

D R A F T
FOR DISCUSSION ONLY

FUNDRAISING THROUGH PUBLIC APPEALS ACT

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ON UNIFORM STATE LAWS

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June 6, 2019

FUNDRAISING THROUGH PUBLIC APPEALS ACT

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FUNDRAISING THROUGH PUBLIC APPEALS ACT

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FUNDRAISING THROUGH PUBLIC APPEALS ACT

Prefatory Note

This Act was conceived as an approach for dealing with funds raised for humanitarian and benevolent purposes through online platforms. 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, and the intention for this Act was to provide guidance and protections for the fundraiser, donors and intended recipients. Its original title was the Uniform Management of Funds Raised Through Crowdfunding Efforts Act. However, the drafting committee quickly realized that the term “crowdfunding” could include some equities fundraising campaigns involving 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.” The term therefore is both over broad and too restrictive for the appropriate scope of this Act. First, this Act addresses only funds raised for specific donative purposes, not for commercial endeavors. (The Act also exempts recognized charities subject to existing regulatory schemes.) Second, the Act’s scope includes fundraising by more traditional avenues, such as pleas for funds communicated through television, radio and print media, in addition to online campaigns. The Act’s current name is intended to remove any confusion.

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 on line. 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. Then there was the drive to create a retirement fund for the 89-year-old Popsicle cart vendor.

There is scant civil case law arising from online public appeals, though prosecutors have made headlines where criminal conduct is involved. Witness the scheme concocted 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 with unused funds?

1 The Uniform Law Conference of Canada addressed the issue in 2011, promulgating its
2 Uniform Informal Public Appeals Act. The drafters of this Act frequently consulted the
3 Canadian Act and Canada's experience in implementing its 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 title of the Act indicates that the Act covers fundraising through appeals to the public. It is
6 not limited to appeals through online platforms, usually called “crowdfunding.” However, as the
7 terms of the Act clarify, it does not apply to fundraising for business purposes and fundraising by
8 organized charities.
9

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

11 (1) “Entity” means a:

- 12 (A) business corporation;
- 13 (B) nonprofit corporation;
- 14 (C) limited liability partnership;
- 15 (D) limited partnership;
- 16 (E) limited liability company;
- 17 (F) limited liability limited partnership; or
- 18 (G) general cooperative association.

19 (2) “Fund manager” means a person that controls or manages a public-appeal fund for the
20 benefit of another person or for a project. It includes a successor fund manager or a person who
21 takes over management and control of a public-appeal fund from the person intended to benefit
22 from the public appeal.

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

24 (4) “Noncommercial purpose” means a purpose that is not;

- 25 (A) an investment opportunity for donors or
- 26 (B) for the profit or commercial advantage for the public-appeal organizer,

intended individual, or project.

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

(6) “Project” means the subject of a public appeal that is an undertaking and not a named person.

(7) “Public appeal” means a solicitation directed at the public or a section of the public, rather than a private solicitation to specific persons, of contributions for a specified noncommercial purpose. The term includes a solicitation through a media outlet, social medium, or online fundraising platform.

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

(9) “Public-appeal organizer” means a person that makes a public appeal.

(10) “Qualified entity” means:

(A) a federal, state or local governmental entity or agency; and

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

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

(12) “Regulated financial institution” means a bank, trust company, mutual savings bank, savings and loan association, or credit union authorized to do business and accept deposits under

1 state or federal law.

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

5 (14) “Unused balance” means money or other property in a public-appeal fund which is
6 not needed for or is insufficient to satisfy the purpose of the public appeal.

7 ***Legislative Note:*** *In a state in which the constitution or other law does not permit the phrase “as*
8 *amended” when federal statutes are incorporated into state law, the phrase should be deleted in*
9 *paragraph (10).*

10 11 **Comment**

12
13 *Fund Manager.* This term refers to the person who has control over the funds once raised. The
14 various online platforms may differ, but commonly the person setting up the fundraising
15 campaign either designates himself or herself as the owner or directs that the funds be controlled
16 by someone else. The fundraiser will have to give a tax identification number for whomever is
17 in control of the funds. The fund manager owes duties to the person or project intended to
18 benefit from the public appeal. If the person controlling the funds is the person intended to
19 benefit from the appeal, then the person is not within the definition of fund manager. However, if
20 for the person controlling the funds for their own benefit relinquishes control to a successor, then
21 that person controlling the funds is a fund manager.

22
23 *Intended Individual.* The fundraising campaign may be for the benefit of one or more individual
24 identifiable by name or by implication. The term may also include an identifiable group
25 composed of named or unnamed individuals. For example, the intended individual could be Jane
26 Smith, a high-school student who needs funds for an educational trip abroad. The intended
27 individual could also be the Jones High School French class which includes Jane Smith. The
28 intended individual may be the fundraiser, or the fundraiser may be raising money for someone
29 else.

30
31 *Noncommercial purpose.* The Act does not apply to crowdfunding intended to raise capital for
32 business ventures or to sell products. Its scope is limited to humanitarian fundraising, where
33 contributors donate funds without any expectation of return or personal benefit, in order to assist
34 a person in need or fund a worthy endeavor. The definition excludes both campaigns in which
35 the donor expects a return on investment and campaigns in which the fundraiser expects to
36 collect remuneration for their efforts. For example, Patreon is a membership program in which
37 fans of artists, writers and other creators can contribute small amounts to fund the creator’s work.
38 That would be considered a commercial purpose and would not be covered by the Act. A string
39 quartet raising money to record musical works that would not be sufficiently commercial to get
40 funding from more orthodox methods would also be considered a commercial purpose under this

1 definition and would not be covered by the Act.

2
3 *Project.* Some fundraisers are intended to raise money for a particular endeavor rather than a
4 person. For example, a group of friends may want to raise money to offer a reward for
5 information about the unsolved murder of their friend. A little league baseball team may want to
6 raise funds to attend a championship tournament that it unexpectedly qualified for. A church
7 may need funds to rebuild after a natural disaster. This category of fundraising campaign is
8 consistent with the type of purpose trust called a “noncharitable trust without ascertainable
9 beneficiary” under the Uniform Trust Code § 409.

10
11 *Public Appeal.* The Act covers appeals made through online platforms, such as GoFundMe and
12 Facebook, as well as through traditional media, such as radio and television news programs. The
13 fundraising activity subject to the Act must be directed at the public. Requesting contributions
14 from family members and close friends is not a public appeal. The appeal may be more directed
15 than a general broadcast. For example, a campaign to raise funds for a retired judge’s unfunded
16 medical care may be directed at all lawyers in the community. That would still be a public
17 appeal. The drafters recognize that what makes a public appeal public is not always clear. A
18 church, for example, may announce to its congregation during a regular service that it is
19 commencing a building fund and needs \$100,000. The announcement is not heard outside the
20 church and, to the mind of the church, is not intended to be public. Another church, however,
21 also launching a building fund for the same amount of money, organizes a public appeal through
22 an online platform. Arguably, the former solicitation would not be a public appeal. The latter,
23 under this Act, would be.

24
25 *Public-Appeal Fund.* The fund could include any form of currency, including cryptocurrency,
26 and other property.

27
28 *Unused Balance.* An "Unused Balance" arises where the purpose for which the public appeal no
29 longer exists. For example, suppose John Smith needs \$250,000 for life-saving surgery. The
30 public appeal raises less than, or even more than, \$250,000 but John Smith dies prior to
31 surgery. The unused balance would be the entirety of the public appeal fund. An unused
32 balance may also exist where the public appeal's target is a specific amount and the public appeal
33 fund exceeds that number. For example, the public appeal for John Smith's surgery generates
34 \$270,000 and his surgery is successful. The unused balance would be \$20,000.

35
36 **SECTION 3. APPLICABILITY.** This [act] applies to a public-appeal fund created by

37 a public appeal organizer:

38 (1) who is an individual residing in this state; or

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

1 **Comment**

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

4
5 **SECTION 4. EXCLUSIONS.** The [act] does not apply to a public-appeal fund if:

6 (1) the public appeal organizer is a qualified entity or the fund is payable directly to a
7 qualified entity;

8 (2) at the time of creation, the public appeal organizer has agreed in a record with all
9 donors as to distribution of the funds raised and distribution of any unused balance; or

10 (3) the public appeal organizer requires that the funds be placed in trust for the benefit of
11 the intended individual or project.

12 **Comment**

13 This section is intended to exclude from the Act well-organized campaigns that have built-in
14 protections. The Act excludes public appeals that are made by a qualified charity or government
15 entity and those that are payable directly to a qualified charity or government entity. For
16 example, the millions of dollars raised through GoFundMe after the Pulse nightclub shooting
17 were payable to Equality Florida, a qualified charitable organization. Such campaigns are not
18 subject to the act because qualified charities and governmental agencies are otherwise regulated
19 and monitored. Some online platforms currently require a public appeal organizer to enter into a
20 contract with each donor regarding distribution of any unused balance, and the contracts provide
21 the terms, such as what to do with an unused balance, that this act is intended to provide. If the
22 campaign provides that the funds will be paid directly to a trust for the benefit of the intended
23 individual or project, applicable state law on trusts provide sufficient structure and protection.

24
25 **SECTION 5. FUND MANAGER APPOINTMENT.** A person becomes a fund
26 manager on receipt of notice of being designated fund manager and the person's conduct
27 indicates acceptance of being designated fund manager.

28 **Comment**

29 Because the role of fund manager creates duties, the fund manager must have some notice before
30 those duties are imposed. In most cases, the fund manager will be the public-appeal organizer.
31 However, if the public-appeal organizer designates another person to have authority over the
32 funds, then before duties arise, the designated fund manager must receive notice and must by
33 their conduct indicate a willingness to serve. Ideally, acceptance would be by written

1 acknowledgement. However, many public appeal campaigns are organized spontaneously by
2 one or more laypersons as a charitable response to someone's sudden misfortune or immediate
3 need for financial assistance. In such cases, formalities are not always considered. In the
4 absence of a written acknowledgement, a person may become a fund manager by oral or other
5 means, including engaging in conduct that constitutes controlling or managing a public appeal
6 fund.

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

12 **Comment**

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

21
22 **SECTION 7. PUBLIC APPEAL BENEFITTING INTENDED INDIVIDUAL**
23 **OTHER THAN PUBLIC APPEAL ORGANIZER.**

24 (a) If the primary purpose of a public appeal is to benefit an intended individual other
25 than the public-appeal organizer, and the terms of the public appeal do not require the public-
26 appeal fund be placed in the name of the intended individual or to a trustee for the benefit of the
27 intended individual, the public-appeal fund must be managed by a fund manager.

28 (b) The public-appeal organizer may be the fund manager. The fund manager shall hold
29 the public-appeal fund for the sole benefit of the intended individual subject to the terms of the
30 public appeal and this [act].

1 **Comment**

2 If the fund is controlled by the organizer or a person other than the intended individual, then the
3 person controlling the fund will be considered a fund manager, will be required to follow the
4 terms of the public appeal and will be subject to the duties and powers designated below. If the
5 public appeal requires that the intended individual or a trustee of a trust for that person's benefit
6 receives the fund directly from the fund intermediary, then there is no fund manager.
7

8 **SECTION 8. PUBLIC APPEAL FOR PROJECT.**

9 (a) If the purpose of a public appeal is to benefit a project and the terms of the public
10 appeal do not require the public-appeal fund be distributed to a trustee or an entity, the fund
11 manager must manage and distribute the public-appeal fund subject to the terms of the public
12 appeal and this [act]. [In the alternative, the public-appeal organizer may place the fund in a trust
13 complying with [Section 409 of the Uniform Trust Code] the terms of which are consistent with
14 the public appeal. If a trust complying with [Section 409 of the Uniform Trust Code] is used, the
15 public appeal organizer shall be treated as the settlor of such trust and no unused balance may be
16 paid to the public appeal organizer.]

17 (b) The public-appeal organizer may be the fund manager. The fund manager shall hold
18 the public-appeal fund for the sole benefit of the project subject to the terms of the public appeal
19 and this [act].

20 **Comment**

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

1 fund to an entity or trustee to manage and distribute the public-appeal fund according to the
2 terms of the public appeal.

3 (d) If a fund manager determines at any time that the purpose of the public appeal has
4 been satisfied and there is no unused balance, the fund manager shall wind up and terminate the
5 public appeal and have no further duties.

6 (e) Subject to subsections (a), (b) and (c) above, a fund manager may distribute the
7 public-appeal fund:

8 (1) in amounts and at times the fund manager considers appropriate for the benefit
9 of the intended individual or project; or

10 (2) to pay reasonable expenses, taxes, or charges for the administration of the
11 public-appeal fund or for reasonable expenses and taxes incurred by the intended individual or
12 project arising on account of the fund.

13 (f) A fund manager shall hold the public-appeal fund in a regulated financial institution in
14 such a manner that the public appeal 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
16 a public-appeal fund unless the loss is a result of the fund manager's dishonesty or willful
17 misconduct.

18 **Comment**

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

1 **SECTION 11. UNUSED BALANCE.**

2 (a) If a fund manager determines the public-appeal fund has an unused balance, the fund
3 manager shall:

4 (1) distribute the unused balance consistent with the terms of the public appeal or
5 the terms of use of the fund intermediary;

6 (2) distribute the unused balance not distributed under paragraph (1) to one or
7 more qualified entities that the fund manager reasonably believes will apply the unused balance
8 in a manner substantially similar to that intended by the public-appeal organizer; and

9 (3) complete and terminate the public appeal, in compliance with applicable law.

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

12 (c) A person having control of a public appeal fund for his or her own benefit shall also
13 be subject to subsections (a) and (b) with respect to the public appeal fund.

14 (d) A contributor to a public-appeal fund has no right under this [act] to a refund from
15 any unused balance.

16 **Comment**

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

1 there are excess funds, as in the Gillingham Bus Disaster, when the funds are insufficient, such
2 as the campaign to fund building the wall on the southern U.S. border (where the target was \$1
3 billion but only \$20 million was raised), or where the purpose is defeated, such as where the
4 intended beneficiary no longer needs the surgery. This section is intended to set forth a process
5 for resolving those issues when the terms of the public appeal do not address such possibilities.
6

7 A contributor to a public-appeal fund may have a right to a refund under the terms of the public
8 appeal or the terms of the online platform.
9

10 **SECTION 12. ENFORCEMENT.**

11 (a) A violation of sections 10 or 11 constitutes a violation of [the state's Consumer
12 Protection Act], except that private enforcement under [section – of the CPA] is not available.

13 (b) The following persons may petition the court for relief described in subsection (c):

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

15 (2) a public-appeal organizer;

16 (3) a fund manager;

17 (4) a person designated as fund manager; and (5) the [Attorney General].

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

19 (1) construe of the terms of the public appeal;

20 (2) compel the fund manager to submit an accounting;

21 (3) ratify past acts or approve proposed acts of the fund manager;

22 (4) direct the fund manager to take a certain action or refrain from taking a certain
23 action;

24 (5) remove the fund manager and appoint a successor fund manager; and

25 (6) accept of the resignation of the fund manager and approve final accounts of
26 the fund manager, and appoint a successor fund manager, if needed, subject to any orders the
27 court determines are necessary to protect the interests of the intended individual or project.

1 **Comment**

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

8 Every state has a Consumer Protection Act or Unfair Deceptive Acts and Practices statute. The
9 state acts are not uniform, however, and remedies available to consumers may or may not
10 include compensatory damages, punitive damages, attorney's fees, and class actions. The
11 drafters of this Act took the approach that the role of a public appeal contributor as consumer
12 should not extend beyond making a contribution. Section 13(a), therefore, is intended to
13 preclude a private cause of action under a state's consumer protection act by a scammed or duped
14 public appeal contributor for a violation of Section 9, 10, or 11 of this Act. Rather, only state
15 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 13. 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 14. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
22 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the Electronic
23 Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not
24 modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize
25 electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C.
26 Section 7003(b)

27 **SECTION 15. TRANSITIONAL PROVISION.** This [act] applies to a public-appeal
28 fund created on or after [the effective date of this [act]] by a public-appeal organizer.

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

30 (a)

31 (b)

32 (c)

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