

1 AN ACT relating to charitable donor intent protection.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 273 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) As used in this section:*

6 *(a) "Charitable organization" means an entity organized and operated*
7 *exclusively for religious, charitable, scientific, testing for public safety,*
8 *literary, educational, or other specified purposes and that is recognized as*
9 *tax exempt under Section 501(c)(3) of the Internal Revenue Code;*

10 *(b) "Donor" means an individual who has made a contribution of property or*
11 *money to either an existing endowment fund, or to establish a new*
12 *endowment fund, of a charitable organization pursuant to the terms of an*
13 *endowment agreement that may include donor-imposed restrictions or*
14 *conditions governing the use of the contribution;*

15 *(c) "Donor-imposed restriction" means a provision of an endowment*
16 *agreement that specifies obligations of the charitable organization*
17 *regarding the management or use of the contribution made by the donor;*

18 *(d) "Endowment agreement" means a written agreement between a charitable*
19 *organization and a donor regarding the contribution made by the donor and*
20 *accepted by the charitable organization which may include donor-imposed*
21 *restrictions or other conditions governing the use of the contribution;*

22 *(e) "Endowment fund" means an institutional fund, including any aggregate*
23 *institutional fund or part thereof, that under the terms of a gift instrument*
24 *is not wholly expendable by the institution on a current basis;*

25 *(f) "Gift instrument" means a record, including an institutional solicitation,*
26 *under which property is granted to, transferred to, or held by an institution*
27 *as an institutional fund; and*

- 1 (g) "Legal representative" means the administrator or executor of an
2 individual's estate, a surviving spouse if there is a judicial settlement of the
3 accounts of an individual's estate, or any living, named individual
4 designated in an endowment agreement to act in place of a party to an
5 endowment agreement with respect to all matters expressed in the
6 endowment agreement and all actions that the agreement contemplates,
7 including but not limited to interpreting, performing, and enforcing any
8 provisions of the endowment agreement and defending their validity.
- 9 (2) Except as required or authorized by federal or state law, or valid court order, a
10 charitable organization that accepts a contribution of property or money
11 pursuant to an endowment agreement containing a donor-imposed restriction
12 shall not violate the terms of that restriction.
- 13 (3) (a) If a charitable organization violates a donor-imposed restriction, the donor
14 or that individual's legal representative, ninety (90) days after notification to
15 the charitable organization, may bring a civil action which shall be limited
16 to appropriate declaratory and injunctive relief within four (4) years after
17 discovery of a breach of the endowment agreement.
- 18 (b) The civil action may be filed in the county where a charitable organization
19 named as a party has its principal office or principal place of carrying out
20 its charitable purpose.
- 21 (c) The civil action seeking relief may be filed regardless of whether the
22 agreement expressly reserves a right to sue or enforce, and it shall not seek
23 a judgment awarding monetary damages to the plaintiff.
- 24 (4) A charitable organization may obtain a judicial declaration of rights as to the
25 terms of an endowment agreement, including any donor-imposed restrictions,
26 and the actions the agreement contemplates, including but not limited to the
27 interpretation, specific performance, and enforcement of the agreement and

1 determination of its validity by bringing a civil action under this section.
2 (5) If the court determines that a charitable organization violated a donor-imposed
3 restriction, the court may order one (1) or more remedies consistent with the
4 charitable purposes expressed in the endowment agreement. The court shall not
5 order the return of the contribution to the donor or the donor's legal
6 representative or estate.