

Senate Bill No. 685

CHAPTER 168

An act to repeal and add Section 15212 of the Probate Code, relating to pet trusts.

[Approved by Governor July 22, 2008. Filed with
Secretary of State July 22, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

SB 685, Yee. Pet trusts.

Existing law 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 would repeal the provisions regarding domestic or pet animal trusts and would provide instead that a trust for the care of a domestic or pet animal is for a lawful noncharitable purpose and terminates when no animal is living on the date of the settlor's death, unless otherwise provided in the trust. The bill would require a court to liberally construe an animal trust to bring it within the bill's provisions, to presume against an interpretation that would render the disposition a mere request or an attempt to honor the animal, and to carry out the general intent of the trust. The bill would provide an order of disposition of trust property upon termination of the trust and would provide authority for the court to name a trustee and to transfer trust property, as specified. This bill would permit any person interested in the welfare of the animal or any nonprofit charitable organization that has as its principal activity the care of animals to petition the court regarding the trust, as specified. The bill would provide a process for an accounting of the trust, to be waived if the value of the trust assets does not exceed \$40,000, as specified. The bill would permit beneficiaries of the trust, a person designated by the trust, or certain nonprofit charitable organizations, upon reasonable request, to inspect the animal, the premises where the animal is maintained, or the books and records of the trust. The bill would except these trusts from the application of specified provisions generally regarding the termination of trusts.

The people of the State of California do enact as follows:

SECTION 1. Section 15212 of the Probate Code is repealed.

SEC. 2. Section 15212 is added to the Probate Code, to read:

15212. (a) Subject to the requirements of this section, a trust for the care of an animal is a trust for a lawful noncharitable purpose. Unless expressly provided in the trust, the trust terminates when no animal living on the date of the settlor's death remains alive. 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.

(b) 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 the 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 settlor's will.

(C) If the application of subparagraph (A) or (B) does not result in distribution of unexpended trust property, to the settlor's heirs under Section 21114.

(3) For the purposes of Section 21110, the residuary clause described in subparagraph (B) of paragraph (2) shall be treated as creating a future interest under the terms of a trust.

(c) 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. In addition to a person identified in subdivision (a) of Section 17200, any person interested in the welfare of the animal or any nonprofit charitable organization that has as its principal activity the care of animals may petition the court regarding the trust as provided in Chapter 3 (commencing with Section 17200) of Part 5.

(d) If a trustee is not designated or no designated or successor 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 ensure 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.

(e) The accountings 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.

(f) 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.

(g) A trust governed by this section is not subject to termination pursuant to subdivision (b) of Section 15408.

(h) Section 15211 does not apply to a trust governed by this section.

(i) For purposes of this section, “animal” means a domestic or pet animal for the benefit of which a trust has been established.