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H.583

Introduced by Representative Burditt of West Rutland

Referred to Committee on

Date:

Subject: Fiduciary relations; Donor Intent Protection Act

Statement of purpose of bill as introduced: This bill proposes to enact the  
Donor Intent Protection Act.

An act relating to the Donor Intent Protection Act

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 14 V.S.A. chapter 120A is added to read:

CHAPTER 120A. DONOR INTENT PROTECTION ACT

§ 3421. TITLE

This act shall be known as the Donor Intent Protection Act.

§ 3422. PURPOSE

This act is intended to provide legal recourse to individual charitable donors  
when their giving restrictions are not followed by a recipient charitable  
organization according to an endowment agreement.

§ 3423. DEFINITIONS

As used in this chapter:

1           (1) “Charitable organization” means an organization organized and  
2           operated exclusively for religious, charitable, scientific, testing for public  
3           safety, literary, educational, or other specified purposes and that is tax exempt  
4           from federal income tax as an entity described in Section 501(c)(3) of the  
5           Internal Revenue Code.

6           (2) “Donor-imposed restriction” means a written statement within an  
7           endowment agreement that specifies obligations on the management or  
8           purpose of the endowment fund.

9           (3) “Endowment fund” means an institutional fund or part thereof that,  
10          under the terms of a gift instrument, is not wholly expendable by the institution  
11          on a current basis. The term does not include assets that an institution  
12          designates as an endowment fund for its own use.

13          (4) “Gift instrument” means a record or records, including an  
14          institutional solicitation, under which property is granted to, transferred to, or  
15          held by an institution as an institutional fund.

16          § 3424. REMEDIES

17          (a) Unless specifically required or authorized by federal or State law,  
18          a charitable organization that accepts a contribution pursuant to a written  
19          donor-imposed restriction shall not violate the terms of that restriction.

20          (b)(1) If a charitable organization violates a donor-imposed restriction  
21          contained in an endowment agreement, the donor or the donor’s legal

1 representative shall have a private right of action against the charitable  
2 organization in the Civil Division of the Superior Court of the county where  
3 the charitable organization has its principal office or its principal place of  
4 carrying out its charitable purpose.

5 (2) An action filed pursuant to this subsection:

6 (A) shall be filed within six years after discovery of the breach of the  
7 agreement;

8 (B) shall not seek a judgment awarding damages to the plaintiff; and

9 (C) may be filed regardless of whether the agreement expressly  
10 reserves a right to sue or enforce it.

11 (c)(1) A charitable organization may obtain a judicial declaration of rights  
12 and duties expressed in an endowment agreement containing donor restrictions  
13 with respect to any action within the scope of the agreement, including the  
14 interpretation, performance, and enforcement of the agreement and a  
15 determination of its validity.

16 (2) A charitable organization may request a declaration pursuant to this  
17 subsection:

18 (A) in a suit brought under subsection (b) of this section; or

19 (B) by filing a complaint under 12 V.S.A. chapter 167 (Declaratory  
20 Judgments Act).

1        (d) If the court determines that a charitable organization violated a donor-  
2        imposed restriction in an endowment agreement, the court may order any  
3        remedy it deems appropriate that is consistent with the charitable purposes  
4        expressed in the endowment agreement. The court shall not order the return of  
5        donated funds to the donor or to the donor's legal representative.

6        Sec. 2. EFFECTIVE DATE

7        This act shall take effect on passage.