

LEGISLATURE OF NEBRASKA  
ONE HUNDRED THIRD LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1089**

Introduced by Conrad, 46.

Read first time January 22, 2014

Committee:

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.