

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

255L0025

HOUSE BILL NO. 1138

Introduced by: Representatives Elliott, Frost, Garnos, McLaughlin, and Novstrup and
Senators Koetzle, Hundstad, and Napoli

1 FOR AN ACT ENTITLED, An Act to provide for the establishment of certain honorary trusts
2 and trusts for domestic animals.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 29A-2 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Subject to section 3 of this Act, a trust may be performed by the trustee for twenty-one years
7 but no longer, whether or not the terms of the trust contemplate a longer duration if:

8 (1) The trust is for a specific lawful noncharitable purpose or for lawful noncharitable
9 purposes to be selected by the trustee; and

10 (2) There is no definite or definitely ascertainable beneficiary designated.

11 Section 2. That chapter 29A-2 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 Subject to the provisions of section 3 of this Act and this section, a trust for the care of a
14 designated domestic or pet animal is valid. The trust terminates when no living animal is
15 covered by the trust. A governing instrument shall be liberally construed to bring the transfer



1 within this section, to presume against the merely precatory or honorary nature of the
2 disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible
3 in determining the transferor's intent.

4 Section 3. That chapter 29A-2 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 In addition to the provisions of sections 1 or 2 of this Act, a trust covered by either of those
7 sections is subject to the following provisions:

- 8 (1) Except as expressly provided otherwise in the trust instrument, no portion of the
9 principal or income may be converted to the use of the trustee or to any use other
10 than for the trust's purposes or for the benefit of a covered animal;
- 11 (2) Upon termination, the trustee shall transfer the unexpended trust property in the
12 following order:
 - 13 (a) As directed in the trust instrument;
 - 14 (b) If the trust was created in a nonresiduary clause in the transferor's will or in a
15 codicil to the transferor's will, under the residuary clause in the transferor's
16 will; and
 - 17 (c) If no taker is produced by the application of subsection (a) or (b) of this
18 subdivision, to the transferor's heirs under § 29A-2-711;
- 19 (3) For the purposes of § 29A-2-707, the residuary clause is treated as creating a future
20 interest under the terms of a trust;
- 21 (4) The intended use of the principal or income may be enforced by an individual
22 designated for that purpose in the trust instrument or, if none, by an individual
23 appointed by a court upon application to it by an individual;
- 24 (5) Except as ordered by the court or required by the trust instrument, no filing, report,

1 registration, periodic accounting, separate maintenance of funds, appointment, or fee
2 is required by reason of the existence of the fiduciary relationship of the trustee;

3 (6) A court may reduce the amount of the property transferred if it determines that that
4 amount substantially exceeds the amount required for the intended use. The amount
5 of the reduction, if any, passes as unexpended trust property under subdivision (2) of
6 this section;

7 (7) If no trustee is designated or no designated trustee is willing or able to serve, a court
8 shall name a trustee. A court may order the transfer of the property to another trustee
9 if required to ensure that the intended use is carried out and if no successor trustee
10 is designated in the trust instrument or if no designated successor trustee agrees to
11 serve or is able to serve. A court may also make such other orders and determinations
12 as are advisable to carry out the intent of the transferor and the purpose of this
13 section.