

SENATE No. 1594

The Commonwealth of Massachusetts

In the Year Two Thousand 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:

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

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

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

9 (c) A trust authorized by this section may be enforced by a person appointed in the terms
10 of the trust or, if no person is so appointed, by a person appointed by the court. A person having
11 interest in the welfare of the animal may request the court to appoint a person to enforce the trust
12 or to remove the appointed person. The appointed person shall have the rights of a trust

13 beneficiary for the purpose of enforcing the trust, including receiving accountings, notices, and
14 other information from the trustee and providing consents.

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

19 (1) as directed by the terms of the trust;

20 (2) to the settlor, if then living;

21 (3) pursuant to the residuary clause of the settlor's will;

22 (4) to the settlor's heirs in accordance with the general laws on descent and distribution.

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

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