



**Public Hearing
9/17/09
1:00 pm
State House
Room A1**

**Support HB1467 – An Act Relative to Trusts for the Care of Animals (Rep. Kafka)
Support SB1594 – An Act Creating Animal Trusts (Sen. Brown)
Referred to Joint Committee on the Judiciary**

PROBLEM:

Providing appropriate care upon death of an animal's owner via a trust.

WHAT THESE BILLS DO:

Appoints a person (trustee or independent trust supervisor), not a guardian for the animal, to ensure the trust is carried out properly. This will ensure that the animal receives the intended care, but it doesn't give the animal additional rights beyond the care to be provided by the trust funds.

WHY YOU SHOULD SUPPORT:

The following two bills ensure the right of an individual to leave funds in a trust for the care of animals after the animal owner's death.

FOR MORE INFORMATION:

Massachusetts Federation of Dog Clubs and Responsible Dog Owners

Nancy Fisk, Vice President; akikoakitas@aol.com; 508-966-4564

Julie Rembrandt Seeley, Corresponding Secretary; jrembrandtseeley@aol.com; 978-456-8644

MassFed: 06/03/09

HOUSE DOCKET, NO. 3473 FILED ON: 1/14/2009

HOUSE No. 1467

The Commonwealth of Massachusetts

PRESENTED BY: Louis L. Kafka

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act Relative to trusts for the care of animals.

Louis L. Kafka 8th Norfolk
David B. Sullivan 6th Bristol

Alice K. Wolf 25th Middlesex
Bruce J. Ayers 1st Norfolk

Timothy J. Toomey, Jr. 26th Middlesex
Bruce E. Tarr First Essex and Middlesex

Jennifer M. Callahan 18th Worcester
Barbara A. L'Italien 18th Essex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO TRUSTS FOR THE CARE OF ANIMALS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Notwithstanding any general or special law or regulation to the contrary, Chapter 203 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after section 3B the following section: - Section 3C.

A trust for the care of one or more animals alive during the settlor's lifetime is valid. Unless the trust instrument provides for an earlier termination, the trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal. (a) Except as expressly provided otherwise in the trust instrument, no portion of the principal or income may be converted to the use of the trustee, other than reasonable trustee fees and expenses of administration, or to any use other than for the benefit of a covered animal or animals. (b) A court may reduce the amount of property held by the trust if that amount substantially exceeds the amount required for the intended use and the court finds that there will be no substantial adverse impact in the care, maintenance, health, or appearance of the animal or animals. The amount of the reduction shall pass as unexpended trust property in accordance with paragraph (c) of this Section. (c) Upon reduction or termination, the trustee shall transfer the unexpended trust property in the following order:

- (1) As directed in the trust instrument;
- (2) To the settler, if living;
- (3) If the trust was created in a nonresiduary clause in the transferor's will or in a codicil to the transferor's will, under the residuary clause in the transferor's will; or
- (4) To the settlor's heirs in accordance with G.L. c. 190. (d) If a trustee is not designated by the trust instrument or no designated trustee is willing or able to serve, the court shall name a trustee. The court may order the transfer of the property to another trustee if the transfer is necessary to ensure that the intended use is carried out. The court may also make other orders and determinations as are advisable to carry out the intent of the settlor and the intended use of the trust. (e) The intended use of the principal or income may be enforced by an individual designated for that purpose in the trust instrument, by the person having custody of an animal for which care is provided by the trust instrument, by a remainder beneficiary, or by an individual appointed by a court upon application to it by an individual or charitable organization. (f) The settlor or other custodian of an animal for whose benefit the trust was created may transfer custody of the animal to the trustee at or subsequent to the creation of the trust. (g) Any trust created under this Section shall be exempt from G.L. c. 184A and the common law rule against perpetuities.

SENATE No. 1594

The Commonwealth of Massachusetts

PRESENTED BY: Scott P. Brown

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act creating animal trusts.

PETITION OF:

Scott P. Brown Norfolk, Bristol and Middlesex
Richard R. Tisei Middlesex and Essex
Bruce E. Tarr First Essex and Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

An Act creating animal trusts.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 203 of the General Laws is hereby amended by inserting after section 42 the following section:-

Section 43. (a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal, or if the trust was created to provided for the care of more than one animal alive during the settlor's lifetime upon the death of the last surviving animal.

(b) Except as provided in this section, the provisions of the general laws which govern the creation and administration of express trusts applies to the trust for the care of an animal.

(c) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove the appointed person. The appointed person shall have the rights of a trust beneficiary for the purpose of enforcing the trust, including receiving accountings, notices, and other information from the trustee and providing consents.

(d) Property of a trust appointed by this person may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Property not required for the intended use, including the trust property remaining upon its termination, shall be distributed in the following order of priority:

- (1) as directed by the terms of the trust;
- (2) to the settlor, if then living;
- (3) pursuant to the residuary clause of the settlor's will;
- (4) to the settlor's heirs in accordance with the general laws on descent and distribution.

(e) A governing instrument shall be liberally construed in order to presume against the merely precatory or honorary nature of the disposition and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

(f) If a trustee is not designated or the designated trustee is not willing or able to serve, the probate court shall name a trustee. A court may order the transfer of the property to another trustee, if the court makes a factual finding that it is necessary to assure the intended use of the trust is carried out and if a successor trustee is not designated in the trust instrument or if a designated trustee does not agree to serve or is unable to serve.