

Senate Bill 433

By: Senators Cowser of the 46th, Kennedy of the 18th, Gooch of the 51st, Robertson of the 29th, Tillery of the 19th and others

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

1 To amend Article 1 of Chapter 3 of Title 14 of the Official Code of Georgia Annotated,
2 relating to general provisions for nonprofit corporations, so as to enact the "Donor Intent
3 Protection Act"; to provide for definitions; to prohibit charitable organizations and charitable
4 trusts from violating the terms of charitable contributions made with donor imposed
5 restrictions, subject to exceptions; to provide for a cause of action; to provide for a
6 limitations period; to provide for venue; to provide for remedies; to provide for related
7 matters; to provide for an effective date and applicability; to repeal conflicting laws; and for
8 other purposes.

9 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

10 **SECTION 1.**

11 Article 1 of Chapter 3 of Title 14 of the Official Code of Georgia Annotated, relating to
12 general provisions for nonprofit corporations, is amended by adding a new part to read as
13 follows:

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14 "Part 815 14-3-190.16 This part shall be known and may be cited as the 'Donor Intent Protection Act.'17 14-3-191.18 As used in this part, the term:19 (1) 'Charitable organization' shall have the same meaning as provided in Code Section
20 14-3-140, provided that such organization is recognized as tax exempt under Section
21 501(c)(3) or 501(c)(4) of the Internal Revenue Code.22 (2) 'Charitable trust' shall have the same meaning as provided in Code Section
23 53-12-170.24 (3) 'Donor' means an individual or entity who has made a contribution of property or
25 money to either an existing endowment fund a new endowment fund of a charitable
26 organization or of a charitable trust pursuant to the terms of an endowment agreement
27 that may include donor imposed restrictions or conditions governing the use of the
28 contribution.29 (4) 'Donor imposed restriction' means a provision of an endowment agreement that
30 specifies obligations of the charitable organization or of the charitable trust regarding the
31 management or use of the contribution made by the donor.32 (5) 'Endowment agreement' means a written agreement between a charitable organization
33 and a donor or of a charitable trust and a donor regarding the contribution made by the
34 donor and accepted by the charitable organization or the charitable trust which may
35 include donor imposed restrictions or other conditions governing the use of the
36 contribution.37 (6) 'Endowment fund' means an institutional fund, including any aggregate institutional
38 fund or part thereof, that under the terms of a gift instrument is not wholly expendable

39 by the institution on a current basis; provided, however, that such term does not include
40 assets that an institution designates as an endowment fund for its own use.

41 (7) 'Gift instrument' means a record, including an institutional solicitation, under which
42 property is granted to, transferred to, or held by an institution as an institutional fund.

43 14-3-192.

44 (a) Except as required or authorized by federal or state law or a valid court order, a
45 charitable organization or a charitable trust that accepts a contribution of property or money
46 pursuant to an endowment agreement containing a donor imposed restriction shall not
47 violate the terms of such restriction without potential penalty.

48 (b) If a charitable organization or a charitable trust violates a donor imposed restriction
49 contained in an endowment agreement, the donor, that donor's direct descendants, or the
50 donor's legal representative may bring a civil action within four years after discovery of
51 a breach of the endowment agreement. Such civil action may be filed in the county where
52 a charitable organization or a charitable trust named as a party has its principal office or
53 principal place of carrying out its charitable purpose. Such civil action may be filed
54 regardless of whether the endowment agreement expressly reserves a right to sue or
55 enforce, and it shall not seek a judgment awarding damages to the plaintiff.

56 (c) A charitable organization or a charitable trust may obtain a judicial declaration of rights
57 as to the terms of an endowment agreement, including any donor imposed restrictions, and
58 the actions the agreement contemplates, including but not limited to the interpretation,
59 performance, and enforcement of the agreement and determination of its validity. A
60 charitable organization or a charitable trust may do so by bringing a civil action and shall
61 seek such declaration in any suit brought against it under this part.

62 (d) If the court determines, in an action brought pursuant to this part, that a charitable
63 organization or a charitable trust violated a donor imposed restriction, the court shall be
64 authorized to order one or more remedies consistent with the charitable purposes expressed

65 in the endowment agreement; provided, however, that the court shall not be authorized to
66 order the return of the contribution to the donor or the donor's legal representative or
67 estate."

68 **SECTION 2.**

69 This Act shall become effective July 1, 2024, and shall apply to any endowment agreement
70 entered into on or after such date.

71 **SECTION 3.**

72 All laws and parts of laws in conflict with this Act are repealed.