

SESSION OF 2023

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR  
HOUSE BILL NO. 2170**

As Recommended by Senate Committee on  
Federal and State Affairs

**Brief\***

Senate Sub. for HB 2170 would create the Donor Intent Protection Act, which would provide legal recourse to an individual charitable donor when the donor's gift restrictions are not followed by the recipient charitable organization.

***Purpose (Section 1)***

The bill would state that its purpose is to provide legal recourse to an individual charitable donor. The bill would state recourse is available when pursuant to an endowment agreement, the donor's gift restrictions are not followed.

The bill would further require the recipient be a charitable organization governing an endowment fund that must contain only property gifted by that single, individual donor.

***Definitions (Section 2)***

The bill would define terms as follows:

- "Charitable organization" would mean an organization organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, educational, or other specified

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

purposes that is exempt from federal income taxation as a 501(c)(3) entity under the Federal Internal Revenue Code;

- “Donor” would mean 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;
- “Donor-imposed restriction” would mean 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 of the gift as a condition of the charitable organization’s receipt of property pursuant to an endowment agreement or institutional solicitation;
- “Endowment agreement” would mean 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 the donor is the only donor gifting such endowment fund or gifting property to such endowment fund;
  - An “endowment agreement” may include donor-imposed restrictions or conditions governing the use of the gifted endowment property or fund;
- “Endowment fund” would mean an institutional fund 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” would not include assets that the charitable institution designates as an endowment fund for its own use and would only include those endowment funds containing only property gifted by a single donor;
- “Institutional solicitation” would mean 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;
- “Legal representative” would mean the administrator or executor of a person’s estate; a supervising spouse if a court judgment has settled the accounts of the estate; or a person designated in an endowment agreement, whether or not born at the time of such designation, to act in place of a party to the agreement for all matters expressed in the agreement and all of the actions it contemplates, including, but not limited to, interpreting, performing, and enforcing the agreement and defending its validity; and
- “Property” would mean real or personal property or money, cryptocurrency, stocks, bonds, or any other asset or financial instrument.

***Violations of Donor-Imposed Restriction and Recourse  
(Section 3)***

Except when specifically required or authorized by federal or state law, the bill would specify that 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 could violate the terms of that restriction.

Under the bill if the donor-imposed restriction is violated, the donor or the donor's legal representative could file a complaint within two years after discovery of the breach of agreement. The complaint could be filed in a district court of the county where the charitable organization has its principal office or place of carrying out its charitable purpose, or in the county of residence of the donor. The bill would allow the complaint to be filed whether or not the endowment agreement expressly reserves a right to sue or right of enforcement. A complaint filed under the bill would not be able to seek a judgment awarding damages to the plaintiff.

If a court determines that a charitable organization violated a donor-imposed restriction, the bill would allow the court to 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.

Remedies would include, but would not be limited to:

- Future compliance with or performance of donor-imposed restrictions or conditions on the use or expenditure of the gifted endowment property;
- 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;
- An accounting or the imposition of accounting requirements;
- Restoration or a change to a name required by the donor-imposed restrictions;

- Measures to preserve the property and value of the endowment fund;
- Modification or release of a donor-imposed restriction or reformation or dissolution of the endowment agreement as permitted by Kansas law;
- Transfer of property from the endowment fund to another charitable organization as directed by the donor; or
- 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.

The bill would not allow for the court to order the return of donated funds to the donor or the donor's legal representative or estate.

#### ***Judicial Declaration of Rights and Duties (Section 4)***

For an endowment agreement containing donor-imposed restrictions, the bill would allow a charitable organization to obtain a judicial declaration of rights and duties as to all of the actions the endowment agreement contemplates, including, but not limited to:

- The interpretation, performance, and enforcement of the agreement; and
- Determination of its validity.

The charitable organization would also be able to seek such declaration in any suit brought under the bill.

### ***Non-Retroactivity (Section 5)***

The bill would state its provisions would not apply to modifications or releases of donor restrictions or purposes by a final determination of a court or by an institution after review by the Attorney General before the effective date of the Act, or to any pending appeal of such a final determination of a court or action by an institution.

### **Background**

HB 2170, as passed by the House, would have amended law concerning samples of products provided to retailers and to club and drinking establishment licensees. [Note: These provisions were added into HB 2059 by the Senate Committee on Federal and State Affairs.]

The Senate Committee removed the contents of HB 2170, inserted the contents of SB 133, as amended by the Senate Committee, and recommended a substitute bill be passed. [Note: The provisions of HB 2170 relating to product samples were not retained in the substitute bill.]

### ***SB 133 (Donor Intent Protection Act)***

SB 133 was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Kloos.

#### ***Senate Committee on Federal and State Affairs***

In the Senate Committee hearing on SB 133, **proponent** testimony was provided by two representatives of Philanthropy Roundtable, who provided examples of instances in which donor intentions were violated, resulting in litigation. Proponents expressed that the bill would provide a legal pathway for the enforcement of written endowment agreements and increase trust between donors and charities.

Written-only proponent testimony was provided by a private citizen.

**Opponent** testimony was provided by a representative of the Kansas State University Foundation, who expressed concern that the bill would create confusion and be a drain on the resources of charitable organizations. The opponent stated the bill would conflict with current Kansas laws that protect donor intent.

On March 23, 2023, the Senate Committee amended SB 133 to:

- Specify that the provisions of the bill apply to a endowment agreement that is governing an endowment fund containing only property gifted by the single, individual donor who sought the agreement;
- Amend the definition of “endowment agreement” to specify that the agreement would only apply to the donor gifting the endowment fund or property to the endowment fund;
- Amend the definition of “endowment fund” to specify that an endowment fund would contain only property gifted by a single donor;
- Add the definition of “legal representative”;
- Change the statute of limitations on filing complaints after discovery from six years to two years; and
- Specify that the Act is not retroactive.

The Senate Committee removed the contents of HB 2170 concerning product samples, inserted the amended contents of SB 133 concerning the Donor Intent Protection Act, and recommended a substitute bill be passed.

## **Fiscal Information**

According to the fiscal note prepared by the Division of the Budget on SB 133, as introduced, the Office of Judicial Administration indicates enactment of the bill could increase the number of cases filed in district court because the bill's provisions would allow for a lawsuit to be filed for violations, which would increase the time spent by judges and court employees processing and researching these cases. The Office estimates enactment of the bill could result in the collection of docket fees in those cases filed under the bill's provisions, which would be credited to the State General Fund. According to the Office, a fiscal effect cannot be estimated until the Judicial Branch has had an opportunity to operate under the bill's provisions. Any fiscal effect associated with the bill is not reflected in *The FY 2024 Governor's Budget Report*.

Donor Intent Protection Act; philanthropic gifts; donor-imposed restrictions; charitable organizations; endowment funds