

Senate Substitute for HOUSE BILL No. 2170

By Committee on Federal and State Affairs

3-24

1 AN ACT concerning philanthropic gifts; relating to judicial enforcement
2 of donor-imposed restrictions on gifts of endowment funds or to
3 endowment funds; enacting the donor intent protection act.
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5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. (a) Sections 1 through 5, and amendments thereto, shall be
7 known and may be cited as the donor intent protection act.

8 (b) The purpose of sections 1 through 5, and amendments thereto, is
9 to provide legal recourse to an individual charitable donor when the
10 donor's gift restrictions pursuant to an endowment agreement with a
11 recipient charitable organization that governs an endowment fund
12 containing only property gifted by such donor are not followed by the
13 recipient charitable organization.

14 Sec. 2. For purposes of sections 1 through 5, and amendments
15 thereto:

16 (a) "Charitable organization" means an organization organized and
17 operated exclusively for religious, charitable, scientific, testing for public
18 safety, literary, educational or other specified purposes and that is exempt
19 from federal income taxation as an entity described in section 501(c)(3) of
20 the federal internal revenue code.

21 (b) "Donor" means an individual who has made a gift of property to
22 an existing endowment fund of a charitable organization or that establishes
23 a new endowment fund of the charitable organization pursuant to terms of
24 an endowment agreement that may include donor-imposed restrictions or
25 conditions governing the use of the gifted endowment property or funds.

26 (c) "Donor-imposed restriction" means a written statement within an
27 endowment agreement or institutional solicitation that specifies obligations
28 on the management or purpose of the property gifted by the donor that are
29 imposed by or accepted by the donor of the gift as a condition of the
30 charitable organization's receipt of property pursuant to an endowment
31 agreement or institutional solicitation.

32 (d) "Endowment agreement" means an agreement between a donor
33 and a charitable organization that gifts an endowment fund to a charitable
34 organization or gifts property to an endowment fund of a charitable
35 organization, and such donor is the only donor gifting such endowment
36 fund or property to an endowment fund. An "endowment agreement" may

1 include donor-imposed restrictions or conditions governing the use of the
2 gifted endowment property or fund.

3 (e) "Endowment fund" means an institutional fund that, under the
4 terms of an endowment agreement or institutional solicitation, is not
5 wholly expendable by the charitable institution on a current basis and that
6 only contains property gifted by a single donor. "Endowment fund" does
7 not include assets that the charitable institution designates as an
8 endowment fund for its own use.

9 (f) "Institutional solicitation" means a record or records, including a
10 solicitation for endowment funding by a charitable organization, under
11 which property is granted to, transferred to or held by a charitable
12 institution as an endowment fund. An "institutional solicitation" may
13 constitute or include an endowment agreement between the donor and the
14 charitable institution.

15 (g) "Legal representative" means the administrator or executor of an
16 individual's estate, a surviving spouse if there is a judicial settlement of the
17 accounts of an individual's estate or any individual designated in an
18 endowment agreement, whether such individual was born at the time of
19 such designation, to act in place of a party to an endowment agreement
20 with respect to all matters expressed in such agreement and all actions that
21 such agreement contemplates, including, but not limited to, interpreting,
22 performing and enforcing any provisions of such agreement and defending
23 the validity thereof.

24 (h) "Property" means real property, personal property or money,
25 cryptocurrency, stocks, bonds or any other asset or financial instrument.

26 Sec. 3. (a) Except where specifically required or authorized by federal
27 or state law, no charitable organization that accepts a contribution of
28 property of an endowment fund or to an endowment fund pursuant to a
29 written donor-imposed restriction shall violate the terms of that restriction.

30 (b) If a charitable organization violates a donor-imposed restriction
31 contained in an endowment agreement or institutional solicitation, the
32 donor, or the donor's legal representative, may file a complaint within two
33 years after discovery of the violation for breach of such agreement. The
34 complaint may be filed in a court of general jurisdiction in the county
35 where a charitable organization named as a party has its principal office or
36 principal place of carrying out its charitable purpose or in the county of
37 residence of the donor. The complaint may be filed whether or not the
38 endowment agreement expressly reserves a right to sue or a right of
39 enforcement. A complaint filed pursuant to sections 1 through 4, and
40 amendments thereto, shall not seek a judgment awarding damages to the
41 plaintiff.

42 (c) (1) If the court determines that a charitable organization violated a
43 donor-imposed restriction, the court may order any remedy in law or

1 equity that is consistent with and restores, to the extent possible, the
2 donor's intent as expressed by the donor-imposed restrictions and
3 conditions in the endowment agreement, including, but not limited to:

4 (A) Future compliance with or performance of donor-imposed
5 restrictions or conditions on the use or expenditure of the gifted
6 endowment property;

7 (B) restitution or restoration by the charitable organization of
8 property to an endowment fund that has been expended or used by the
9 charitable organization in contravention of donor-imposed restrictions;

10 (C) an accounting or the imposition of accounting requirements;

11 (D) restoration or a change to a name required by the donor-imposed
12 restrictions;

13 (E) measures to preserve the property and value of the endowment
14 fund;

15 (F) modification or release of a donor-imposed restriction or
16 reformation or dissolution of the endowment agreement as permitted by
17 Kansas law;

18 (G) transfer of property from the endowment fund to another
19 charitable organization as directed by the donor; or

20 (H) any other remedy available under contract law or equity
21 consistent with the charitable purposes expressed in the endowment
22 agreement and with the charitable purpose of the charitable organization.

23 (2) The court shall not order the return of donated funds to the donor
24 or the donor's legal representative or estate.

25 Sec. 4. A charitable organization may obtain a judicial declaration of
26 rights and duties expressed in an endowment agreement containing donor-
27 imposed restrictions as to all of the actions that such agreement
28 contemplates, including, but not limited to, the interpretation, performance
29 and enforcement of the agreement and determination of its validity. The
30 charitable organization may also seek such declaration in any suit brought
31 under this section.

32 Sec. 5. The provisions of sections 1 through 4, and amendments
33 thereto, shall not apply to any release or modification of any donor
34 restriction or purpose ordered or made pursuant to K.S.A. 58-3616, and
35 amendments thereto, prior to July 1, 2023, or to any appeal of any such
36 release or modification that is pending on or after July 1, 2023.

37 Sec. 6. This act shall take effect and be in force from and after its
38 publication in the statute book.