



One Hundred First Legislature - Second Session - 2010
Introducer's Statement of Intent
LB 758

Chairperson: Brad Ashford
Committee: Judiciary
Date of Hearing: February 3, 2010

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

LB 758 amends the Nebraska Probate Code by specifically providing that the doctrine of Cy Pres applies to wills. Cy Pres means “as nearly as possible”, and it can be applied by a court when a testator (one who made a will) had a charitable purpose that can no longer be carried out exactly as it was specified in the will. The doctrine of Cy Pres allows the court to order that the funds be directed to another charitable purpose that closely approximates the testator’s intention as nearly as possible. This doctrine is used to prevent charitable gifts from lapsing and to continue as nearly as possible the overall charitable purpose of the testator, even if the specific intent as it was written in the will cannot be carried out. Nebraska statutes currently apply the Cy Pres doctrine to trusts, but the corresponding section of law relating to wills was repealed when the Uniform Trust Code was put into Nebraska Statutes. Section 2 of this bill would insert the doctrine of Cy Pres back in to the Nebraska Probate Code. Paragraph (d) of section 2 provides Cy Pres doctrine shall be applied to a will only if the document creating the charitable interest does not otherwise provide for an alternate disposition of the property in the event the will’s charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful.

The bill further amends the Nebraska Probate Code as it relates to the powers of a personal representative of an estate. The amendment provides the personal representative of an estate the power to incorporate an unincorporated business into any form of limited liability organization, subject to any direction otherwise contained in the will or court order. Current law allows the personal representative the ability to change an unincorporated business into a corporation. The amendment would also allow, subject to a contrary provision in the will or court order, the continuation by the personal representative of any unincorporated sole proprietorship indefinitely, by deleting the current four month limitation.

Finally, Section 4 of the bill amends section 30-3839 of the Nebraska Trust Code, and clarifies that the Cy Pres doctrine shall be applied to a trust only if the document creating the charitable interest does not otherwise provide for an alternate disposition of the property in the event the trust’s charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful.

Principal Introducer:

Senator John Wightman