

# THE ANIMAL COUNCIL

**P.O. Box 168, Millbrae CA 94030**

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Via Facsimile (916) 403-7394

June 2, 2014

Senate Committee on Judiciary  
State Capitol, Room 2187  
Sacramento, California 95814

Attention: Tara Welch, Bill Consultant

Re: A.B. 1520, Guardians ad litem: animals. Amended May 23, 2014; Gatto. OPPOSE

Dear Ms. Jackson, Mr. Anderson and Members:

Please register our opposition to the above-captioned bill and include our organization on your Committee's Bill Analysis opposition list.

The Animal Council is a non-profit, tax-exempt, IRC Section 501(c)(4) organization founded in 1991 to seek positive, humane solutions to the challenges of ideological animal activists through study, analysis and application of animal husbandry, statistics and law, and to preserve human benefit from all species, breeds and registries.

We carefully monitor relevant California legislation on a year to year basis. Probate Code 15212 was enacted in 2008 by Senator Yee's S.B. 685 with the animal trust provisions amended initially into the bill in January of 2008, replacing the unrelated subject of a 2007 bill. Subsequently, S.B. 685 was amended four more times. Its purpose was to enable enforceability of trusts for the support of animals and was sponsored by the San Francisco Society for Prevention of Cruelty to Animals. As an institution, the SFSPCA had considerable experience in the area of caring for decedents' animals and related issues of wills and trusts. Provisions for oversight of the trust as well as the welfare of the animal for which a trust has been established were included in S.B. 685.

As to A.B. 1520, we believe that there is no proper legal basis for appointment of guardians ad litem for animals within the California Probate Code. Section 1003(a) listing six classes of humans eligible for these appointments includes the language, "at any stage of a

proceeding under this code to represent the interest.” The May 23 amendment to A.B. 1520 would add a new subsection (b) to Section 1003, separately providing such appointments for animals for which a trust has been established but *omits* the reference to “a proceeding under this code.” However, the basis for this appointment would otherwise be the same as persons listed in (a) -- interest of an animal for which a trust has been established, if the court determines that representation of the interest otherwise would be inadequate. Animals do not have their own legal interests in the sense that persons do, so that enacting this parallel provision presents concerns that may not be obvious on casual reading.

Without qualifying language limiting the context for making or entertaining the motion, it appears that it could be *sui generis*, i.e. the only requisite being made on behalf of an animal for which a trust has been established regardless of whether any other court proceeding exists and regarding an alleged “interest” the animal might have that would not otherwise be protected. Although animals may have compelling moral rights, they do not have existing legal rights so that whatever protection might fall to guardians ad litem would fall outside the scope of established protections provided for the interests within court proceedings of persons listed in subsection (a.) Even under existing law, the scope of authority of guardians ad litem is not well defined nor understood by the appointees, even when they are themselves attorneys. Since Section 15212 already provides procedures for oversight of the trust and the animal, it is difficult to understand the need for establishing unprecedented legal rights for any class of animals within the Probate Code.

The term “beneficiary” as used in Probate Code Section 15212 should not be construed as including animals for which the trust was established. If this had been the intention, this would have been expressly defined or stated. Rather, the references to “beneficiaries” should be construed as human beneficiaries who would either be named in the same trust instrument as beneficiaries during the life of the animal or who would be entitled to distribution upon death of the animal. Further, SB 685 and Probate Code 15212 refer to an animal only as “which” and not “who.” Section 15212(i) defines “animal” as “a domestic or pet animal for the benefit of which a trust has been established” with no reference to it also being a “beneficiary” as the term is used within this section and the Probate Code generally. Had the legislative intent been otherwise, it would have been expressly stated when the purpose of the legislation was to ensure enforceability of trustors’ intentions to care for their animals.

Accordingly, the author’s statement included in the Assembly Committee on Judiciary Analysis that included a quote attributed to the “WikiPage” he used to solicit public input for revisions to the Probate Code is misleading and incorrect in a legal context:

As was noted by contributors to the WikiPage: "The status of animals is inherently more than property as evidenced by animals being able to be beneficiaries of trusts pursuant to legislation. It makes sense, therefore, that when needed, a guardian ad litem could be appointed for them." noted by contributors to the WikiPage: "The status of animals is inherently more than property as evidenced by animals being able to be

beneficiaries of trusts pursuant to legislation. It makes sense, therefore, that when needed, a guardian ad litem could be appointed for them."

There is a legal difference between being a "beneficiary" in a legal sense and that of animals as "property" for which a trust is established for its care and maintenance. Inanimate property can also be maintained by a trustor's designation and assets but does not become a "beneficiary" itself. Under existing law, animals are property within a framework that allows their legal owners or others provided by statute to protect their interests within the judicial system. Animals for which a trust has been established may be "beneficiaries" in vernacular usage, but the statutory enforceability of the trust does not confer the legal status of "beneficiary" on the animals. To enact law that suggests this invites confusion, expense and unnecessarily time consuming use of the judicial system.

Finally, within the area of "animal law" is a persistent advocacy of eliminating the property status of animals in favor of something else that would arguably elevate their status legally or morally. This is certainly a philosophically debatable topic, but it should not be brought into the legislative arena – inadvertently or otherwise in the context of a statute that the public, legal profession and the courts need to rely on for clarity and ease, economy and efficiency of enforceability.

For these reasons, we must respectfully oppose AB 1520.

Very truly yours,



SHARON A. COLEMAN  
President, The Animal Council

Cc: Author, Committee Members