

D R A F T

FOR DISCUSSION ONLY

# FUNDRAISING THROUGH PUBLIC APPEALS ACT

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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By

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February 13, 2019

## **FUNDRAISING THROUGH PUBLIC APPEALS ACT**

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# FUNDRAISING THROUGH PUBLIC APPEALS ACT

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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 **Discussion Notes**

5 The Act was originally conceived as an approach to deal with Funds raised for humanitarian and  
6 benevolent purposes through online platforms. The term “crowdfunding” is defined by  
7 Merriam-Webster as “the practice of obtaining needed Funding (as for a new business) by  
8 soliciting contributions from a large number of people especially from the online community.”  
9 The term therefore may be both overbroad and too restrictive for the appropriate scope of the  
10 Act. First, we have determined that the Act will only address Funds raised for specific donative  
11 purposes, not for commercial purposes. Second, the drafting committee has also discussed  
12 extending the Act’s scope to include fundraising done via more traditional avenues, such as pleas  
13 for funds communicated through television, radio or print media, in addition to online  
14 campaigns. We can consider requesting a name change, or we can clarify the scope of the Act  
15 either through a definition of crowdfunding or a statement of the scope of the Act. The Canadian  
16 uniform act addressing these topics is entitled “Uniform Informal Public Appeals Act.”  
17

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

19 (1) “Fund manager” means a person that controls or has authority to control management  
20 of a public appeal fund.

21 (2) “Intended individual” means an individual who is the subject of a public appeal.

22 (3) “Noncommercial purpose” means a purpose that is not intended to make a profit or  
23 achieve a commercial advantage for the benefit of the public appeal organizer, intended  
24 individual, or project.

25 (4) “Person” means an individual, estate, trust, business or nonprofit entity, public  
26 corporation, government or governmental subdivision, agency, or instrumentality, or other legal  
27 entity.

28 (5) “Project” means the subject of a public appeal. The term does not include an intended  
29 individual.

30 (6) “Public appeal” means a solicitation directed at the general public or a section of the

1 public, of contributions for a specified noncommercial purpose including a solicitation through a  
2 media outlet, social medium, and online fundraising platform.

3 (7) “Public appeal fund” means money or other property raised through a public appeal  
4 including a post-termination contribution.

5 (8) “Public appeal organizer” means a person that makes a public appeal.

6 (9) “Qualified entity” means an entity, organization, or association that [is registered with  
7 this state as a charitable organization under state charitable organization registration statute or]  
8 qualifies as tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986[, as  
9 amended], 26 U.S.C. Section 501(c)(3).

10 (10) “Record” means information that is inscribed on a tangible medium or that is stored  
11 in an electronic or other medium and is retrievable in perceivable form.

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

15 (12) “Surplus” means money or other property in a public appeal fund which is not  
16 needed or cannot be used for the purpose of the public appeal.

17 **Legislative Note:** *In a state in which the constitution or other law does not permit the phrase “as*  
18 *amended” when federal statutes are incorporated into state law, the phrase should be deleted in*  
19 *subsection (9).*

20  
21  
22

### Discussion Notes

23 The style rules call for definitions of terms that recur throughout the act to be put into a separate  
24 section early in the act. We may determine that other terms require a definition in this section.  
25 When appropriate, these definitions were based on definitions from the Uniform Trust Code or  
26 other uniform acts.

1 *Public Appeal.* This definition includes more traditional media outlets but may not include, for  
2 example, fundraising done in a church congregation for a member of the community in need.  
3 The reaches of the act need to be defined to clarify whether smaller, more informal fundraising  
4 efforts are included.  
5

6 **SECTION 3. APPLICABILITY.**

7 (a) This [act] applies to a public appeal fund created by a public appeal organizer:

8 (1) who is a resident of this state; or

9 (2) which is an entity organized under the laws of this state or whose principal  
10 place of business is in this state.

11 (b) The [act] does not apply to funds raised through a public appeal:

12 (1) for which the public appeal organizer is a qualified entity or which are payable  
13 directly to a qualified entity;

14 (2) in which the public appeal organizer has agreed in a record with all donors  
15 specifying distribution of the funds raised and distribution of any surplus; or

16 (3) in which the public appeal organizer requires the funds be placed in trust for  
17 the benefit of the intended individual or project.

18 **Discussion Notes**

19 The Uniform Trust Code includes a scope provision, and a scope provision may be appropriate in  
20 this act, in addition to the definitions section. We think that some platforms, like Kickstarter,  
21 require an Organizer to enter into a contract with each donor regarding distribution. This section  
22 is intended to exclude from the Act well-organized campaigns that have built in protections, such  
23 as those that have contracted for terms or set up formal trusts for the Fund beneficiary.  
24

25 **Discussion Notes**

26 The choice of law issue is one of the thorniest. The committee decided to clarify by limiting  
27 choice of law to the domicile of the Organizer.  
28

29 **SECTION 4. PRINCIPLES OF LAW AND EQUITY.** Unless displaced by a  
30 provision of this [act], the principles of law and equity of this state supplement this [act].

1 **Discussion Notes**

2 This section is based on Uniform Premarital and Marital Agreements Act §5 and is similar to  
3 Uniform Trust Code §106. The purpose is to confirm that the law of an enacting state other than  
4 this act remains applicable to crowdfunding campaigns except as displaced by this act.  
5

6 **SECTION 5. PUBLIC APPEAL BENEFITING ORGANIZER.** If the purpose of a  
7 public appeal is to benefit only the public appeal organizer, the public appeal organizer has  
8 authority to manage and distribute the public appeal fund, subject to the terms of the public  
9 appeal and this [act].

10 **Discussion Notes**

11 Funds raised for the purpose of covering support obligations of the Fund Organizer, such as  
12 medical expenses of minor children, are for the benefit of the Fund Organizer.  
13

14 **SECTION 6. PUBLIC APPEAL FOR INTENDED INDIVIDUAL OTHER THAN**  
15 **PUBLIC APPEAL ORGANIZER.** If the purpose of a public appeal is intended to benefit only  
16 an intended individual and the terms of the public appeal do not require that public appeal funds  
17 be placed in the name of the intended individual, the public appeal funds shall be managed by a  
18 fund manager. The public appeal organizer may be the fund manager. The fund manager shall  
19 hold the public appeal funds for the sole benefit of the intended individual.

20 **SECTION 7. PUBLIC APPEAL FOR PROJECT.** If the purpose of a public appeal is  
21 intended to benefit only a project, and the terms of the public appeal do not require that the  
22 public appeal funds be placed in a trust or distributed to an entity, the public appeal fund must be  
23 distributed to the public appeal organizer. [In the alternative, the public appeal organizer may  
24 place the fund in a trust complying with [Section 409 of the Uniform Trust Code]. The public  
25 appeal organizer must be treated as the settlor and no surplus funds may be paid to the public  
26 appeal organizer.]

1           **SECTION 8. PUBLIC APPEAL FUND INTERMEDIARY.**

2           (a) A bank, credit union, trust company or similar savings institution that holds funds a  
3 public appeal fund raised through a public appeal is not a fund manager unless it has authority to  
4 control or manage the fund. Such an institution shall be considered a fund intermediary with no  
5 duties other than those owed to any depositor under applicable law.

6           (b) An online platform that assists in organizing a public appeal or holds or passes  
7 through funds raised through a public appeal, is not a fund manager unless it has authority to  
8 control or manage the funds. The online platform is an intermediary with no duties to a public  
9 fund organizer, fund manager, intended individual, project, or fund contributor other than those  
10 owed pursuant to any user agreement and applicable law.

11           **SECTION 9. DUTIES OF FUND MANAGER.**

12           (a) A fund manager shall distribute the public appeal funds consistent with the terms of  
13 the public appeal.

14           (b) If a fund manager determines that the purpose of the public appeal has been satisfied  
15 and there is no surplus, the fund manager shall wind up and terminate the public appeal. The  
16 fund manager has no further duties on termination of the public appeal.

17           **SECTION 10. FUND MANAGER’S POWERS.**

18           (a) A fund manager may make payments from the public appeal fund without  
19 distinguishing principal and income:

20                   (1) in the amount and at the time the fund manager considers appropriate for the  
21 benefit of the intended individual or project; or

22                   (2) to pay an expense, tax, or charge for the intended individual or project arising  
23 in respect to the fund.

1 (b) A fund manager may invest money in the public appeal fund not currently needed for  
2 the benefit of the intended individual or project.

3 (c) A fund manager is not liable for a loss incurred in the management of a public appeal  
4 fund unless the loss is a result of the fund manager's dishonesty or willful misconduct.

5 **SECTION 11. SURPLUS.**

6 (a) If a fund manager determines there is a surplus in the public appeal fund, the fund  
7 manager shall:

8 (1) distribute the surplus consistent with the terms in the public appeal;

9 (2) absent terms in the public appeal, distribute the surplus to one or more public  
10 appeal funds or qualified entities if the fund manager reasonably believes the surplus would  
11 benefit in individual or project similar to that intended by the public appeal organizer; and

12 (3) wind up and terminate the public appeal, complying with applicable law.

13 (b) If the fund manager, after due diligence, is unable to satisfy subsection (a), the fund  
14 manager shall treat the surplus as unclaimed property under [cite revised Uniform Unclaimed  
15 Property Act].

16 (c) A contributor to a public appeal fund has no right to a refund from any surplus unless  
17 the public appeal provides for a refund of surplus.

18 **SECTION 12. ENFORCEMENT.** The following persons may seek judicial  
19 enforcement of the terms of a public appeal or this [act]:

20 (1) an intended individual or the intended individual's successor;

21 (2) a public appeal organizer;

22 (4) a fund manager; and

23 (5) the Attorney General.

1           **SECTION 13. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In  
2 applying and construing this uniform act, consideration must be given to the need to promote  
3 uniformity of the law with respect to its subject matter among states that enact it.

4           **SECTION 14. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**  
5 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the Electronic  
6 Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not  
7 modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize  
8 electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C.  
9 Section 7003(b)

10           **SECTION 15. TRANSITIONAL PROVISION.** This [act] applies to a public appeal  
11 fund crated on or after [the effective date of this [act]] by a public appeal organizer.

12           **SECTION 16. REPEALS; CONFORMING AMENDMENTS.**

13           (a) . . . .

14           (b) . . . .

15           (c) . . . .

16           **SECTION 17. EFFECTIVE DATE.** This [act] takes effect . . . .