

Senate Substitute for HOUSE BILL No. 2170

AN ACT concerning philanthropic gifts; relating to judicial enforcement of donor-imposed restrictions on gifts of endowment funds or to endowment funds; enacting the donor intent protection act.

Be it enacted by the Legislature of the State of Kansas:

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

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

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

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

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

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

(d) "Endowment agreement" means a written agreement between a donor and a charitable organization that gifts an endowment fund to a charitable organization or gifts property to an endowment fund of a charitable organization, and such donor is the only donor gifting such endowment fund or property to an endowment fund. An "endowment agreement" may include donor-imposed restrictions or conditions governing the use of the gifted endowment property or fund.

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

(f) "Legal representative" means the administrator or executor of an individual's estate, a surviving spouse if there is a judicial settlement of the accounts of an individual's estate or any living, named individual designated in an endowment agreement to act in place of a party to an endowment agreement with respect to all matters expressed in such endowment agreement and all actions that such agreement contemplates, including, but not limited to, interpreting, performing and enforcing any provisions of such endowment agreement and defending the validity thereof.

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

Sec. 3. (a) Except where specifically required or authorized by federal or state law, including, but not limited to, K.S.A. 58-3616, and amendments thereto, no charitable organization that accepts a contribution of property of an endowment fund or to an endowment fund pursuant to an endowment agreement that imposes a written donor-imposed restriction shall violate the terms of that restriction.

(b) If a charitable organization violates a donor-imposed restriction contained in an endowment agreement, the donor, or the

donor's legal representative, may file a complaint within two years after discovery of the violation for breach of such agreement but not more than 40 years after the date of the endowment agreement that established the endowment fund. The complaint may be filed in a court of general jurisdiction in the county of this state where a charitable organization named as a party has its principal office or principal place of carrying out its charitable purpose or in the county of residence of the donor. The complaint may be filed whether or not the endowment agreement expressly reserves a right to sue or a right of enforcement. A complaint filed pursuant to sections 1 through 4, and amendments thereto, shall not seek, or result in, a judgment awarding damages to the plaintiff.

(c) (1) If the court determines that a charitable organization violated a donor-imposed restriction, the court may order any remedy in law or equity that is consistent with and restores, to the extent possible, the donor's intent as expressed by the donor-imposed restrictions and conditions in the endowment agreement, including, but not limited to:

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

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

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

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

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

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

(G) transfer of property from the endowment fund to another charitable organization as directed by the donor, but only if the transfer would not jeopardize or be inconsistent with the tax-exempt status of the original charitable organization. Nothing in this section shall conflict with or affect section 3(b), and amendments thereto.

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

Sec. 4. A charitable organization may obtain a judicial declaration of rights and duties expressed in an endowment agreement containing donor-imposed restrictions as to all of the actions that such agreement contemplates, including, but not limited to, the interpretation, performance and enforcement of the agreement and determination of its validity as provided in K.S.A. 58-3616, and amendments thereto. The charitable organization may also seek such declaration in any suit brought under this section.

Sec. 5. The provisions of sections 1 through 4, and amendments thereto, shall not apply to any release or modification of any donor restriction or purpose ordered or made pursuant to K.S.A. 58-3616, and amendments thereto, prior to July 1, 2023, or to any appeal of any such release or modification that is pending on or after July 1, 2023. Nothing in this act affects the authority of the attorney general to enforce any restriction in an endowment agreement, limits the application of the judicial power of cy pres or alters the right of an institution to modify a restriction on the management, investment, purpose or use of an endowment fund in a manner permitted by the endowment agreement.

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

I hereby certify that the above BILL originated in the HOUSE, and was adopted by that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.