# ASSEMBLY, No. 1684

# STATE OF NEW JERSEY

## 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**Sponsored by:**
**Assemblyman JOHN J. BURZICHELLI**
**District 3 (Cumberland, Gloucester and Salem)**

**SYNOPSIS**

Clarifies provisions with regard to pet trusts.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.

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

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

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

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

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

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

d. **[**The court may reduce the amount of the property transferred if it determines that the amount substantially exceeds the amount required for the intended use. The amount of any reduction shall be transferred as directed in the trust instrument or, if no such directions are contained in the trust instrument, to the estate of the creator of the trust**]** The principal and income of the trust shall be applied only to its intended use, except to the extent a court determines that the value of the trust property substantially exceeds the amount required for the intended use and there will be no substantial adverse impact in the care of the animal. Unless otherwise provided in the terms of the trust, property not required for the intended use shall be distributed to the grantor, if then living. If the grantor is deceased, such property shall be distributed pursuant to the terms of the trust, or, if none stated, then pursuant to the residuary clause of the grantor's will or pursuant to the residuary provisions of the inter vivos trust; otherwise such property shall be distributed to the grantor's heirs in accordance with the then applicable law of descent and distribution.

**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.**

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

f. As used in this section:

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

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

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

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

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

2. This act shall take effect immediately.

STATEMENT

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

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

The bill changes the term "domesticated animal" to "domestic animal" and "exotic pet animal" to "exotic animal." The bill defines "domestic animal" as a domestic companion animal or domestic livestock, and those terms as follows:

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

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

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

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