

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. "Endowment*
25 *fund" does not include assets that an institution designates as an*
26 *endowment fund for its own use;*

27 *(f) "Gift instrument" means a record, including an institutional solicitation,*

1 under which property is granted to, transferred to, or held by an institution
2 as an institutional fund; and

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

11 (2) Except as required or authorized by federal or state law, or valid court order, a
12 charitable organization that accepts a contribution of property or money
13 pursuant to an endowment agreement containing a donor-imposed restriction
14 shall not violate the terms of that restriction.

15 (3) (a) If a charitable organization violates a donor-imposed restriction, the donor
16 or that individual's legal representative, ninety (90) days after notification to
17 the charitable organization, may bring a civil action for declaratory and
18 injunctive relief within four (4) years after discovery of a breach of the
19 endowment agreement.

20 (b) The civil action may be filed in the county where a charitable organization
21 named as a party has its principal office or principal place of carrying out
22 its charitable purpose.

23 (c) The civil action may be filed regardless of whether the agreement expressly
24 reserves a right to sue or enforce and it shall not seek a judgment awarding
25 damages to the plaintiff.

26 (4) A charitable organization may obtain a judicial declaration of rights as to the
27 terms of an endowment agreement, including any donor-imposed restrictions,

1 and the actions the agreement contemplates, including but not limited to the
2 interpretation, performance, and enforcement of the agreement and
3 determination of its validity. A charitable organization may do so by bringing a
4 civil action, and shall seek such declaration in any suit brought against it under
5 this section.

6 (5) If the court determines that a charitable organization violated a donor-imposed
7 restriction, the court may order one (1) or more remedies consistent with the
8 charitable purposes expressed in the endowment agreement. The court shall not
9 order the return of the contribution to the donor or the donor's legal
10 representative or estate.