

ASSEMBLY, No. 2454

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED FEBRUARY 4, 2016

Sponsored by:

Assemblyman JOHN J. BURZICHELLI
District 3 (Cumberland, Gloucester and Salem)

SYNOPSIS

Clarifies provisions with regard to pet trusts.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning pet trusts and amending P.L.2001, c.144.

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3 **BE IT ENACTED** by the Senate and General Assembly of the State
4 of New Jersey:

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6 1. Section 1 of P.L.2001, c.144 (C.3B:11-38) is amended to
7 read as follows:

8 1. a. **[A]** An animal owner's inter vivos or testamentary trust
9 for the care of [a] [domesticated] the animal owner's designated
10 domestic animal or exotic animal is valid. The trust shall terminate
11 upon the death of the animal, or, if the trust was created to care for
12 more than one animal, upon the death of the last surviving animal or
13 the death of the last surviving direct offspring of animals in
14 gestation at the time the trust is enacted. The intended use of the
15 principal or income may be enforced by **[a person]** an individual
16 designated for that purpose in the trust instrument or, [a person] if
17 none, by an individual appointed by the court, upon application to it
18 by an individual, or a trustee. [The trust shall terminate when no
19 living animal is covered by the trust, or at the end of 21 years,
20 whichever occurs earlier.]

21 b. Except as expressly provided otherwise in the trust
22 instrument, no portion of the trust's principal or income may be
23 converted to the use of the trustee or to any use other than for the
24 trust's purpose or the benefit of the animal designated in the trust.

25 c. Upon termination of the trust, the trustee shall transfer the
26 unexpended trust property as directed in the trust instrument. If no
27 directions for such transfer exist, the property shall pass to the
28 estate of the creator of the trust.

29 d. **[The court may reduce the amount of the property**
30 **transferred if it determines that the amount substantially exceeds the**
31 **amount required for the intended use. The amount of any reduction**
32 **shall be transferred as directed in the trust instrument or, if no such**
33 **directions are contained in the trust instrument, to the estate of the**
34 **creator of the trust]** The principal and income of the trust shall be
35 applied only to its intended use, except to the extent a court
36 determines that the value of the trust property substantially exceeds
37 the amount required for the intended use and there will be no
38 substantial adverse impact in the care of the animal. Unless
39 otherwise provided in the terms of the trust, property not required
40 for the intended use shall be distributed to the grantor, if then
41 living. If the grantor is deceased, such property shall be distributed
42 pursuant to the terms of the trust, or, if none stated, then pursuant to
43 the residuary clause of the grantor's will or pursuant to the
44 residuary provisions of the inter vivos trust; otherwise such

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 property shall be distributed to the grantor's heirs in accordance
2 with the then applicable law of descent and distribution.

3 e. If no trustee is designated or if no designated trustee is
4 willing or able to serve, a court shall appoint a trustee and may
5 make such other orders and determinations as are advisable to carry
6 out the intent of the creator of the trust and the purpose of this act.

7 f. As used in this section:

8 "Domestic animal" means a domestic companion animal or
9 domestic livestock.

10 "Domestic companion animal" means any domesticated bird, cat,
11 dog, ferret, rabbit not raised as food or for its fur, reptile, or other
12 animal kept primarily as a household pet for personal appreciation
13 and companionship. "Domestic companion animal" shall not
14 include any animal being used for research purposes, domestic
15 livestock, or wildlife.

16 "Domestic livestock" means domestic livestock as defined
17 pursuant to subsection c. of section 1 of P.L.1995, c.311 (C.4:22-
18 16.1), including animals designated as agricultural livestock by the
19 Department of Agriculture and kept for that purpose.

20 "Exotic animal" means any nongame species or mammal, bird,
21 reptile, or amphibian not indigenous to New Jersey, and for which a
22 permit has been issued if required by the Department of
23 Environmental Protection.

24 (cf: P.L.2001, c.144, s.1)

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26 2. This act shall take effect immediately.

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STATEMENT

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31 This bill revises trust law concerning pets to be consistent with
32 current law. P.L.2001, c.144 (C.3B:11-38) provided for the creation of
33 pet trusts for domesticated animals in New Jersey. Under that
34 enactment a pet trust terminates when no living animal is covered by
35 the trust or at the end of 21 years, whichever occurs earlier. This
36 provision concerning termination of the trust is not consistent with
37 P.L.1999, c.159, which repealed the Rule Against Perpetuities. The
38 Rule Against Perpetuities had imposed limitations on the duration of
39 trusts.

40 This bill would eliminate this limitation on pet trusts by providing
41 that a pet trust terminates upon the death of the animal, or, if the trust
42 was created to care for more than one animal, upon the death of the
43 last surviving animal or the death of the last surviving direct offspring
44 of animals in gestation at the time the trust is enacted. In addition, the
45 bill expands the law by allowing pet trusts for exotic animals as well
46 as domestic animals.

47 The bill changes the term "domesticated animal" to "domestic
48 animal" and "exotic pet animal" to "exotic animal." The bill defines

A2454 BURZICHELLI

1 “domestic animal” as a domestic companion animal or domestic
2 livestock, and those terms as follows:

3 1) “Domestic companion animal” means any domesticated bird,
4 cat, dog, ferret, rabbit not raised as food or for its fur, reptile, or other
5 animal kept primarily as a household pet for personal appreciation and
6 companionship, and does not include any animal being used for
7 research purposes, domestic livestock, or wildlife;

8 2) “Domestic livestock” means domestic livestock as defined
9 pursuant to subsection c. of section 1 of P.L.1995, c.311 (C.4:22-16.1),
10 including animals designated as agricultural livestock by the
11 Department of Agriculture and kept for that purpose.

12 The bill also defines “exotic animal” as any nongame species or
13 mammal, bird, reptile, or amphibian not indigenous to New Jersey, and
14 for which a permit has been issued if required by the Department of
15 Environmental Protection.

16 Current law provides that a court may reduce the amount of the
17 property transferred if the court determines that the amount
18 substantially exceeds what is required for the intended use. The bill
19 qualifies this authority by providing that the court can reduce the
20 amount provided it substantially exceeds the amount required for the
21 intended use and there will be no substantial adverse impact on the
22 care of the animal. Property not required for the intended use would
23 be distributed to the grantor, if living, or if deceased the property
24 would be distributed according to the terms of the trust or the grantor’s
25 will. Otherwise, the property would be distributed to the heirs.