

AMENDED IN SENATE JANUARY 23, 2008

AMENDED IN SENATE JANUARY 9, 2008

AMENDED IN SENATE JANUARY 7, 2008

AMENDED IN SENATE APRIL 10, 2007

SENATE BILL

No. 685

**Introduced by Senator Yee
(Coauthor: Senator Padilla)**

February 23, 2007

An act to repeal and add Section 15212 of the Probate Code, relating to pet trusts.

LEGISLATIVE COUNSEL'S DIGEST

SB 685, as amended, Yee. Pet trusts.

Existing law provides that a trust for the care of a designated domestic or pet animal may be performed by the trustee for the life of the animal, whether or not there is a beneficiary who can seek enforcement or termination of the trust and whether or not the terms of the trust contemplate a longer duration.

This bill would repeal the provisions regarding domestic or pet animal trusts and would provide instead that a trust for the care of a designated domestic or pet animal is ~~valid~~ *valid for a lawful noncharitable purpose* and terminates when no living animal *on the date of the trustor's death* is covered by the trust, *unless otherwise provided in the trust and* subject to certain requirements. The bill would require a court to liberally construe a pet trust to bring it within the bill's provisions, to presume against an interpretation that would render the disposition a mere request or an attempt to honor the pet, and to carry out the general intent of the ~~transfer~~ *trust*. The bill would provide an order of disposition of trust

property upon termination of the trust and would provide authority for the court to name a trustee and to transfer trust property, as specified. *This bill would permit a person interested in the welfare of the pet animal or any nonprofit charitable organization whose principal activity is the care of animals to apply to the court for appointment as trustee or for removal of a trustee. The bill would provide a process for an accounting of the trust, to be waived if the value of the pet trust assets do not exceed \$5,000. The bill would require termination of a trust for the care of a covered domestic or pet animal that has a life span of 21 years of age or greater when that animal dies.*

Vote: majority. Appropriation: no. Fiscal committee: no.
 State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 15212 of the Probate Code is repealed.
- 2 SEC. 2. Section 15212 is added to the Probate Code, to read:
- 3 15212. (a) Subject to the requirements of this section, a trust
- 4 for the care of a designated domestic or pet animal is ~~valid. The~~ trust terminates when no living animal
- 5 ~~trust terminates when no living animal~~ a trust for a lawful
- 6 noncharitable purpose. Unless expressly provided in the trust, and
- 7 subject to Section 15211, the trust terminates when no animal
- 8 living on the date of the trustor’s death is covered by the trust. The
- 9 governing instrument of the animal trust shall be liberally construed
- 10 to bring the ~~transfer trust~~ within this section, to presume against
- 11 the merely precatory or honorary nature of the disposition, and to
- 12 carry out the general intent of the ~~transferor~~ trustor. Extrinsic
- 13 evidence is admissible in determining the ~~transferor’s~~ trustor’s
- 14 intent.
- 15 (b) A trust for the care of a designated domestic or pet animal
- 16 is subject to the following requirements:
- 17 (1) Except as expressly provided otherwise in the trust
- 18 instrument, the principal or income shall not be converted to the
- 19 use of the trustee or to any use other than for the trust’s purposes
- 20 or for the benefit of a covered animal.
- 21 (2) Upon termination of the trust, the trustee shall ~~transfer~~
- 22 *distribute* the unexpended trust property in the following order:
- 23 (A) As directed in the trust instrument.

1 (B) If the trust was created in a nonresiduary clause in the
2 transferor's *trustor's* will or in a codicil to the transferor's *trustor's*
3 will, under the residuary clause in the transferor's *trustor's* will.

4 (C) If the application of subparagraph (A) or (B) does not result
5 in ~~transfer~~ *distribution* of unexpended trust property, to the
6 transferor's *trustor's* heirs under Section 21114.

7 (3) For the purposes of Section 21110, the residuary clause
8 described in subparagraph (B) of paragraph (2) shall be treated as
9 creating a future interest under the terms of a trust.

10 ~~(4)~~

11 (c) The intended use of the principal or income may be enforced
12 by a person designated for that purpose in the trust instrument or,
13 if none is designated, by a person appointed by a court ~~upon~~
14 ~~application to the court by that person.~~ *Any person interested in*
15 *the welfare of the pet animal or any nonprofit charitable*
16 *organization whose principal activity is the care of animals may*
17 *apply to the court for appointment as trustee to enforce the trust*
18 *or for removal of a trustee for a violation of this section.*

19 ~~(5) Except as ordered by the court or required by the trust~~
20 ~~instrument, no filing, report, registration, periodic accounting,~~
21 ~~separate maintenance of funds, appointment, or fee is required by~~
22 ~~reason of the existence of the fiduciary relationship of the trustee.~~

23 ~~(6)~~

24 (d) (1) If a trustee is not designated or no designated trustee is
25 willing or able to serve, a court shall name a trustee. A court may
26 order the transfer of the trust property to a trustee, if it is required
27 to assure that the intended use is carried out and if a successor
28 trustee is not designated in the trust instrument or if no designated
29 successor trustee agrees to serve or is able to serve. A court may
30 also make all other orders and determinations as it shall deem
31 advisable to carry out the intent of the transferor and the purpose
32 of this section.

33 (2) (A) *If the value of the assets in the pet trust does not exceed*
34 *five thousand dollars (\$5,000), no filing, report, registration,*
35 *periodic accounting, separate maintenance of funds, appointment,*
36 *or fee is required by reason of the existence of the fiduciary*
37 *relationship of the trustee, unless ordered by the court or required*
38 *by the trust instrument.*

39 (B) *If the value of the trust assets exceed five thousand dollars*
40 *(\$5,000), the trustee shall submit to the court an accounting of the*

1 *assets in the trust within 60 days of the trustee's appointment.*
2 *Thereafter, the trustee shall submit to the court an accounting of*
3 *the trust assets biennially. No hearing on the accounting shall be*
4 *required. The court may, for good cause and after reviewing the*
5 *accounting submitted by the trustee, order a hearing on the*
6 *accounting, with notice given to residuary beneficiaries of the*
7 *trustor's will, to other named beneficiaries in the trust, and to the*
8 *trustor's heirs under Section 21114. The court may, after the*
9 *hearing, issue orders necessary to ensure that the purpose of the*
10 *trust is carried out.*

11 *(e) Notwithstanding Section 15211, a trust for the care of a*
12 *covered domestic or pet animal that has a life span of 21 years of*
13 *age or greater shall terminate when that designated animal dies.*