

By: Representative Ford

To: Judiciary A

HOUSE BILL NO. 653

1 AN ACT TO REENACT SECTIONS 91-7-47, 91-7-63, 91-9-9, 91-9-107
2 AND 93-13-15, MISSISSIPPI CODE OF 1972, WHICH AUTHORIZE TRUSTEES,
3 EXECUTORS, GUARDIANS AND OTHER FIDUCIARIES TO PROMOTE COMPLIANCE
4 WITH ENVIRONMENTAL LAWS; TO AMEND REENACTED SECTIONS 91-7-47,
5 91-7-63, 91-9-9, 91-9-107 AND 93-13-15, MISSISSIPPI CODE OF 1972,
6 TO EXTEND THE REPEALER DATE FROM JULY 1, 1999, TO JULY 1, 2000; TO
7 AMEND SECTION 6, CHAPTER 589, LAWS OF 1994, TO DELETE THE REPEALER
8 DATE OF JULY 1, 1999, IN CONFORMITY TO THE EXTENSION OF THE
9 REPEALER DATE IN THE REENACTED CODE SECTIONS; AND FOR RELATED
10 PURPOSES.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

12 SECTION 1. Section 91-7-47, Mississippi Code of 1972, is
13 reenacted and amended as follows:

14 91-7-47. (1) Every executor or administrator with the will
15 annexed, who has qualified, shall have the right to the possession
16 of all the personal estate of the deceased, unless otherwise
17 directed in the will; and he shall take all proper steps to
18 acquire possession of any part thereof that may be withheld from
19 him, and shall manage the same for the best interest of those
20 concerned, consistently with the will, and according to law. He
21 shall have the proper appraisements made, return true and complete
22 inventories except as otherwise provided by law, shall collect all
23 debts due the estate as speedily as may be, pay all debts that may
24 be due from it which are properly probated and registered, so far
25 as the means in his hands will allow, shall settle his accounts as
26 often as the law may require, pay all the legacies and bequests as
27 far as the estate may be sufficient, and shall well and truly
28 execute the will if the law permit. He shall also have a right to
29 the possession of the real estate so far as may be necessary to
30 execute the will, and may have proper remedy therefor.

31 (2) In addition to the rights and duties contained in this
32 section, he shall also have those rights, powers and remedies as
33 set forth in Section 91-9-9. The provisions of this subsection
34 shall stand repealed from and after July 1, 2000.

35 SECTION 2. Section 91-7-63, Mississippi Code of 1972, is
36 reenacted and amended as follows:

37 91-7-63. (1) Letters of administration shall be granted by
38 the chancery court of the county in which the intestate had, at
39 the time of his death, a fixed place of residence; but if the
40 intestate did not have a fixed place of residence, then by the
41 chancery court of the county where the intestate died, or that in
42 which his personal property or some part of it may be. The court
43 shall grant letters of administration to the relative who may
44 apply, preferring first the husband or wife and then such others
45 as may be next entitled to distribution if not disqualified,
46 selecting amongst those who may stand in equal right the person or
47 persons best calculated to manage the estate; or the court may
48 select a stranger, a trust company organized under the laws of
49 this state, or of a national bank doing business in this state, if
50 the kindred be incompetent. If such person does not apply for
51 administration within thirty (30) days from the death of an
52 intestate, the court may grant administration to a creditor or to
53 any other suitable person.

54 (2) In addition to the rights and duties of the
55 administrator contained in this chapter, he shall also have those
56 rights, powers and remedies as set forth in Section 91-9-9. The
57 provisions of this subsection shall stand repealed from and after
58 July 1, 2000.

59 SECTION 3. Section 91-9-9, Mississippi Code of 1972, is
60 reenacted and amended as follows:

61 91-9-9. (1) In addition to powers, remedies and rights
62 which may be set forth in any will, trust agreement or other
63 document which is the source of authority, a trustee, executor,

64 administrator, guardian, or one acting in any other fiduciary
65 capacity, whether an individual, corporation or other entity
66 ("fiduciary") shall have the following powers, rights and remedies
67 whether or not set forth in the will, trust agreement or other
68 document which is the source of authority:

69 (a) To inspect, investigate or cause to be inspected
70 and investigated, property held by the fiduciary, including
71 interests in sole proprietorships, partnerships, or corporations
72 and any assets owned by any such business enterprise, for the
73 purpose of determining compliance with any environmental law
74 affecting such property and to respond to any actual or potential
75 violation of any environmental law affecting property held by the
76 fiduciary;

77 (b) To take on behalf of the estate or trust, any
78 action necessary to prevent, abate, or otherwise remedy any actual
79 or potential violation of any environmental law affecting property
80 held by the fiduciary, either before or after the initiation of an
81 enforcement action by any governmental body;

82 (c) To refuse to accept property in trust if the
83 fiduciary determines that any property to be donated or conveyed
84 to the trust either is contaminated by any hazardous substance, or
85 is being used or has been used for any activity directly or
86 indirectly involving any hazardous substance, which could result
87 in liability to the trust or otherwise impair the value of the
88 assets held therein;

89 (d) To settle or compromise at any time any and all
90 claims against the trust or estate which may be asserted by any
91 governmental body or private party involving the alleged violation
92 of any environmental law affecting property held in trust or in an
93 estate;

94 (e) To disclaim any power granted by any document,
95 statute, or rule of law which, in the sole discretion of the
96 fiduciary, may cause the fiduciary to incur personal liability

97 under any environmental law;

98 (f) To decline to serve as a fiduciary, if the
99 fiduciary reasonably believes that there is or may be a conflict
100 of interest between the fiduciary in its or his fiduciary capacity
101 and in its or his individual capacity, because of potential claims
102 or liabilities which may be asserted against the fiduciary on
103 behalf of the trust or estate due to the type or condition of
104 assets held therein.

105 (2) An administrator, executor, guardian or conservator is
106 not relieved under this chapter from obtaining court approval for
107 any actions which otherwise are required to be approved by a
108 court.

109 (3) The fiduciary shall be entitled to charge the cost of
110 any inspection, investigation, review, abatement, response,
111 cleanup, or remedial action authorized herein against the income
112 or principal of the trust or estate. A fiduciary shall not be
113 personally liable to any beneficiary or other party for any
114 decrease in value of assets in trust or in an estate by reason of
115 the fiduciary's compliance or efforts to comply with any
116 environmental law, specifically including any reporting
117 requirement under such law. Neither the acceptance by the
118 fiduciary of property or a failure by the fiduciary to inspect or
119 investigate property shall be deemed to create any inference as to
120 whether there is or may be any liability under any environmental
121 law with respect to such property.

122 (4) For purposes of this section, "environmental law" means
123 any federal, state, or local law, rule, regulation, or ordinance
124 relating to protection of the environment or human health. For
125 purposes of this section, "hazardous substances" means any
126 substance defined as hazardous or toxic or otherwise regulated by
127 any environmental law.

128 (5) A fiduciary in its or his individual capacity shall not
129 be considered an owner or operator of any property of the trust or

130 estate for the purposes of any environmental law.

131 (6) Notwithstanding any other provision of this chapter, the
132 fiduciary is subject at all times to the provisions of the Prudent
133 Man Standard in all its dealings.

134 (7) The provisions of this section shall stand repealed from
135 and after July 1, 2000.

136 SECTION 4. Section 91-9-107, Mississippi Code of 1972, is
137 reenacted and amended as follows:

138 91-9-107. (1) From time of creation of the trust until
139 final distribution of the assets of the trust, a trustee has the
140 power to perform, without court authorization, every act which a
141 prudent man would perform for the purposes of the trust, including
142 but not limited to:

143 (a) The powers specified in subsection (3) of this
144 section, and

145 (b) Those powers, rights and remedies set forth in
146 Section 91-9-9, related to compliance with environmental laws
147 affecting property held by fiduciaries. The provisions of this
148 paragraph (b) shall stand repealed from and after July 1, 2000.

149 (2) In the exercise of his powers, including the powers
150 granted by this article, a trustee has a duty to act with due
151 regard to his obligation as a fiduciary.

152 (3) A trustee has the power, subject to subsections (1) and
153 (2):

154 (a) To collect, hold and retain trust assets received
155 from a trustor until, in the judgment of the trustee, disposition
156 of the assets should be made; and the assets may be retained even
157 though they include an asset in which the trustee is personally
158 interested;

159 (b) To receive additions to the assets of the trust;

160 (c) To continue or participate in the operation of any
161 business or other enterprise, and to effect incorporation,
162 dissolution or other change in the form of the organization of the

163 business or enterprise;

164 (d) To acquire an undivided interest in a trust asset
165 in which the trustee, in any trust capacity, holds an undivided
166 interest;

167 (e) To invest and reinvest trust assets in accordance
168 with the provisions of the trust or as provided by law;

169 (f) To deposit trust funds in a bank, including a bank
170 operated by the trustee;

171 (g) To acquire or dispose of an asset, for cash or on
172 credit, at public or private sale; and to manage, develop,
173 improve, exchange, partition, change the character of, or abandon
174 a trust asset or any interest therein; and to encumber, mortgage
175 or pledge a trust asset for a term within or extending beyond the
176 term of the trust, in connection with the exercise of any power
177 vested in the trustee;

178 (h) To make ordinary or extraordinary repairs or
179 alterations in buildings, improvements or other structures; to
180 demolish any improvements; to raze existing or erect new party
181 walls, buildings or improvements;

182 (i) To subdivide, develop or dedicate land to public
183 use; or to make or obtain the vacation of plats and adjust
184 boundaries; or to adjust differences in valuation on exchange or
185 partition by giving or receiving consideration; or to dedicate
186 easements to public use without consideration;

187 (j) To enter for any purpose into a lease as lessor or
188 lessee with or without option to purchase or renew for a term
189 within or extending beyond the term of the trust;

190 (k) To enter into a lease or arrangement for
191 exploration and removal of minerals or other natural resources, or
192 enter into a pooling or unitization agreement;

193 (l) To grant an option involving disposition of a trust
194 asset, or to take an option for the acquisition of any asset;

195 (m) To vote a security, in person or by general or

196 limited proxy;

197 (n) To pay calls, assessments and any other sums
198 chargeable or accruing against or on account of securities;

199 (o) To sell or exercise stock subscription or
200 conversion rights; to consent, directly or through a committee or
201 other agent, to the reorganization, consolidation, merger,
202 dissolution or liquidation of a corporation or other business
203 enterprise;

204 (p) To hold a security in the name of a nominee or in
205 other form without disclosure of the trust, so that title to the
206 security may pass by delivery, but the trustee is liable for any
207 act of the nominee in connection with the stock so held;

208 (q) To insure the assets of the trust against damage or
209 loss, and the trustee against liability with respect to third
210 persons;

211 (r) To borrow money to be repaid from trust assets or
212 otherwise; to advance money for the protection of the trust and
213 for all expenses, losses and liability sustained in the
214 administration of the trust or because of the holding or ownership
215 of any trust assets, for which advances with any interest the
216 trustee has a lien on the trust assets as against the beneficiary;

217 (s) To pay or contest any claim; to settle a claim by
218 or against the trust by compromise, arbitration or otherwise; and
219 to release, in whole or in part, any claim belonging to the trust
220 to the extent that the claim is uncollectible;

221 (t) To pay taxes, assessments, compensation of the
222 trustee, and other expenses incurred in the collection, care,
223 administration and protection of the trust;

224 (u) To allocate items of income or expense to either
225 trust income or principal, as provided by law, including creation
226 of reserves out of income for depreciation, obsolescence or
227 amortization, or for depletion in mineral or timber properties;

228 (v) To pay any sum distributable to a beneficiary under

229 legal disability, without liability to the trustee, by paying the
230 sum to the beneficiary or by using same for his benefit or by
231 paying the sum for the use of the beneficiary either to a legal
232 representative appointed by the court, or if none, to a relative
233 or to an adult person with whom beneficiary is residing, who is
234 believed to be reliable by trustee;

235 (w) To effect distribution of property and money in
236 divided or undivided interests and to adjust resulting differences
237 in valuation;

238 (x) To employ persons, including attorneys, auditors,
239 investment advisors or agents, even if they are associated with
240 the trustee, to advise or assist the trustee in the performance of
241 his administrative duties; to act without independent
242 investigation upon their recommendations; and instead of acting
243 personally, to employ one or more agents to perform any act of
244 administration, whether or not discretionary;

245 (y) To prosecute or defend actions, claims or
246 proceedings for the protection of trust assets and of the trustee
247 in the performance of his duties;

248 (z) To execute and deliver all instruments which will
249 accomplish or facilitate the exercise of the powers vested in the
250 trustee.

251 (4) If a trustee has determined that either (a) the market
252 value of a trust is less than Twenty-five Thousand Dollars
253 (\$25,000.00) and that, in relation to the costs of administration
254 of the trust, the continuance of the trust pursuant to its
255 existing terms will defeat or substantially impair the
256 accomplishment of the purposes of the trust; or (b) the trust no
257 longer has a legitimate purpose or that its purpose is being
258 thwarted with respect to any trust in any amount; then the trustee
259 may seek court approval to terminate the trust and the court, in
260 its discretion, may approve such termination. In such a case, the
261 court may provide for the distribution of trust property,

262 including principal and undistributed income, to the beneficiaries
263 in a manner which conforms as nearly as possible to the intention
264 of the settlor and the court shall make appropriate provisions for
265 the appointment of a guardian in the case of a minor beneficiary.

266 SECTION 5. Section 93-13-15, Mississippi Code of 1972, is
267 reenacted and amended as follows:

268 93-13-15. (1) (a) Every guardian of any ward heretofore or
269 who may be hereafter appointed by any chancery court or chancery
270 clerk whose act is approved by the chancery court, or by any
271 chancellor, is in fact a general guardian to the extent of his
272 appointment according to the terms of the order or decree of
273 appointment, such as: guardian of the estate of the ward is the
274 general guardian of the ward and his estate; the guardian of the
275 person and estate of a ward is the general guardian of the person
276 and estate of such ward; the guardian of the person only of a ward
277 is the general guardian of the ward named.

278 (b) In addition to the rights and duties of the
279 guardian contained in this chapter, he shall also have those
280 rights, powers and remedies as set forth in Section 91-9-9. The
281 provisions of this paragraph (b) shall stand repealed from and
282 after July 1, 2000.

283 (2) All orders and decrees now or hereafter made in which
284 the word "general" is not used in conjunction with the word
285 "guardian" shall be construed and applied as if the word "general"
286 had been used in conjunction with the word "guardian."

287 (3) After May 5, 1960, all orders or decrees appointing any
288 guardian or ward shall designate such guardian as "general"
289 guardian.

290 SECTION 6. Section 6, Chapter 589, Laws of 1994, is amended
291 as follows:

292 Section 6. This act shall take effect and be in force from
293 and after its passage * * *.

294 SECTION 7. This act shall take effect and be in force from

295 and after July 1, 1999.