

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 1127 (Niello)
Version: March 18, 2024
Hearing Date: April 2, 2024
Fiscal: No
Urgency: No
AM

SUBJECT

Trust termination

DIGEST

This bill would increase the value of a trust that a trustee may terminate without court approval from \$50,000 to \$100,000, and require that dollar amount to be adjusted periodically based on the change in the United States city average of the “Consumer Price Index for All Urban Consumers,” (CPI) as published by the United States Bureau of Labor Statistics, as specified.

EXECUTIVE SUMMARY

A trust is a means for property to be managed and distributed to specified beneficiaries in accordance with the wishes of the trust’s creator, or “settlor.” The settlor typically transfers property into the trust, designates beneficiaries, and establishes guidelines for the management and distribution of the trust assets by a trustee, who has a legal obligation to implement the settlor’s intent and make reasonable decisions with regard to the trust property. While trusts have numerous financial advantages, including the convenience of avoiding probate, the costs of administering a trust can be significant, particularly in the case of institutional trustees. Thus, at some point, the costs of administering the trust can exceed its benefits and ultimately disadvantage the beneficiaries. At this point, it is in the beneficiaries’ interest to terminate the trust and distribute the assets in accordance with the intent of the settlor. Under existing law, a trustee that wishes to terminate a trust must generally petition a court to determine whether termination is justified, but this process is costly and further diminishes the assets of the trust. Recognizing this problem, existing law provides that if the trust principal is \$50,000 or less, the trustee may terminate the trust without court approval. This bill would increase that threshold or cap to \$100,000, and have that amount be periodically adjusted based on CPI. The bill is sponsored by the California Bankers Association and supported by the California Lawyers Association, Trusts and Estates Section Executive Committee (TEXCOM). The Committee has received no timely opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Governs the creation, validation, modification, termination, and administration of trusts, and provides for the adjudication of disputes relating to trusts. Provides for the rights and responsibilities of all parties to a trust, i.e., the settlor (i.e., the creator of the trust), trustee, beneficiary, heir, and a third party, such as a creditor. (Prob. Code § 15000 et seq.¹)
- 2) Provides that a trust terminates when any of the following occurs:
 - a) the term of the trust expires;
 - b) the trust purpose is fulfilled;
 - c) the trust purpose becomes unlawful;
 - d) the trust purpose becomes impossible to fulfill; or
 - e) the trust is revoked. (§ 15407.)
- 3) Provides that on termination of the trust, the trustee continues to have the powers reasonably necessary under the circumstances to wind up the affairs of the trust. (§ 15407(b).)
- 4) Provides that if a trust is terminated by the trustee pursuant to Probate Code Section 15408(b), the trust property may be distributed, without the need for a court order, as determined by the trustee according to the manner provided in the trust instrument or in a manner directed by the court that conforms as nearly as possible to the intention of the settlor as expressed in the trust instrument. (§ 15410(e) & (d).)
- 5) Provides that if the trust instrument does not provide a manner of distribution at termination and the settlor's intent is not adequately expressed in the trust instrument, the trustee may distribute the trust property to the living beneficiaries on an actuarial basis. (§ 15410(e).)
- 6) Provides, generally, that in order to terminate or modify a trust, a trustee or beneficiary must petition the court to do so, and, if the court finds that the fair market value of the principal of the trust has become so low in relation to the cost of administration that continuation of the trust under its existing terms will defeat or substantially impair the accomplishments of its purposes, the court may order the termination or modification, as long as it does so in a manner that conforms as nearly as possible to the intention of the settlor. (§ 15408(a).)

¹ All further references are to the Probate Code unless specified otherwise.

- 7) Provides that, notwithstanding 6) above, if the trust principal does not exceed \$50,000 in value the trustee has the power to terminate the trust without petitioning the court. (§ 15408(b).)
- 8) Requires the Judicial Council to periodically adjust specified dollar amounts in statute related to small estates based on the change in CPI, with each adjusted amount rounded to the nearest \$25. (§ 890.)

This bill:

- 1) Grants the trustee the power to terminate a trust without petitioning the court if the trust principal does not exceed \$100,000.
- 2) Requires the Judicial Council to adjust the dollar amount in 1) above periodically pursuant to Section 890.

COMMENTS

1. Stated need for the bill

The author writes:

Increasing the amount a trustee may terminate a trust without a court order to \$100,000 or less puts California on par with the majority of the country. This increase helps preserve the principal balance of the trust, thereby avoiding additional fees and expenses associated with trust administration and costs associated with a court termination. By preserving a higher principal balance of the trust, SB 1127 will help Californians by bringing savings to the beneficiaries of the trust.

2. Termination of an uneconomic trust

a. Background on statutory authority to terminate a trust without a court order

In 1985, the California Law Revision Commission (Commission) issued a report recommending that, among other things, a trustee be authorized to terminate a trust valued at \$20,000 or less without obtaining a court order in order to terminate an uneconomical trust that could not achieve its purpose. (*Recommendation proposing The Trust Law (Dec. 1985)* 18 Cal. Law Revision Com. Rep. (1986), pp. 573-574.) The Commission recommended this non-judicial procedure because “[t]he problem with requiring trustees of such trusts to apply to the court is that such applications involve additional expense and there is a risk that the court may not grant approval of the termination.” (*Id.* at p. 574.) Accordingly, the Legislature enacted AB 2652 (McAlister, Ch. 820, Stats. 1986) which, among other things, added Section 15408 to the Probate

Code and authorized trustees to terminate trusts valued at \$20,000 or less without court approval.

The cap on trusts that can be terminated without court approval remained \$20,000 until 2011. In 2010, the Uniform Trust Code was amended by the National Conference of Commissioners on Uniform Laws. The Uniform Trust Code assumes that a trust with a value of \$50,000 or less is sufficiently likely to be inefficient to administer that a trustee should be able to terminate it without the expense of a judicial termination proceeding, but the Uniform Trust Code notes that jurisdictions may wish to designate a higher or lower figure. (National Conference of Commissioners on Uniform Laws, *Uniform Trust Code*, Section 414 and Comment (2010).) In 2010, SB 202 (Harman, Ch. 621, Stats. 2010) raised the cap to \$40,000. In 2018, AB 2426 (Maienschein, Ch. 78, Stats. 2018) raised the cap to \$50,000. The Uniform Trust Code notes that the rule enabling a trustee to unilaterally terminate a trust that is below a specified value is a default rule that applies in the absence of a specific provision in the trust instrument establishing a different cap or a different procedure for termination without a court order. (*Id.*)

- b. Majority of other states allow a trustee to terminate a trust without petitioning a court if the trust principal is \$75,000 or greater*

This bill would bring California's law enabling a trustee to unilaterally terminate a trust that is below a specified value more in line with that of the majority of other states. A survey of the trust laws of the 50 states and the District of Columbia show that 34 states have a cap of \$100,000, including Colorado (Colo. Rev. Stats. § 15-5-414.), Connecticut (Conn. Gen. Stat. § 45a-499ii), Hawaii (Haw. Rev. Stats. §554D-414.), Illinois (760 ILCS 3/414.), and Virginia (VA Code § 64.2-732.). Seven states and the District of Columbia have a cap of \$50,000. Indiana has a cap of \$75,000 (IC § 30-4-3-24.5.), seven states have no dollar amount stated in their statute, and Oklahoma does not have a statute. It does not appear any other state periodically adjusts their cap based on the CPI.

- c. What happens when the trust is terminated?*

Existing law provides that if a trust is terminated by the trustee pursuant to Probate Code Section 15408(b), the trust property may be distributed, without the need for a court order, as determined by the trustee according to the manner provided in the trust instrument or in a manner directed by the court that conforms as nearly as possible to the intention of the settlor as expressed in the trust instrument. (Prob. Code Sec. 15410(e) & (d).) Existing law also provides that if the trust instrument does not provide a manner of distribution at termination and the settlor's intent is not adequately expressed in the trust instrument, the trustee may distribute the trust property to the living beneficiaries on an actuarial basis. (Prob. Code Sec. 15410(e).)

3. Statements in support

The California Bankers Association, the sponsors of the bill, writes in support stating:

By increasing the amount where the trustee may terminate a trust without a court order from \$50,000 to \$100,00[0] or less, this measure helps preserve the principal balance of the trust, thereby avoiding additional fees and expenses associated with the trust administration and costs associated with a court termination.

SUPPORT

California Bankers Association (sponsor)
TEXCOM

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 2426 (Maienschein, Ch. Ch. 78, Stats 2018) authorized trustees to terminate trusts valued at \$50,000 or less without court approval.

SB 202 (Harman, Ch. 621, Stats. 2010) authorized trustees to terminate trusts valued at \$40,000 or less without court approval.

AB 2652 (McAlister, Ch. 820, Stats. 1986), among other things, added Section 15408 to the Probate Code and authorized trustees to terminate trusts valued at \$20,000 or less without court approval.
