



Senate

General Assembly

File No. 707

January Session, 2009

Substitute Senate Bill No. 650

Senate, April 20, 2009

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE CREATION OF A TRUST FOR THE CARE OF AN ANIMAL.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2009*) (a) A testamentary or
2 inter vivos trust may be created to provide for the care of an animal or
3 animals alive during the settlor's lifetime. Such trust shall terminate
4 upon the death of the last surviving animal.

5 (b) A trust created under this section shall not be valid unless
6 approved by the Probate Court, upon a finding by the Probate Court
7 that the terms of the trust instrument are reasonable under the
8 circumstances. If the Probate Court finds that the terms of the trust
9 instrument are not reasonable under the circumstances, the Probate
10 Court may order that the terms of the trust instrument be modified to
11 ensure that they are reasonable under the circumstances. Upon
12 approving the terms of the trust instrument pursuant to this
13 subsection, the Probate Court shall provide notice of such approval to
14 the Attorney General.

15 (c) A trust created under this section may be enforced by a person
16 appointed in the terms of the trust instrument or, if no person is so
17 appointed, by a person appointed by the Probate Court. The Attorney
18 General or any person having an interest in the welfare of the animal
19 may petition the Probate Court to appoint a person to enforce the trust
20 or to remove a person so appointed. The person appointed to enforce
21 the trust shall have the rights of a trust beneficiary for the purpose of
22 enforcing the trust, including the right to receive accountings, notices
23 and other information from the trustee and the right to provide
24 consent related to the care of the animal.

25 (d) If a trustee is not designated or a designated trustee is not
26 willing or able to serve as trustee, the Probate Court (1) shall name a
27 trustee, and (2) may order the transfer of trust property to a successor
28 trustee if the Probate Court makes a factual finding that such transfer
29 is necessary to ensure the intended use of the trust property is carried
30 out.

31 (e) Whenever a trustee is required to give a bond for the
32 performance of the trustee's duties, the Attorney General may file a
33 petition with the probate court of the district in which such trust
34 property is situated, or where the trustee resides, for the fixing,
35 accepting and approving of a bond to the state, conditioned on the
36 proper discharge of the duties of such trustee, which bond shall be
37 filed in the office of such probate court.

38 (f) If the Attorney General determines that the trustee is not
39 properly discharging his or her duties as trustee, the Attorney General
40 may file a petition in the Probate Court for the removal of the trustee
41 and appointment of a successor trustee. The Probate Court shall grant
42 such petition if the Probate Court determines that such removal is
43 necessary because of the trustee's failure to perform his or her duties as
44 trustee. The Probate Court shall order the transfer of trust property to
45 the successor trustee immediately upon his or her appointment and
46 qualification.

47 (g) Trust property may be applied only to its intended use, subject

48 to usual trust expenses including trust funds and commissions, except
49 to the extent the Probate Court determines that the value of the trust
50 property exceeds the amount required for its intended use. Trust
51 property not required for its intended use, including trust property
52 remaining upon termination of the trust, shall be distributed in the
53 following order of priority:

54 (1) As directed by the terms of the trust instrument;

55 (2) To the settlor, if then living;

56 (3) Pursuant to the residuary clause of the settlor's will; or

57 (4) To the settlor's heirs in accordance with the provisions of the
58 general statutes governing descent and distribution.

59 (h) Except as otherwise provided in this section, the provisions of
60 the general statutes governing the creation and administration of trusts
61 shall apply to a trust created to provide for the care of an animal
62 pursuant to this section.

63 Sec. 2. Section 45a-484 of the general statutes is repealed and the
64 following is substituted in lieu thereof (*Effective October 1, 2009*):

65 (a) Except as otherwise provided by the trust or section 45a-520 with
66 respect to charitable trusts, a probate court having jurisdiction under
67 this section may terminate a trust, in whole or in part, on application
68 therefor by the trustee, by any beneficiary entitled to income from the
69 trust, [or] by such beneficiary's legal representative, by the Attorney
70 General with respect to a trust created under section 1 of this act, or by
71 any person having an interest in the welfare of an animal subject to a
72 trust created under section 1 of this act, after reasonable notice to all
73 beneficiaries who are known and in being and who have vested or
74 contingent interests in the trust, and after holding a hearing, if the
75 court determines that all of the following apply: (1) The continuation
76 of the trust is (A) uneconomic when the costs of operating the trust,
77 probable income and other relevant factors are considered, or (B) not
78 in the best interest of the beneficiaries; (2) the termination of the trust is

79 equitable and practical; and (3) the current market value of the trust
80 does not exceed the sum of one hundred thousand dollars.

81 (b) If the probate court orders termination of the trust, in whole or
82 in part, it shall direct that the principal and undistributed income be
83 distributed to the beneficiaries in such manner as the probate court
84 determines is equitable. The probate court may also make such other
85 order as it deems necessary or appropriate to protect the interests of
86 the beneficiaries.

87 (c) No trust may be terminated over the objection of its settlor or
88 where the interest of the beneficiaries cannot be ascertained. The
89 provisions of this section shall not apply to spendthrift trusts.

90 (d) A probate court may terminate a testamentary trust pursuant to
91 this section if the probate court has jurisdiction over the accounts of the
92 testamentary trustee. A probate court may terminate an inter vivos
93 trust pursuant to this section if the trustee or settlor has his or its
94 principal place of business in, or resides in, that probate district.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2009	New section
Sec. 2	October 1, 2009	45a-484

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Probate Court	PCAF - Revenue Gain	Potential	Potential

Note: PCAF=Probate Court Administration Fund

Municipal Impact: None

Explanation

The bill allows the Probate Court to approve and enforce a testamentary or inter vivos trust providing for the care of an animal. To the extent that such trusts are enacted, there is a potential revenue gain to the Probate Court Administration Fund associated with additional fees collected for approving them. The current probate fee for a trust ranges from \$50 to \$750, depending on the value of the trust.

The Out Years

The annualized ongoing fiscal impact identified above would remain constant into the future as probate fees are set by statute.

OLR Bill Analysis**sSB 650*****AN ACT CONCERNING THE CREATION OF A TRUST FOR THE CARE OF AN ANIMAL.*****SUMMARY:**

This bill authorizes the creation of a testamentary or inter vivos trust to provide for the care of an animal or animals alive during the settlor's (person who creates the trust) lifetime. The trust must terminate when the last surviving animal dies. Under current law, trusts for animals are simply honorary, because animal beneficiaries cannot enforce them.

The trust is not valid unless a probate court approves it upon a finding that the terms of the trust are reasonable under the circumstances. If the court finds that the terms are unreasonable under the circumstances, it may order that them modified to ensure that they are reasonable.

If a trustee is not designated or a designated trustee is not willing or able to serve as trustee, the probate court (1) must name a trustee and (2) may order the transfer of trust property to a successor trustee if the probate court makes a factual finding that a transfer is necessary to ensure the trust property's intended use is carried out.

The bill requires the probate court to notifying the attorney general whenever it approves such a trust. It establishes rules relating to enforcement, bonds, removal of trustees, the use of trust property, and termination of the trust.

Finally, the bill specifies that, except as the bill otherwise provides, statutory provisions governing trust creation and administration apply to trusts created to provide for the care of an animal.

EFFECTIVE DATE: October 1, 2009

ENFORCEMENT

The bill allows the trust to be enforced by a person appointed in the trust instrument or, if no person is appointed, by a person the probate court appoints. The bill authorizes the attorney general or any person having an interest in the welfare of the animal to petition the probate court to appoint a person to enforce the trust or to remove a person who has been appointed. The bill gives the person appointed to enforce the trust the rights of a trust beneficiary to enforce the trust, including the right (1) to receive accountings, notices, and other information from the trustee and (2) provide consent related to the animal's care.

PERFORMANCE BOND

Under the bill, whenever a trustee is required to give a bond for the performance of the trustee's duties, the attorney general may file a petition with the probate court of the district in which the trust property is situated, or where the trustee resides, for fixing, accepting, and approving a bond to the state. The bond must be conditioned on the trustee's proper discharge of duties and must be filed in the office of the probate court.

REMOVAL OF TRUSTEE

If the attorney general determines that the trustee is not properly discharging his or her duties as trustee, he may file a petition in the probate court to remove the trustee and appoint a successor trustee. The probate court must grant the petition if it determines that removal is necessary because of the trustee's failure to perform his or her duties as trustee. The bill requires the probate court to order the transfer of trust property to the successor trustee immediately upon his or her appointment and qualification.

USE OF TRUST PROPERTY

The bill requires that trust property be applied only to its intended use, subject to usual trust expenses including trust funds and

commissions, except to the extent the probate court determines that the trust property's value exceeds the amount required for its intended use.

Trust property not required for its intended use, including trust property remaining upon termination of the trust, must be distributed in the following order of priority:

1. as directed by the trust instrument terms;
2. to the settlor, if living;
3. pursuant to the residuary clause of the settlor's will; or
4. to the settlor's heirs in accordance with the provision of law governing descent and distribution.

TERMINATION OF THE TRUST

Unless the trust provides otherwise, the bill authorizes a probate court having jurisdiction to terminate a trust, in whole or in part, on application by the attorney general, or by any person having an interest in the welfare of an animal subject to a trust.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute
Yea 38 Nay 0 (03/31/2009)