SENATE BILL No. 133

By Committee on Federal and State Affairs

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

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

Section 1. (a) Sections 1 through 4, and amendments thereto, shall be known and may be cited as the donor intent protection act.

(b) The purpose of sections 1 through 4, 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 are not followed by the recipient charitable organization.

Sec. 2. For purposes of sections 1 through 4, 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.

(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 and 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 or institutional solicitation.

(d) "Endowment agreement" means an 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 may include donor-imposed restrictions or conditions governing the use of the gifted endowment property or fund.

(e) "Endowment fund" means an institutional fund or part thereof
that, under the terms of an endowment agreement or institutional
solicitation, is not wholly expendable by the charitable institution on a
current basis. "Endowment fund" does not include assets that the
charitable institution designates as an endowment fund for its own use.

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

(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, no charitable organization that accepts a contribution of
property of an endowment fund or to an endowment fund pursuant to 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 or institutional solicitation, the
donor, or the donor's legal representative, may file a complaint within six
years after discovery of the violation for breach of such agreement. The
complaint may be filed in a court of general jurisdiction in the county
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 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 have 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;
(G) transfer of property from the endowment fund to another charitable organization as directed by the donor; or
(H) any other remedy available under contract law or equity consistent with the charitable purposes expressed in the endowment agreement and with the charitable purpose of the charitable organization.

(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 such agreement contemplates, including, but not limited to, the interpretation, performance and enforcement of the agreement and determination of its validity. The charitable organization may also seek such declaration in any suit brought under this section.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.