

1 SENATE BILL NO. 134

2 INTRODUCED BY G. HERTZ

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE SAFEGUARDING ENDOWMENT GIFTS ACT;
5 PROVIDING DEFINITIONS; PROVIDING PROTECTIONS AFFORDED TO ENDOWMENTS AND GIFTS TO
6 CERTAIN ENTITIES; PROVIDING REQUIREMENTS FOR CERTAIN ENTITIES RELATING TO
7 ENDOWMENTS AND GIFTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE
8 APPLICABILITY DATE."

9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11

12 NEW SECTION. Section 1. Short title -- purpose. (1) [Sections 1 through 3] may be cited as the
13 "Safeguarding Endowment Gifts Act".

14 (2) [Sections 1 through 3] are necessary to provide legal recourse to individual charitable donors
15 when their giving restrictions are not followed by a recipient charitable organization according to an endowment
16 agreement.

17

18 NEW SECTION. Section 2. Definitions. For the purposes of [sections 1 through 3] the following
19 definitions apply:

20 (1) "Charitable organization" means an organization arranged and operated exclusively for
21 religious, charitable, scientific, literary, educational, or other specified purposes or for testing for public safety
22 and that has a tax-exempt designation under the provisions of section 501(c)(3) of the Internal Revenue Code,
23 26 U.S.C. 501(c)(3).

24 (2) "Donor" means an individual or entity who has made a contribution of property or money to
25 either an existing endowment fund or a new endowment fund of a charitable organization or of a charitable trust
26 pursuant to the terms of an endowment agreement that may include donor-imposed restrictions or other
27 conditions governing the use of the contribution.

28 (3) "Donor-imposed restriction" means a written statement within an endowment agreement that

1 specifies obligations on the management or purpose of the endowment fund.

2 (4) "Endowment agreement" means a written agreement between a charitable organization and a
3 donor or a charitable trust and a donor regarding the contribution made by the donor and accepted by the
4 charitable organization or the charitable trust that may include donor-imposed restrictions or other conditions
5 governing the use of the contribution.

6 (5) (a) "Endowment fund" means an institutional fund or part of an institutional fund that, under the
7 terms of a gift instrument, is not wholly expendable by the institution on a current basis.

8 (b) The term does not include assets that an institution designates as an endowment fund for its
9 own use.

10 (6) "Gift instrument" means a record or records, including an institutional solicitation, under which
11 property is granted to, transferred to, or held by an institution as an institutional fund.

12 (7) "Legal representative" means the administrator or executor of a person's estate, IF MADE KNOWN
13 BY THE DONOR TO THE CHARITABLE ORGANIZATION, a surviving spouse if a court judgment has settled the accounts
14 of the estate, or a person designated in an endowment agreement, ~~whether or not the person has been born at~~
15 ~~the time of the designation~~, to act in place of a party to the agreement for all matters expressed in the
16 agreement and all of the actions the agreement contemplates, including without limitation interpreting,
17 performing, and enforcing the agreement and defending its validity.

18 (8) "Property" means real property, personal property or money, cryptocurrency, stocks, bonds, or
19 any other asset or financial instrument.

20

21 NEW SECTION. Section 3. Protections afforded. (1) Except where specifically required or
22 authorized by federal or state law, a charitable organization that accepts a contribution pursuant to a written
23 donor-imposed restriction may not violate the terms of that restriction without potential penalty.

24 (2) If a charitable organization violates a donor-imposed restriction contained in an endowment
25 agreement, the donor or that person's legal representative, 90 days after WRITTEN notification IS PROVIDED to the
26 charitable organization AT THE ORGANIZATION'S ADDRESS OF RECORD, may file a complaint within ~~6~~ 3 years after
27 discovery for breach of the endowment agreement. The complaint may be filed in a court of general jurisdiction
28 in the county where a charitable organization named as a party has its principal office or principal place of

1 carrying out its charitable purpose or in a court of the United States whose district includes the county. The
2 complaint may be filed regardless of whether the agreement expressly reserves a right to sue or enforce, and it
3 may not seek a judgment awarding damages to the plaintiff.

4 (3) In the event a charitable organization is unable to fulfill a term in an endowment agreement, the
5 donor or that person's legal representative must be notified ~~30~~ 90 days in advance and offered an alternative
6 solution that closely matches the initial term in the endowment agreement.

7 (4) A charitable organization may obtain a judicial declaration of rights and duties expressed in an
8 endowment agreement containing donor restrictions as to all of the actions the agreement contemplates,
9 including without limitation the interpretation, performance, and enforcement of the agreement and the
10 determination of its validity. The charitable organization may seek the declaration in any suit brought under this
11 section or by filing a complaint.

12 (5) If the court determines that a charitable organization violated a donor-imposed restriction in an
13 endowment agreement, the court may order one or more remedies consistent with the charitable purposes
14 expressed in the endowment agreement. The court may not order the return of donated funds to the donor or
15 the donor's legal representative or estate.

16 (6) Nothing in this act affects the authority of the attorney general to enforce any restriction in an
17 endowment agreement, limits the application of the judicial power of cy pres, or alters the right of an institution
18 to modify a restriction on the management, investment, purpose, or use of an endowment fund in a manner
19 permitted by the endowment agreement and by the Montana Uniform Prudent Management of Institutional
20 Funds Act, Title 72, chapter 30.

21
22 NEW SECTION. Section 4. Codification instruction. [Sections 1 through 3] are intended to be
23 codified as a new part in Title 72, chapter 30, and the provisions of Title 72, chapter 30, apply to [sections 1
24 through 3].

25
26 NEW SECTION. Section 5. Effective date -- RETROACTIVE APPLICABILITY. [This act] is effective July 1,
27 2025 ON PASSAGE AND APPROVAL AND APPLIES RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO ANY
28 ENDOWMENT AGREEMENT ENTERED INTO ON OR AFTER JANUARY 1, 1975.

1

2

- END -