part of a fundraising effort carried out on a permanent or
17 continuing basis.

18 (2) “Crowdfunded-appeal fund” means money or other property donated through a
19 crowdfunded appeal, including a donation made after the crowdfunded appeal ends.

20 (3) “Crowdfunded-appeal organizer” means a person that makes a crowdfunded appeal.

21 (4) “Fund manager” means a person that manages a crowdfunded-appeal fund for the
22 benefit of a project, the fund manager, or another person. The term includes a successor fund
23 manager.

24 (5) “Intended subject” means a person or project for which a crowdfunded appeal solicits
25 funds.

26 (6) “Person” means an individual, estate, business or nonprofit entity, public corporation,

1 government or governmental subdivision, agency, or instrumentality, or other legal entity.

2 (7) “Qualified entity” means:

3 (A) a government or governmental subdivision, agency, or instrumentality; and

4 (B) a person that [is registered with this state as a charitable organization under
5 [cite to state charitable organization registration statute] or] qualifies as tax exempt under Section
6 501(c)(3) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. Section 501(c)(3).

7 (8) “Regulated financial institution” means a bank, trust company, mutual savings bank,
8 savings and loan association, or credit union, authorized to do business and accept deposits under
9 state or federal law.

10 (9) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
11 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
12 the United States.

13 (10) “Terms of the crowdfunded appeal” means information given to the public or part of
14 the public on which a decision to donate to the crowdfunded appeal may be based. The
15 information may include the specific uses of the crowdfunded-appeal fund and the disposition of
16 any unused balance.

17 (11) “Unused balance” means money or other property in a crowdfunded-appeal fund
18 which is not needed for or is unable to be used to satisfy the purpose of the crowdfunded appeal.

19 **Legislative Note:** *In a state in which the constitution or other law does not permit the phrase “as*
20 *amended” when federal statutes are incorporated into state law, the phrase should be deleted in*
21 *paragraph (7).*

22 23 Comment

24
25 *Fund Manager.* This term refers to a person who has control over the funds once raised, when
26 the purpose of the fundraising is to benefit someone other than the fund manager or is to benefit
27 a project. The various online platforms may differ, but commonly the person setting up the
28 fundraising campaign either designates himself or herself as the owner or directs that the funds

1 be controlled by someone else. The fundraiser will have to give a tax identification number for
2 whomever is in control of the funds. The fund manager owes duties to the person or project
3 intended to benefit from the public appeal. If the person controlling the funds is the person
4 intended to benefit from the appeal, then the person is not within the definition of fund manager.
5 However, if for the person controlling the funds for their own benefit relinquishes control to a
6 successor, then that person controlling the funds is a fund manager.

7
8 *Intended Subject.* The fundraising campaign may be for the benefit of one or more individuals
9 identifiable by name or by implication. The term may also include an identifiable group
10 composed of named or unnamed individuals. For example, the intended individual could be Jane
11 Smith, a high-school student who needs funds for an educational trip abroad. The intended
12 individual could also be the Jones High School French class which includes Jane Smith. The
13 intended subject may be the fundraiser, or the fundraiser may be raising money for someone else.
14 Some fundraisers are intended to raise money for a particular endeavor rather than a person. For
15 example, a group of friends may want to raise money to offer a reward for information about the
16 unsolved murder of their friend. A little league baseball team may want to raise funds to attend a
17 championship tournament that it unexpectedly qualified for. A church may need funds to rebuild
18 after a natural disaster. This category of fundraising campaign is consistent with the type of
19 purpose trust called a “noncharitable trust without ascertainable beneficiary” under the Uniform
20 Trust Code § 409.

21
22 *Public Appeal.* The Act covers appeals made through online platforms, such as GoFundMe and
23 Facebook, as well as through traditional media, such as radio and television news programs. The
24 fundraising activity subject to the Act must be directed at the public. Requesting contributions
25 from family members and close friends is not a public appeal. The appeal may be more directed
26 than a general broadcast. For example, a campaign to raise funds for a retired judge’s unfunded
27 medical care may be directed at all lawyers in the community. That would still be a public
28 appeal. The drafters recognize that what makes a public appeal public is not always clear. A
29 small rural church, for example, may announce to its congregation (who are all neighbors who
30 know each other) during a regular service that the church is commencing a building
31 improvement fund and needs \$50,000. The announcement is not heard outside the church and, to
32 the mind of the church, is not intended to be public. Another church, however, in an urban area
33 with a large and continually changing congregation, is also launching a building fund, and
34 organizes a public appeal through an online platform. Arguably, the former solicitation would
35 not be a public appeal. The latter, under this Act, would be.

36
37 *Public-Appeal Fund.* The fund could include any form of currency, including cryptocurrency,
38 and other property.

39
40 *Unused Balance.* An “Unused Balance” arises where the purpose for which the public appeal no
41 longer exists. For example, suppose John Smith needs \$250,000 for life-saving surgery. The
42 public appeal raises less than, or even more than, \$250,000 but John Smith dies prior to
43 surgery. The unused balance would be the entirety of the public appeal fund. An unused
44 balance may also exist where the public appeal’s target is a specific amount and public appeal
45 fund exceeds that number. For example, the public appeal for John Smith’s surgery generates
46 \$270,000 and his surgery is successful. The uninsured portion of the medical bills is \$250,000

1 so the unused balance would be \$20,000. Whether there is an unused balance will depend in
2 large part on how the public appeal described the purpose and the scope of the purpose. For
3 example, John Smith's appeal may have also been intended to cover his living expenses while
4 recovering from the surgery.

5 6 **SECTION 3. SCOPE.**

7 (a) Except as otherwise provided in subsection (b), this [act] applies to a crowdfunded-
8 appeal fund created by a crowdfunded-appeal organizer:

9 (1) who resides in this state;

10 (2) which is organized under law of this state; or

11 (3) that has its principal place of business in this state.

12 (b) This [act] does not apply to:

13 (1) a crowdfunded-appeal fund if:

14 (A) the crowdfunded-appeal organizer is a qualified entity or the fund is
15 payable directly to a qualified entity;

16 (B) the terms of the crowdfunded appeal provide for an economic benefit
17 to a donor other than a benefit of token value or public recognition of the donation; or

18 (C) the crowdfunded-appeal organizer requires that the fund be placed in
19 trust for the benefit of the intended subject; or

20 (2) a solicitation that provides an investment opportunity to the donor, including a
21 commercial investment activity governed by [state securities regulation].

22 **Reporter's Note**

23 The choice of law could be particularly problematic for online fundraising activity. The
24 drafters chose to focus on the residence of the organizer for clarity.

25 **[Comment to Previous Section 4. Exclusions.]**

26
27 This section is intended to exclude from the Act well-organized campaigns that have
28 built-in protections. The Act excludes public appeals that are made by a qualified charity or

1 government entity and those that are payable directly to a qualified charity or government entity.
2 For example, the millions of dollars raised through GoFundMe after the Pulse nightclub shooting
3 was payable to Equality Florida, a qualified charitable organization. Such campaigns are not
4 subject to the act because qualified charities and governmental agencies are otherwise regulated
5 and monitored.

6
7 The Act does not apply to crowdfunding intended to raise capital for business ventures or
8 to sell products. Its scope is limited to humanitarian fundraising, where contributors donate
9 funds without any expectation of return or personal benefit, in order to assist a person in need or
10 fund a worthy endeavor. This section excludes both campaigns in which the donor expects a
11 return on investment or a product with a value commensurate with the contribution, and
12 campaigns in which the fundraiser expects to collect remuneration for their efforts. For example,
13 Patreon is a membership program in which fans of artists, writers and other creators can
14 contribute small amounts to fund the creator's work. That would be considered a commercial
15 purpose and would not be covered by the Act. A string quartet raising money to record musical
16 works that would not be sufficiently commercial to get funding from more orthodox methods
17 would also be considered a commercial purpose under this definition and would not be covered
18 by the Act. The Act does not apply to campaigns where the contributors will receive the product
19 (such as a game or a kitchen gadget) for which the promoter is raising funds to produce.
20 However, if the contributors will receive a token benefit, such as a t-shirt, the Act applies.

21
22 If the campaign provides that the funds will be paid directly to a trust for the benefit of
23 the intended individual or project, applicable state law on trusts provide sufficient structure and
24 protection so the Act does not apply.]

25 26 **SECTION 4. FUND MANAGER APPOINTMENT.** The crowdfunded-appeal

27 organizer is the fund manager, until the organizer nominates another person as the fund manager
28 and that person receives notice of the nomination and accepts the appointment. The person's
29 conduct that constitutes managing the fund indicates acceptance of being designated fund
30 manager. A person may accept appointment by oral or other means.

31 **Comment**

32 Because the role of fund manager creates duties, the fund manager must have some
33 notice before those duties are imposed. In most cases, the fund manager will be the public-
34 appeal organizer. However, if the public-appeal organizer designates another person to have
35 authority over the funds, then before duties arise, the designated fund manager must receive
36 notice and must by their conduct indicate a willingness to serve. Ideally, acceptance would be by
37 written acknowledgement. However, many public appeal campaigns are organized
38 spontaneously by one or more laypersons as a charitable response to someone's sudden
39 misfortune or immediate need for financial assistance. In such cases, formalities are not always
40 considered. In the absence of a written acknowledgement, a person may become a fund manager

1 by oral or other means, including engaging in conduct that constitutes controlling or managing a
2 public appeal fund.

3
4 **SECTION 5. CROWDFUNDED APPEAL BENEFITING ORGANIZER.** If the

5 intended subject is the crowdfunded-appeal organizer, the organizer may manage the
6 crowdfunded-appeal fund in accordance with the terms of the crowdfunded appeal and this [act].

7 **Comment**

8 The Act applies to appeals from the person in need, such as a person who organizes a
9 campaign to raise money for his or her own tuition. The need for protection of the intended
10 individual is not present, so some provisions do not apply, but other provisions, such as
11 distribution of unused balances, are applicable. The public appeal is for the benefit of the
12 organizer if it directly goes to the organizer for his or her expenses. Funds raised for the purpose
13 of covering support obligations of the public-appeal organizer, such as medical expenses of
14 minor children, are for the benefit of the public-appeal organizer. The public-appeal organizer is
15 considered a fund manager but is excepted from certain duties as specified below.

16
17 **SECTION 6. CROWDFUNDED APPEAL BENEFITTING PERSON OTHER**
18 **THAN CROWDFUNDED-APPEAL ORGANIZER.**

19 (a) If the intended subject of a crowdfunded appeal is to benefit a person identified by
20 name other than the crowdfunded-appeal organizer and the terms of the appeal do not require the
21 crowdfunded-appeal fund be placed in the name of the person or with a trustee for the benefit of
22 the named persons, the crowdfunded-appeal fund must be managed by a fund manager.

23 (b) The fund manager shall manage the crowdfunded-appeal fund under subsection (a)
24 for the benefit of an individual who is the intended subject in accordance with the terms of the
25 crowdfunded appeal and this [act].

26 **Comment**

27 If the public appeal is for a project and the terms of the public appeal direct that the fund
28 will be distributed from the fund intermediary to a trust or an entity, which may be a charity or
29 may be an entity that does not fit the definition of qualified entity, then the entity or trust is not
30 considered a fund manager. For example, if the project is funding a youth chess tournament to
31 be run by a community organization that is a §501(c)(4) or (c)(7) organization, and the funds are
32 paid directly to the organization, then the public-appeal organizer does not control the money

1 and is not a fund manager, and the organization is also not a fund manager. Also, if a trust has
2 been set up under Uniform Trust Code § 409, and the fund is payable directly from the fund
3 intermediary to the trust, there is no fund manager. If there is no designated entity or trust to
4 receive the fund, and the fund manager does not want to be responsible for distributing the fund
5 to carry out the purpose, the fund manager may cause a trust under § 409 to be created and may
6 pay the fund into the trust, so that the trustee may then manage and distribute the fund.

7 8 **SECTION 7. CROWDFUNDED APPEAL BENEFITTING PROJECT.**

9 (a) If the intended subject is a project, the crowdfunded-appeal fund must be managed by
10 a fund manager. The fund manager must manage the crowdfunded-appeal fund in accordance
11 with the terms of the appeal and this [act].

12 [(b)] A crowdfunded-appeal organizer may place the fund under subsection (a) in a trust
13 that complies with [Section 409 of the Uniform Trust Code] the terms of which are consistent
14 with the crowdfunded appeal and the crowdfunded-appeal organizer is treated as the settlor of
15 the trust. The unused balance may not be paid to the crowdfunded-appeal organizer.]

16 (c) The crowdfunded-appeal organizer may be the fund manager of the crowdfunded
17 appeal described in subsection (a). The fund manager must manage a crowdfunded-appeal fund
18 under subsection (a) in accordance with the terms of the crowdfunded appeal and this [act].

19 **Comment**

20 If the public appeal is for a project and the terms of the public appeal direct that the fund
21 will be distributed from the fund intermediary to a trust or an entity, which may be a charity or
22 may be an entity that does not fit the definition of qualified entity, then the entity or trust is not
23 considered a fund manager. For example, if the project is funding a youth chess tournament to
24 be run by a community organization that is a §501(c)(4) or (c)(7) organization, and the funds are
25 paid directly to the organization, then the public-appeal organizer does not control the money
26 and is not a fund manager, and the organization is also not a fund manager. Also, if a trust has
27 been set up under Uniform Trust Code § 409, and the fund is payable directly from the fund
28 intermediary to the trust, there is no fund manager. If there is no designated entity or trust to
29 receive the fund, and the fund manager does not want to be responsible for distributing the fund
30 to carry out the purpose, the fund manager may cause a trust under § 409 to be created and may
31 pay the fund into the trust, so that the trustee may then manage and distribute the fund.
32

1 fund.

2 (c) At any time, a fund manager may transfer the crowdfunded-appeal fund to a qualified
3 entity or trustee to manage and distribute the fund in accordance with the terms of the
4 crowdfunded-appeal and this [act].

5 (d) If there is more than \$[] in a crowdfunded-appeal fund for the benefit of an intended
6 subject other than the crowdfunded-appeal organizer or for a project one year after
7 commencement of the crowdfunded appeal, the fund manager shall transfer the fund to a
8 qualified entity or trustee to manage and distribute the fund in accordance with the terms of the
9 crowdfunded appeal and this [act].

10 (e) At any time, if a fund manager determines that the purpose of the crowdfunded appeal
11 is satisfied and there is no unused balance, the fund manager shall wind up and terminate the
12 crowdfunded appeal and has no further duties.

13 (f) A fund manager shall deposit the crowdfunded-appeal fund in an account in a regulated
14 financial institution in a manner that the fund is not subject to the fund manager's creditors.

15 (g) A fund manager is not liable for a loss incurred in the management and distribution of a
16 crowdfunded appeal fund unless the loss is a result of the fund manager's dishonesty or willful
17 conduct.

18 **Comment**

19 The public-appeal fund is intended to be short-term. If the fund is held by a fund
20 manager for another person or for a project for more than a year, then the fund manager must
21 distribute the fund to a more formal arrangement, such as a trust or an entity that can manage the
22 fund long term. The fund manager is authorized to pay reasonable expenses and taxes related to
23 the fund, including expenses and taxes incurred by the intended individual or project because of
24 the fund. The fund manager must not commingle the fund with his or her own funds and
25 otherwise protect the fund from his or her own creditors. The fund manager's liability is limited
26 to acts of dishonesty and willful misconduct, because the fund manager likely is a good
27 Samaritan and may not be knowledgeable about financial management and fiduciary duty.
28

1 **SECTION 10. UNUSED BALANCE.**

2 (a) If a fund manager determines there is an unused balance, the fund manager shall:

3 (1) distribute the unused balance consistent with the terms of use of any fund
4 intermediary under Section 9;

5 (2) distribute the unused balance not distributed under paragraph (1) to one or
6 more qualified entities the fund manager reasonably believes will use the unused balance in a
7 manner substantially similar to that expressed by the terms of the crowdfunded appeal; and

8 (3) complete and terminate the crowdfunded appeal, in compliance with law.

9 (b) If a fund manager, after due diligence, is unable to satisfy subsection (a), the unused
10 balance escheats to this state.

11 (c) A person that manages a crowdfunded-appeal fund for the person's own benefit is
12 subject to subsections (a) and (b) with respect to the fund.

13 (d) A donor to a crowdfunded-appeal fund does not have a right under this [act] to a
14 refund from an unused balance.

15 **Comment**

16 This section addresses a significant issue that has arisen with humanitarian
17 crowdfunding: how to distribute excess or unused funds. A case from Great Britain, *Re*
18 *Gillingham Bus Disaster Fund*, [1958] Ch. 300, *aff'd* [1959] Ch. 62 (C.A.), is a prominent
19 example. In 1951, a large bus hit a group of more than fifty cadets in the Royal Marines
20 Volunteer Cadet Corps, ranging in age from 9 to 13 years old, who were marching along the
21 street. Twenty-four were killed and the rest were seriously injured. More than £10,000 was
22 raised to pay for funeral expenses and expenses of the injured, but because of insurance
23 settlements, only about £2500 was spent. The trustees asked the court what to do with the
24 balance, and the court held that it did not qualify as a charitable trust, so *cy pres* was not
25 available. The court also held that the trust purposes were too vague to constitute a valid trust,
26 and the only remedy was to declare a resulting trust in favor of the donors. However, the donors
27 were not found or identified, and the money languished in the court for decades. In 1992,
28 survivors of the crash asked for resolution, and the Treasury Solicitor made the funds available to
29 them under a court decision declaring the funds *bona vacantia*. Seventeen survivors received
30 about £400 each. The problem of unused funds can arise when there are excess funds, as in the
31 Gillingham Bus Disaster, when the funds are insufficient, such as the campaign to fund building

1 the wall on the southern U.S. border (where the target was \$1 billion but only \$20 million was
2 raised), or where the purpose is defeated, such as where the intended beneficiary no longer needs
3 the surgery. This section is intended to set forth a process for resolving those issues when the
4 terms of the public appeal do not address such possibilities.

5
6 A contributor to a public-appeal fund may have a right to a refund under the terms of the
7 public appeal or the terms of the online platform.

8 9 **SECTION 11. ENFORCEMENT.**

10 (a) The following persons may petition the court for relief under subsection (b):

- 11 (1) an intended subject or the intended subject's successor;
12 (2) a crowdfunded-appeal organizer;
13 (3) a fund manager;
14 (4) a person designated as fund manager; and (5) the [Attorney General].

15 (b) The court in a proceeding under subsection (a) may:

- 16 (1) construe the terms of the crowdfunded appeal;
17 (2) compel the fund manager to submit an accounting;
18 (3) ratify a past act or approve a proposed act of the fund manager;
19 (4) direct the fund manager to take an action or refrain from taking an action;
20 (5) remove the fund manager and appoint a successor fund manager; and
21 (6) subject to an order necessary to protect the interest of the intended subject,

22 accept the resignation of the fund manager. Approve a final accounting of the fund manager, and
23 appoint a successor fund manager, if necessary.

24 (c) A violation of Section 9 or 10 is a violation of [cite to the state's Consumer Protection
25 Act], except that a private right of action under [cite to the state's Consumer Protection Act] is
26 not available.

1 **Comment**

2
3 Standing to enforce the terms of a public appeal is not given to the donors. The potential
4 large number of donors and the likely small amount contributed by individual donors creates
5 practical problems with allowing donors to enforce. See *Holden Hospital Corp. v. Southern Ill.*
6 *Hospital Corp.*, 174 N.E.2d 793 (Ill. 1961).
7

8 Every state has a Consumer Protection Act or Unfair Deceptive Acts and Practices
9 statute. The state acts are not uniform, however, and remedies available to consumers may or
10 may not include compensatory damages, punitive damages, attorney's fees, and class
11 actions. The drafters of this Act took the approach that the role of a public appeal contributor as
12 consumer should not extend beyond making a contribution. Section 13(a), therefore, is intended
13 to preclude a private cause of action under a state's consumer protection act by a scammed or
14 duped public appeal contributor for a violation of Section 9, 10, or 11 of this Act. Rather, only
15 state enforcement provisions apply. Thus, Section 12(b) intentionally omits a public appeal
16 contributor from those parties who may petition a court for the relief described in Section 12(c).
17

18 **SECTION 12. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
19 applying and construing this uniform act, consideration must be given to the need to promote
20 uniformity of the law with respect to its subject matter among states that enact it.

21 **SECTION 13. TRANSITIONAL PROVISION.** This [act] applies to a crowdfunded-
22 appeal fund created on or after [the effective date of this [act]].

23 **SECTION 14. REPEALS; CONFORMING AMENDMENTS.**

24 (a)

25 (b)

26 (c)

27 **SECTION 15. EFFECTIVE DATE.** This [act] takes effect