

LEGISLATURE OF NEBRASKA

ONE HUNDRED THIRD LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1089

Final Reading

Introduced by Conrad, 46.

Read first time January 22, 2014

Committee: Judiciary

A BILL

1 FOR AN ACT relating to civil procedure; to amend section 30-3839,
2 Revised Statutes Cumulative Supplement, 2012; to state
3 intent; to provide for disposition of residual funds in
4 class action litigation and charitable trusts; and to
5 repeal the original section.

6 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1) It is the intent of the Legislature to
2 ensure that the unpaid residuals in class action litigation are
3 distributed, to the extent possible, in a manner designed to promote
4 justice for all citizens of this state. The Legislature finds that
5 the use of funds collected by state courts pursuant to this section
6 for these purposes is in the public interest, is a proper use of the
7 funds, and is consistent with essential public and governmental
8 purposes.

9 (2) Prior to the entry of any judgment or order approving
10 settlement in a class action described in section 25-319, the court
11 shall determine the total amount that will be payable to all class
12 members if all class members are paid the amount to which they are
13 entitled pursuant to the judgment or settlement. The court shall also
14 set a date when the parties shall report to the court the total
15 amount that was actually paid to the class members. After the report
16 is received, the court, unless it orders otherwise to further the
17 purposes of the underlying cause of action, shall direct the
18 defendant to pay the sum of the unpaid residue to the Legal Aid and
19 Services Fund.

20 Sec. 2. Section 30-3839, Revised Statutes Cumulative
21 Supplement, 2012, is amended to read:

22 30-3839 (UTC 413) (a) Except as otherwise provided in
23 subsection (b) of this section, if a particular charitable purpose
24 becomes unlawful, impracticable, impossible to achieve, or wasteful:

25 (1) the trust does not fail, in whole or in part;

1 (2) the trust property does not revert to the settlor or
2 the settlor's successors in interest; and

3 (3) the court may apply cy pres to modify or terminate
4 the trust by directing that the trust property be applied or
5 distributed, in whole or in part, in a manner consistent with the
6 settlor's charitable purposes or to the Legal Aid and Services Fund.

7 (b) Subsection (a) of this section does not apply if the
8 document creating the charitable interest expressly provides for an
9 alternate disposition of the charitable interest in the event the
10 charitable purpose becomes unlawful, impracticable, impossible to
11 achieve, or wasteful. A general residuary disposition by trust shall
12 not be considered an express provision for an alternate disposition.

13 (c) This section shall not be deemed to limit application
14 of the common law doctrines of cy pres and deviation or section
15 58-615.

16 Sec. 3. Original section 30-3839, Revised Statutes
17 Cumulative Supplement, 2012, is repealed.