SENATE DOCKET, NO. FILED ON: 1/13/2009

**SENATE . . . . . . . . . . . . . . No.**

|  |
| --- |
|  |

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:

|  |  |
| --- | --- |
| Name: | District/Address: |
| 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.