

**SENATE BILL No. 133**

By Committee on Federal and State Affairs

2-1

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1 AN ACT concerning philanthropic gifts; relating to judicial enforcement  
2 of donor-imposed restrictions on endowment fund or other gifts to  
3 charitable organizations; 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 4, 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 4, 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 are not followed by the recipient  
12 charitable organization.

13 Sec. 2. For purposes of sections 1 through 4, and amendments  
14 thereto:

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

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

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

31 (d) "Endowment agreement" means an agreement between a donor  
32 and a charitable organization that gifts an endowment fund to a charitable  
33 organization or gifts property to an endowment fund of a charitable  
34 organization and may include donor-imposed restrictions or conditions  
35 governing the use of the gifted endowment property or fund.

36 (e) "Endowment fund" means an institutional fund or part thereof

1 that, under the terms of an endowment agreement or institutional  
2 solicitation, is not wholly expendable by the charitable institution on a  
3 current basis. "Endowment fund" does not include assets that the  
4 charitable institution designates as an endowment fund for its own use.

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

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

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

17 (b) If a charitable organization violates a donor-imposed restriction  
18 contained in an endowment agreement or institutional solicitation, the  
19 donor, or the donor's legal representative, may file a complaint within six  
20 years after discovery of the violation for breach of such agreement. The  
21 complaint may be filed in a court of general jurisdiction in the county  
22 where a charitable organization named as a party has its principal office or  
23 principal place of carrying out its charitable purpose or in the county of  
24 residence of the donor. The complaint may be filed whether or not the  
25 endowment agreement expressly reserves a right to sue or a right of  
26 enforcement. A complaint filed pursuant to sections 1 through 4, and  
27 amendments thereto, shall not seek a judgment awarding damages to the  
28 plaintiff.

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

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

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

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

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

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

1 fund;

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

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

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

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

12 Sec. 4. A charitable organization may obtain a judicial declaration of  
13 rights and duties expressed in an endowment agreement containing donor-  
14 imposed restrictions as to all of the actions such agreement contemplates,  
15 including, but not limited to, the interpretation, performance and  
16 enforcement of the agreement and determination of its validity. The  
17 charitable organization may also seek such declaration in any suit brought  
18 under this section.

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