

AMENDED IN SENATE APRIL 25, 2016

**SENATE BILL**

**No. 1158**

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**Introduced by Senator Anderson**

February 18, 2016

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An act to amend Sections ~~15403, 15404, and 15406~~ *15403 and 15404* of the Probate Code, relating to trusts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1158, as amended, Anderson. Trusts: modification or termination.

Existing law authorizes the beneficiaries of an irrevocable trust, upon the consent of all beneficiaries, to compel the modification or termination of the trust upon petition to the court. Existing law prohibits the modification or termination of an irrevocable trust if the continuance of the trust is necessary to carry out a material purpose of the trust, unless the court determines that modification or termination under the circumstances outweighs the interest in accomplishing a material purpose of the trust. Notwithstanding that provision, existing law prohibits the court from terminating a trust that is subject to a valid restraint on the transfer of a beneficiary's interest.

This bill would revise and recast these provisions to instead ~~authorize, upon the consent of all beneficiaries, the modification or termination of an irrevocable trust as agreed to by the beneficiaries upon petition to the court.~~ The bill would instead authorize the court, in determining whether modification or termination would defeat a material purpose of the trust, ~~to take into consideration any factors deemed relevant to the court, including~~ *require the court, in making the determination described above with respect to a proposed termination of an irrevocable trust, to consider* whether the trust is subject to a valid restraint on the transfer of a beneficiary's interest. The bill would delete

the provision that the court is prohibited from terminating an irrevocable trust that is subject to a valid restraint on the transfer of a beneficiary's interest. *The bill would also make clarifying changes.*

Existing law authorizes the settlor and the beneficiaries of a trust, upon the consent of the settlor and all beneficiaries, to compel the modification or termination of the trust.

This bill would revise and recast those provisions and instead authorize the trust to be modified or terminated by the written consent of the settlor and all beneficiaries without court approval of the modification or termination.

Existing law provides that the presumption of fertility is rebuttable in determining the class of beneficiaries whose consent is necessary to modify or terminate a trust pursuant to the above-described provisions.

~~This bill would additionally authorize the court to limit the beneficiaries whose consent is required under those provisions to beneficiaries whose interests would be substantially impaired by the modification or termination, as specified.~~

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 15403 of the Probate Code is amended  
2 to read:

3 15403. (a) Except as provided in subdivision (b), if all  
4 beneficiaries of an irrevocable trust ~~consent to a modification or~~  
5 ~~termination of the trust, the trust shall be modified or terminated~~  
6 ~~by the court as agreed to by the beneficiaries upon petition to the~~  
7 ~~court. consent, they may petition the court for modification or~~  
8 ~~termination of the trust.~~

9 (b) ~~The court shall grant a petition for modification or~~  
10 ~~termination made pursuant to subdivision (a) unless the court~~  
11 ~~determines the modification or termination would defeat a material~~  
12 ~~purpose of the trust, after considering, in addition to any other~~  
13 ~~factors deemed relevant to the court, whether the trust is subject~~  
14 ~~to a valid restraint on the transfer of a beneficiary's interest as~~  
15 ~~provided in Chapter 2 (commencing with Section 15300). The~~  
16 ~~court is not precluded from modifying or terminating the trust~~  
17 ~~solely because of such a restraint on the transfer.~~

(b) *If the continuance of the trust is necessary to carry out a material purpose of the trust, the trust cannot be modified or terminated unless the court, in its discretion, determines that the reason for doing so under the circumstances outweighs the interest in accomplishing a material purpose of the trust. In making that determination with respect to a proposed termination of an irrevocable trust, the court shall consider whether the trust is subject to a valid restraint on the transfer of a beneficiary's interest as provided in Chapter 2 (commencing with Section 15300).*

(c) *If the trust provides for the disposition of principal to a class of persons described only as "heirs" or "next of kin" of the settlor; or using other words that describe the class of all persons who would take under the rules of intestacy, the court may limit the class of beneficiaries whose consent is necessary to modify or terminate a trust to the beneficiaries who are reasonably likely to take under the circumstances.*

SEC. 2. Section 15404 of the Probate Code is amended to read:

15404. (a) A trust may be modified or terminated by the written consent of the settlor and all beneficiaries without court approval of the modification or termination.

(b) If any beneficiary does not consent to the modification or termination of the trust, ~~the court may modify or partially terminate the trust~~ upon petition to the court, ~~the court~~ by the other beneficiaries, with the consent of the settlor, ~~may compel a modification or a partial termination of the trust~~ if the interests of the beneficiaries who do not consent are not substantially impaired.

(c) If the trust provides for the disposition of principal to a class of persons described only as "heirs" or "next of kin" of the settlor, or using other words that describe the class of all persons who would take under the rules of intestacy, the court may limit the class of beneficiaries whose consent is ~~needed to compel the modification or termination of the~~ *necessary to modify or terminate* a trust to the beneficiaries who are reasonably likely to take under the circumstances.

SEC. 3. ~~Section 15406 of the Probate Code is amended to read:~~

~~15406. In determining the class of beneficiaries whose consent is necessary to modify or terminate a trust pursuant to Section 15403 or 15404, both of the following shall apply:~~

(a) ~~The presumption of fertility is rebuttable.~~

1     ~~(b) The court in its discretion may limit the beneficiaries whose~~  
2     ~~consent is required to beneficiaries whose interests would be~~  
3     ~~substantially impaired by the modification or termination. For~~  
4     ~~purposes of this subdivision, the court may consider the likelihood~~  
5     ~~of a beneficiary taking under the trust.~~

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