

CHAPTER 138
HOUSE BILL No. 2446

AN ACT concerning certain postsecondary educational institutions; relating to investments and gifts; amending K.S.A. 76-308, 76-410a, 76-604 and 76-718a and repealing the existing sections; also repealing K.S.A. 76-347, 76-349, 76-360 and 76-362.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) As used in this section:

(1) (A) "Property" means any tangible, intangible or other personal property.

(B) "Property" does not mean real property.

(2) "University" means (A) The university of Kansas, Kansas state university, Wichita state university, Fort Hays state university, Emporia state university and Pittsburg state university; and (B) all campuses and academic and administrative units, schools, colleges, departments or other unincorporated subdivisions of a university.

(3) "Foundation" or "university foundation" means the official foundation of a university.

(4) "Foundation subsidiary" means a third party entity wholly-owned by the foundation or a non-member, non-stock not-for-profit entity wholly controlled by the foundation.

(5) "Chief executive officer" means the president or chancellor of a university or a person designated by the chief executive officer.

(6) "Gift" means any gift, donation, bequest or endowment of property.

(7) "Donor" means any person who makes a gift.

(8) "Approval" means the acceptance of a gift by the chief executive officer of a university and includes any conditions established by the chief executive officer in such approval.

(9) "State law" means any state statute or rule and regulation adopted pursuant thereto.

(b) (1) Except as provided by this section, each gift made to a university, upon written approval of the chief executive officer, shall be deemed to be a gift to the university's foundation.

(2) The provisions of this section shall not apply to any gift that has been or is made to a university if the donor made the gift upon the express written condition that such gift not be transferred to the university's foundation or foundation subsidiary.

(c) All university funds and all student scholarship or loan funds held or managed for a university by the university's foundation, pursuant to state law in effect immediately prior to the effective date of this act and upon written approval of the chief executive officer of the university, shall be deemed to be the property of such foundation.

(d) A gift which otherwise would vest in a foundation under subsection (b) shall not so vest until the earlier of:

(1) The date on which the foundation provides written notice of acceptance of such gift to the chief executive officer. Such notice shall include acceptance of any conditions established in the approval of the gift by the chief executive officer; or

(2) thirty days following the date on which the chief executive officer provides written notice to the foundation of such gift including any conditions established in the approval thereof by the chief executive officer and the failure of such foundation within such thirty-day period to provide such chief executive officer written notice that such foundation either disclaims or is assigning to a foundation subsidiary the gift that was described in the chief executive officer's notice that otherwise would become property of such foundation pursuant to subsection (b). If written notice of such disclaimer or assignment is provided to the chief executive officer within such thirty-day period, such property disclaimed or assigned shall be deemed never to have belonged to the foundation. Any portion of a gift which is assigned shall be deemed to be the property of the foundation subsidiary subject to any conditions established in the approval thereof by the chief executive officer of such university.

(e) Any property which is or becomes the property of a foundation or a foundation subsidiary, pursuant to this section or otherwise, shall not be deemed to be public or state property or moneys under K.S.A. 45-240, and amendments thereto, or other state law.

(f) Any property which becomes the property of a foundation or a

foundation subsidiary pursuant to this section shall be received, held, administered, invested, reinvested and expended solely for the benefit of such foundation's university, including faculty or staff of the university, subject to any lawful restrictions created by any agreement or other instrument which governs such gift or student scholarship or loan fund, whether by the donor thereof or in the approval thereof by the chief executive officer of the university. Unless lawful restrictions on the use of the property provide otherwise, any such property may be commingled with other property of such foundation or foundation subsidiary. The foundation or foundation subsidiary may charge and deduct a reasonable administrative fee for services provided in fulfilling its obligations under this subsection and may be reimbursed for its actual expenses incurred in performing such services, from the profits, income or principal of such property.

(g) A foundation or foundation subsidiary shall not have the power to commit its university to expend any public funds or state moneys.

(h) The Kansas university endowment association shall be the official foundation for the university of Kansas. The Kansas state university foundation shall be the official foundation for Kansas state university. The Wichita state university foundation shall be the official foundation for Wichita state university. The Fort Hays state university foundation shall be the official foundation for Fort Hays state university. The Emporia state university foundation, inc., shall be the official foundation for Emporia state university. The Pittsburg state university foundation, inc., shall be the official foundation for Pittsburg state university.

(i) The provisions of subsections (b) and (c) shall not apply to:

(1) Any fees, tuition or other charges collected by a university.

(2) Any gift or transfer made to a university by the university's foundation or foundation subsidiary.

(3) Any funds appropriated by the state of Kansas to a university, the state board of regents, any political or taxing subdivision of the state or to the United States or any agency or instrumentality of any such entity. A foundation, or at the designation of a foundation, a foundation subsidiary may receive, hold, administer, invest, reinvest and expend any of such appropriated funds or moneys and any funds or property which the foundation timely disclaims in compliance with subsection (d) in accordance with, and subject to the terms and conditions of, a written agreement entered into between such foundation or foundation subsidiary and its university which is otherwise authorized by state law or by the terms and conditions of a written agreement between such university and the state of Kansas, the state board of regents, political or taxing subdivision of the state or the United States or any agency or instrumentality of any such entity.

(j) The provisions of K.S.A. 76-156a, and amendments thereto, shall not apply to a gift transferred pursuant to subsection (b).

(k) The provisions of this section shall not supersede the provisions of K.S.A. 76-718a, and amendments thereto.

Sec. 2. K.S.A. 76-308 is hereby amended to read as follows: 76-308. ~~The permanent university fund shall at no time be diminished for any purpose whatsoever. The permanent university fund shall be administered by the state board of regents for the benefit of the university of Kansas, and~~ *The original principal of the permanent university fund shall not be distributed.* The earnings of such fund shall be subject to appropriation by the legislature. K.S.A. ~~58-3601~~ 58-3610 et seq. shall apply to the permanent university fund, except as otherwise provided by this section and K.S.A. 76-718a, *and amendments thereto.*

Sec. 3. K.S.A. 76-410a is hereby amended to read as follows: 76-410a. ~~The state agricultural university fund shall at no time be diminished for any purpose whatsoever. Such fund shall be administered by the state board of regents for the benefit of Kansas state university of agriculture and applied science, and~~ *The original principal of the state agricultural university fund shall not be distributed for any purpose.* The earnings of such fund shall be subject to appropriation by the legislature. K.S.A. ~~58-3601~~ 58-3610 et seq. shall apply to the state agricultural university fund, except as otherwise provided by this section and K.S.A. 76-718a, *and amendments thereto.*

Sec. 4. K.S.A. 76-604 is hereby amended to read as follows: 76-604. ~~The moneys of the state normal school fund shall constitute a perpetual fund, the principal of which shall remain forever undiminished. The state~~

~~normal school fund shall be administered by the state board of regents for the benefit of Emporia state university, and The original principal of the state normal school fund shall not be distributed for any purpose.~~ The earnings of such fund shall be subject to appropriation by the legislature. K.S.A. ~~58-3601~~ 58-3610 et seq. shall apply to the state normal school fund, except as otherwise provided by this section and K.S.A. 76-718a, *and amendments thereto.*

Sec. 5. K.S.A. 76-718a is hereby amended to read as follows: 76-718a. The Kansas *university* endowment association is hereby authorized to act as the investing agent for the permanent university fund referred to in K.S.A. 76-308, and the amendments thereto. The Kansas state university foundation is hereby authorized to act as the investing agent for the state agricultural university fund referred to in K.S.A. 76-410a, and amendments thereto. The Emporia state university foundation, inc., is hereby authorized to act as the investing agent for the state normal school fund referred to in K.S.A. 76-604, and amendments thereto.

Such investing agents shall invest and reinvest moneys in such funds in:

(a) ~~Time deposit deposits~~, open accounts for periods of not less than 30 days, or certificates of deposit for periods of not less than 90 days, in commercial banks located in Kansas *or offered by financial institutions to the extent of insurance provided by the FDIC or NCUSIF;*

(b) United States treasury bills or notes with maturities as the investing agent shall determine; or

(c) ~~insured savings and loan associations to the extent of the insurance provided by the F.S.L.I.C~~ *The permanent endowment fund of the endowment association or foundation.*

Sec. 6. K.S.A. 76-308, 76-347, 76-349, 76-360, 76-362, 76-410a, 76-604 and 76-718a are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 13, 2010.
