

2021 Kansas Statutes

58a-413. Cy pres. If a charitable trust is or becomes illegal or impossible or impracticable of fulfillment or if a devise or bequest for charity, at the time it was intended to become effective is illegal or impossible or impracticable of fulfillment, and if the settlor, manifested a general intention to devote the property to charity, any judge, on application of any trustee, any interested party or the attorney general, may order an administration of the trust, as nearly as possible to fulfill the manifested general charitable intention of the settlor. In every such proceeding, the attorney general, as representative of the public interest, shall be notified and given an opportunity to be heard. The provisions of this act shall not be applicable if the settlor has provided, either directly or indirectly, for an alternative plan in the event the charitable trust is or becomes illegal or impossible or impracticable of fulfillment. If the alternative plan is also a charitable trust, the intention shown in the original plan shall prevail in the application of this act.

(b) If a federal estate tax deduction is not allowable at the time of a decedent's death because of the failure of an interest in property which passes from the decedent to a person, or for a use, described in section 2055(a) of the federal internal revenue code of 1986, as in effect on December 31, 2000, to meet the requirements of section 170(f)(3)(B) or 2055(e)(2) of the federal internal revenue code of 1986, as in effect on December 31, 2000, then in order that such deduction shall nevertheless be allowable under section 2055(a) of the federal internal revenue code of 1986, as in effect on December 31, 2000, any judge, on application of any trustee, or any interested party may:

- (1) With the written consent of the charitable beneficiaries, the noncharitable beneficiaries not under any legal disability and duly appointed guardians or guardians ad litem acting on behalf of any beneficiaries under legal disability or conservator; or
- (2) upon a finding that the interest of such beneficiaries is substantially preserved, order a change to the trust by reformation, amendment, construction or otherwise, which changes a reformable interest into a qualified interest within the meaning of section 2055(e)(3) of the federal internal revenue code of 1986, as in effect on December 31, 2000. In every such proceeding, the attorney general, as representative of the public interest, shall be notified and given an opportunity to be heard.

(c) As used in this act "impracticable of fulfillment" includes, but is not limited to, the failure of any charitable trust, testamentary or inter vivos, including, without limitation, trusts described in section 509 of the federal internal revenue code of 1986, as in effect on December 31, 2000, and charitable remainder trusts described in section 664 of the federal internal revenue code of 1986, as in effect on December 31, 2000, to include, if required to do so by section 508(e) or section 4947(a) of the federal internal revenue code of 1986, as in effect on December 31, 2000, the provisions relating to governing instruments set forth in section 508(e) of the federal internal revenue code of 1986, as in effect on December 31, 2000.

(d) The provisions of this section shall be effective as to all trusts not construed prior to the effective date of this act.

History: L. 2002, ch. 133, § 34; Jan. 1, 2003.