

SENATE RULES COMMITTEE

SB 685

Office of Senate Floor Analyses

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UNFINISHED BUSINESS

Bill No: SB 685

Author: Yee (D) et al

Amended: 6/19/08

Vote: 21

SENATE JUDICIARY COMMITTEE: 5-0, 1/15/08

AYES: Corbett, Harman, Ackerman, Kuehl, Steinberg

SENATE FLOOR: 40-0, 1/30/08

AYES: Aanestad, Ackerman, Alquist, Ashburn, Battin, Calderon, Cedillo, Cogdill, Corbett, Correa, Cox, Denham, Ducheny, Dutton, Florez, Harman, Hollingsworth, Kehoe, Kuehl, Lowenthal, Machado, Maldonado, Margett, McClintock, Migden, Negrete McLeod, Oropeza, Padilla, Perata, Ridley-Thomas, Romero, Runner, Scott, Simitian, Steinberg, Torlakson, Vincent, Wiggins, Wyland, Yee

ASSEMBLY FLOOR: 76-0, 6/26/08 - See last page for vote

SUBJECT: Pet trusts

SOURCE: San Francisco Society for the Prevention of Cruelty to Animals

DIGEST: This bill repeals current law on trusts for domesticated or pet animals and enacts new, more detailed provisions for the creation and enforcement of pet trusts.

Assembly Amendments set guidelines for distribution of the trust for amounts above as well as below \$40,000 rather than the \$5,000 threshold as it left the Senate.

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ANALYSIS: Existing law provides that a trust for a noncharitable corporation or unincorporated society or for a lawful noncharitable purpose may be performed by the trustee for only 21 years, whether or not there is a beneficiary who can seek enforcement or termination of the trust and whether or not the terms of the trust contemplate a longer duration.

Existing law also provides that a trust for the care of a designated domestic or pet animal may be performed by the trustee for the life of the animal, whether or not there is a beneficiary who can seek enforcement or termination of the trust and whether or not the terms of the trust contemplate a longer duration.

This bill deletes those provisions and instead provides that a trust for the care of an animal is a trust for a lawful noncharitable purpose. Unless expressly provided in the trust, and the trust terminates when no animal living on the date of the settlor's death remains alive. The bill provides that the governing instrument of the animal trust shall be liberally construed to bring the trust within this section, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the settlor. Extrinsic evidence is admissible in determining the settlor's intent.

The bill provides that a trust for the care of an animal is subject to the following requirements:

1. Except as expressly provided otherwise in the trust instrument, the principal or income shall not be converted to the use of the trustee or to any use other than for the benefit of an animal.
2. Upon termination of the trust, the trustee shall distribute the unexpended trust property in the following order:
 - A. As directed in the trust instrument.
 - B. If the trust was created in a nonresiduary clause in the settlor's will or in a codicil to the settlor's will, under the residuary clause in the transferor's will.
 - C. If the application described above does not result in distribution of unexpended trust property, to the settlor's heirs under Section 21114.

The bill provides that the provisions of the bill shall be treated as creating a future interest under the terms of a trust, as specified.

The bill further provides that the intended use of the principal or income may be enforced by a person designated for that purpose in the trust instrument or, if none is designated, by a person appointed by a court upon application to the court. The bill provides that in addition to a person identified in subdivision (a) of Section 17200, any person interested in the welfare of the pet animal or any nonprofit charitable organization that has as its principal activity the care of animals, may petition the court regarding the trust.

The bill specifies that if a trustee is not designated or no designated successor or trustee is willing or able to serve, a court shall name a trustee. A court may order the transfer of the trust property to a court appointed trustee if it is required to assure that the intended use is carried out and if a successor trustee is not designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. A court may also make all other orders and determinations as it shall deem advisable to carry out the intent of the settlor and the purpose of this section.

The bill provides the accountings of the trust required by Section 16062 shall be provided to the beneficiaries who would be entitled to distribution if the animal were then deceased and to any nonprofit charitable corporation that has as its principal activity the care of animals and that has requested these accountings in writing. However, if the value of the assets in the trust does not exceed forty thousand dollars (\$40,000), no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or fee is required by reason of the existence of the fiduciary relationship of the trustee, unless ordered by the court or required by the trust instrument.

The bill provides that any beneficiary, any person designated by the trust instrument or the court to enforce the trust, or any nonprofit charitable corporation that has as its principal activity the care of animals may, upon reasonable request, inspect the animal, the premises where the animal is maintained, or the books and records of the trust.

The bill provides that a trust governed by this bill is not subject to termination pursuant to subdivision (b) of Section 15408 and Section 15211 does not apply to a trust governed by this bill.

The bill provides that for purposes of this bill, “animal” means a domestic or pet animal for the benefit of which a trust has been established.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 6/27/08)

The San Francisco Society for the Prevention of Cruelty to Animals (source)
2nd Chance 4 Pets
Action for Animals
Animal Legal Defense Fund
Animal Switchboard
California Federation for Animal Legislation
Companion Animal Trusts
Horse Trusts
Humane Society of the United States
Marin Humane Society
Pets Are Wonderful Support
San Francisco Dog Owners Group
State Humane Association of California
The American Society for Prevention of Cruelty to Animals
United Animal Nations
WildCare

ARGUMENTS IN SUPPORT: According to the author’s office, “The changes set out in SB 685 create the basis for oversight and enforcement of pet trusts. The consequence of this oversight is that the trust provisions would be legally protected. If it were seen that pets covered by the trust were not being properly cared for, legal action could be taken to ensure that the pets are protected. Thus, a settlor’s plans could be enforced, and pets surviving their owners could not be discarded with impunity, as is the case with present pet trust law. This could then have positive effects on shelters and animal care facilities, which are all too often the destination and destiny of pets whose owner/guardian has passed away.”

The author and source believe that current California law treats pet trusts as honorary and therefore these trusts are unenforceable. The statute (Probate Code Sec. 15212) does not contain any references to a pet trust being honorary and there are no cases interpreting the statute that would clarify whether or not it is honorary. Nevertheless, the source of this bill asserts

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that California is one of only two states that have unenforceable pet trust statutes, and that by adopting the pet trust provisions of the Uniform Probate Code (which this bill would do), California will finally join 37 other states that provide for the creation of pet trusts and the means for their enforcement.

ASSEMBLY FLOOR:

AYES: Adams, Aghazarian, Anderson, Arambula, Beall, Benoit, Berg, Berryhill, Blakeslee, Brownley, Caballero, Carter, Cook, Coto, Davis, De La Torre, De Leon, DeSaulnier, DeVore, Duvall, Dymally, Emmerson, Eng, Evans, Feuer, Fuentes, Fuller, Furutani, Gaines, Galgiani, Garcia, Garrick, Hancock, Hayashi, Hernandez, Horton, Houston, Huff, Huffman, Jeffries, Jones, Karnette, Keene, Krekorian, La Malfa, Laird, Leno, Levine, Lieber, Lieu, Ma, Maze, Mendoza, Mullin, Nakanishi, Nava, Niello, Parra, Plescia, Price, Sharon Runner, Ruskin, Salas, Saldana, Silva, Smyth, Solorio, Spitzer, Strickland, Swanson, Torrico, Tran, Villines, Walters, Wolk, Bass

NO VOTE RECORDED: Charles Calderon, Nunez, Portantino, Soto

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SUPPORT/OPPOSITION: SEE ABOVE

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