

As Introduced

**136th General Assembly
Regular Session
2025-2026**

S. B. No. 368

Senator Roegner

To amend sections 109.25, 1715.51, and 5813.06 and 1
to enact sections 1715.551, 1715.552, 1715.553, 2
1715.554, 1715.555, 1715.556, 1715.557, 3
1715.558, and 1715.559 of the Revised Code to 4
establish the scope and procedures for a civil 5
action when an institution violates a 6
restriction in an endowment agreement. 7

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 109.25, 1715.51, and 5813.06 be 8
amended and sections 1715.551, 1715.552, 1715.553, 1715.554, 9
1715.555, 1715.556, 1715.557, 1715.558, and 1715.559 of the 10
Revised Code be enacted to read as follows: 11

Sec. 109.25. The attorney general is a necessary party to 12
and shall be served with process or with summons by registered 13
mail in all judicial proceedings, the object of which is to: 14

(A) Terminate a charitable trust or distribute assets; 15

(B) Depart from the objects or purposes of a charitable 16
trust as the same are set forth in the instrument creating the 17
trust, including any proceeding for the application of the 18
doctrine of cy pres or deviation; 19

(C) Construe the provisions of an instrument with respect 20

to a charitable trust; 21

(D) Determine the validity of a will having provisions for 22
a charitable trust; 23

(E) Enforce the express terms of an endowment agreement 24
under sections 1715.551 to 1715.559 of the Revised Code. 25

A judgment rendered in such proceedings without service of 26
process or summons upon the attorney general is void, 27
unenforceable, and shall be set aside upon the attorney 28
general's motion seeking such relief. The attorney general shall 29
intervene in any judicial proceeding affecting a charitable 30
trust when requested to do so by the court having jurisdiction 31
of the proceeding, and may intervene in any judicial proceeding 32
affecting a charitable trust when ~~he~~ the attorney general 33
determines that the public interest should be protected in such 34
proceeding. 35

Sec. 1715.51. As used in sections 1715.51 to 1715.59 of 36
the Revised Code: 37

(A) "Benefactor" means each person signing an endowment 38
agreement who committed in the agreement to transfer property to 39
an institution with the institution's consent. 40

(B) (1) "Benefactor representative" means either: 41

(a) A person designated in an endowment agreement, whether 42
or not born or existing at the time of such designation, to act 43
in place of the benefactor for the purpose of resolving disputes 44
about the agreement, including the agreement's validity, 45
interpretation, performance, and enforcement, and any action 46
that the agreement contemplates; 47

(b) If no person is designated in the endowment agreement, 48

as described in division (B) (1) (a) of this section, the 49
administrator or executor of a benefactor's estate. 50

(2) "Benefactor representative" does not mean the 51
institution receiving or administering property under an 52
endowment agreement or any person designated by such institution 53
for any purpose. 54

(C) "Charitable purpose" means any purpose the achievement 55
of which is beneficial to the community, including the relief of 56
poverty, the advancement of education or religion, the promotion 57
of health, and the promotion of a governmental purpose. 58

~~(B)~~ (D) "Institution" means any of the following: 59

(1) A person, other than an individual, organized and 60
operated exclusively for charitable purposes; 61

(2) A governmental organization to the extent that it 62
holds funds exclusively for a charitable purpose; 63

(3) A trust that had both charitable and noncharitable 64
interests and the noncharitable interests have terminated. 65

~~(C)~~ (E) "Institutional fund" means a fund that is held by 66
an institution exclusively for charitable purposes. 67

"Institutional fund" does not include any of the following: 68

(1) ~~Program-related~~ Program-related assets; 69

(2) A fund held for an institution by a trustee that is 70
not an institution; 71

(3) A fund in which a beneficiary that is not an 72
institution has an interest other than an interest that may 73
arise upon a violation of or the failure of the purposes of the 74
fund. 75

~~(D)~~(F) "Endowment agreement" means a gift instrument 76
signed by a benefactor and by a state institution of higher 77
education or another institution whose corporate purpose is to 78
benefit an identified state institution of higher education and 79
receives, holds, or administers charitable transfers of property 80
for such state institution of higher education; and that 81
contains both of the following obligations: 82

(1) The benefactor commits to transfer property to a state 83
institution of higher education or to another institution to 84
receive, hold, or administer the property for the use or benefit 85
of a state institution of higher education with the consent of 86
such state institution of higher education. 87

(2) An institution signing the instrument commits that the 88
institution or a state institution of higher education will 89
receive, hold, or administer the transferred property as an 90
endowment fund for the use or benefit of a state institution of 91
higher education subject to any restrictions on management, 92
investment, spending, or purpose expressed in the instrument. 93

(G) "Endowment fund" means an institutional fund or any 94
part thereof that, under the terms of a gift instrument, is not 95
wholly expendable by the institution on a current basis. 96
"Endowment fund" does not include assets that an institution 97
designates as an endowment fund for its own use. 98

~~(E)~~(H) "Gift instrument" means a record or records, 99
including an institutional solicitation, under which property is 100
granted to, transferred to, or held by an institution as an 101
institutional fund. 102

~~(F)~~(I) "Person" means an individual, corporation, business 103
trust, estate, trust, partnership, limited liability company, 104

association, joint venture, public corporation, governmental 105
organization, or any other legal or commercial entity. 106

~~(G)~~(J) "~~Program related~~ Program-related asset" means an 107
asset held by an institution primarily to accomplish a 108
charitable purpose of the institution and not primarily for 109
investment. 110

~~(H)~~(K) "Record" means information that is inscribed on a 111
tangible medium or that is stored in an electronic or other 112
medium and is retrievable in perceivable form. 113

(L) "State institution of higher education" has the same 114
meaning as in section 3345.011 of the Revised Code and is an 115
"institution" within the meaning of this chapter. 116

Sec. 1715.551. If an institution violates a restriction 117
contained in an endowment agreement on the management, 118
investment, spending, or purpose of the endowment fund, a 119
benefactor or benefactor representative may notify the 120
charitable law section of the office of the attorney general in 121
writing of the violation. 122

Sec. 1715.552. The attorney general may enforce the 123
interests of the beneficiaries of an endowment agreement by 124
filing a complaint for breach or to obtain a declaratory 125
judgment of rights and duties expressed in the agreement and as 126
to all of the actions it contemplates, including the 127
interpretation, performance, and enforcement of the agreement 128
and determination of its validity. 129

Sec. 1715.553. (A) If, within one hundred eighty days 130
after receiving the notice under section 1715.551 of the Revised 131
Code, the attorney general has not obtained full compliance with 132
the restriction and restitution to the endowment fund of 133

<u>property approximately equal to any value lost due to the</u>	134
<u>violated restriction, a benefactor or benefactor representative</u>	135
<u>may file a complaint for either or both of the following:</u>	136
<u>(1) Breach of the endowment agreement;</u>	137
<u>(2) To obtain a declaratory judgment of rights and duties</u>	138
<u>expressed in the agreement as to all of the actions it</u>	139
<u>contemplates, including the interpretation, performance, and</u>	140
<u>enforcement of the agreement and determination of its validity.</u>	141
<u>(B) Each of the following applies to the complaint:</u>	142
<u>(1) It may be filed regardless of whether the agreement</u>	143
<u>expressly reserves a right to sue or enforce.</u>	144
<u>(2) The filing of a complaint by the attorney general</u>	145
<u>under section 1715.552 of the Revised Code is not a requirement</u>	146
<u>for filing a complaint under this section.</u>	147
<u>(3) It shall not seek a judgment awarding to the plaintiff</u>	148
<u>damages, court costs, attorney's fees, or any other award of</u>	149
<u>money or other property.</u>	150
<u>(4) It shall seek only one or both of the following:</u>	151
<u>(a) Declaratory relief;</u>	152
<u>(b) Equitable relief consistent with the charitable</u>	153
<u>purposes expressed in the endowment agreement and consistent</u>	154
<u>with the charitable purposes of the institution administering</u>	155
<u>the endowment fund under the endowment agreement and the state</u>	156
<u>institution of higher education receiving the use or benefit of</u>	157
<u>the endowment fund.</u>	158
<u>Sec. 1715.554. An institution that is a party to an</u>	159
<u>endowment agreement, or the state institution of higher</u>	160

education receiving the use or benefit of the endowment fund 161
established through an endowment agreement, may obtain a 162
declaratory judgment of rights and duties expressed in an 163
endowment agreement and as to all of the actions it 164
contemplates, including the interpretation, performance, and 165
enforcement of the agreement and determination of the 166
agreement's validity. The institution shall seek such 167
declaration in response to any complaint brought under sections 168
1715.551 to 1715.559 of the Revised Code. 169

Sec. 1715.555. Every complaint authorized by sections 170
1715.551 to 1715.559 of the Revised Code shall be filed in a 171
court of competent general jurisdiction in the county where the 172
state institution of higher education receiving the use or 173
benefit of the endowment fund has its principal office. Every 174
such complaint shall: 175

(A) Name the attorney general as a party; 176

(B) Name as parties each institution that signed the 177
endowment agreement or its successor, the state institution of 178
higher education receiving the use or benefit of the endowment 179
fund, and any institution that currently holds or administers 180
property subject to the agreement; 181

(C) Name as parties each benefactor and benefactor 182
representative. 183

Sec. 1715.556. The failure to join as a party a benefactor 184
or benefactor representative is not jurisdictional. The court, 185
however, shall afford a benefactor or benefactor representative 186
an opportunity to be heard or to intervene if sought within a 187
reasonable time before the court renders final judgment. 188

Sec. 1715.557. The interest of a benefactor and the 189

interest represented by a benefactor representative shall not be 190
presumed to be identical with the interest of the attorney 191
general or a state institution of higher education or an 192
institution administering an endowment fund under an endowment 193
agreement. 194

Sec. 1715.558. (A) Except as allowed by division (B) of 195
this section, a benefactor or benefactor representative shall 196
not file a complaint authorized by sections 1715.551 to 1715.559 197
of the Revised Code based on a breach of an endowment agreement 198
if the person filing the complaint discovered the breach more 199
than six years before filing the complaint. 200

(B) If, during the sixth year after discovery of the 201
breach of an endowment agreement, a benefactor or benefactor 202
representative notifies the charitable law section of the office 203
of the attorney general in writing of the breach of an endowment 204
agreement as authorized by sections 1715.551 to 1715.559 of the 205
Revised Code, the period within which such benefactor or 206
benefactor representative must file a complaint authorized by 207
sections 1715.551 to 1715.559 of the Revised Code is extended 208
automatically by two hundred ten days. 209

Sec. 1715.559. Sections 1715.551 to 1715.559 of the 210
Revised Code apply only to the following: 211

(A) Endowment funds established on and after the effective 212
date of this section; 213

(B) Endowment funds established before the effective date 214
of this section, but only with respect to breaches of such 215
endowment agreements if those breaches occur on or after the 216
effective date of this section. 217

Sec. 5813.06. (A) Nothing in sections 5813.01 to 5813.05 218

of the Revised Code affects the construction or interpretation 219
of sections 1715.51 to 1715.59 of the Revised Code relating to 220
the uniform prudent management of institutional funds act. 221
Specifically, neither the percentage set forth in division (B) 222
of section 5813.02 of the Revised Code nor the amount actually 223
requested by a governing board pursuant to that section shall be 224
construed or interpreted to limit or expand what is a prudent 225
amount that can be expended by a governing board of an 226
institution under sections 1715.51 to 1715.59 of the Revised 227
Code. 228

(B) If an institutional trust fund is also an 229
institutional fund as defined in division ~~(C)~~(E) of section 230
1715.51 of the Revised Code with the result that sections 231
1715.51 to 1715.59 of the Revised Code also are applicable to 232
the institutional trust fund, then sections 1715.51 to 1715.59 233
of the Revised Code apply to the institutional trust fund, and 234
sections 5813.01 to 5813.07 of the Revised Code do not apply to 235
the institutional trust fund. 236

Section 2. That existing sections 109.25, 1715.51, and 237
5813.06 of the Revised Code are hereby repealed. 238