

LEGISLATIVE BILL 1089

Approved by the Governor April 10, 2014

Introduced by Conrad, 46.

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

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

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

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

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

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

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

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

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

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

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

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