

By: Representative Martinson

To: Judiciary A

HOUSE BILL NO. 336
(As Passed the House)

1 AN ACT TO AMEND SECTION 91-9-107, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE MINIMUM AMOUNT REQUIRED TO SEEK COURT APPROVAL TO
3 TERMINATE A TRUST BY THE TRUSTEE; AND FOR RELATED PURPOSES.

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

5 SECTION 1. Section 91-9-107, Mississippi Code of 1972, is
6 amended as follows:

7 91-9-107. (1) From time of creation of the trust until
8 final distribution of the assets of the trust, a trustee has the
9 power to perform, without court authorization, every act which a
10 prudent man would perform for the purposes of the trust, including
11 but not limited to:

12 (a) The powers specified in subsection (3) of this
13 section, and

14 (b) Those powers, rights and remedies set forth in
15 Section 91-9-9, related to compliance with environmental laws
16 affecting property held by fiduciaries. The provisions of this
17 paragraph (b) shall stand repealed from and after July 1, 2002.

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

21 (3) A trustee has the power, subject to subsections (1) and
22 (2):

23 (a) To collect, hold and retain trust assets received
24 from a trustor until, in the judgment of the trustee, disposition
25 of the assets should be made; and the assets may be retained even
26 though they include an asset in which the trustee is personally
27 interested;

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

29 (c) To continue or participate in the operation of any
30 business or other enterprise, and to effect incorporation,
31 dissolution or other change in the form of the organization of the
32 business or enterprise;

33 (d) To acquire an undivided interest in a trust asset
34 in which the trustee, in any trust capacity, holds an undivided
35 interest;

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

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

40 (g) To acquire or dispose of an asset, for cash or on
41 credit, at public or private sale; and to manage, develop,
42 improve, exchange, partition, change the character of, or abandon
43 a trust asset or any interest therein; and to encumber, mortgage
44 or pledge a trust asset for a term within or extending beyond the
45 term of the trust, in connection with the exercise of any power
46 vested in the trustee;

47 (h) To make ordinary or extraordinary repairs or
48 alterations in buildings, improvements or other structures; to
49 demolish any improvements; to raze existing or erect new party
50 walls, buildings or improvements;

51 (i) To subdivide, develop or dedicate land to public
52 use; or to make or obtain the vacation of plats and adjust
53 boundaries; or to adjust differences in valuation on exchange or
54 partition by giving or receiving consideration; or to dedicate
55 easements to public use without consideration;

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

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

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

64 (m) To vote a security, in person or by general or
65 limited proxy;

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

68 (o) To sell or exercise stock subscription or
69 conversion rights; to consent, directly or through a committee or
70 other agent, to the reorganization, consolidation, merger,
71 dissolution or liquidation of a corporation or other business
72 enterprise;

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

77 (q) To insure the assets of the trust against damage or
78 loss, and the trustee against liability with respect to third
79 persons;

80 (r) To borrow money to be repaid from trust assets or
81 otherwise; to advance money for the protection of the trust and
82 for all expenses, losses and liability sustained in the
83 administration of the trust or because of the holding or ownership
84 of any trust assets, for which advances with any interest the
85 trustee has a lien on the trust assets as against the beneficiary;

86 (s) To pay or contest any claim; to settle a claim by
87 or against the trust by compromise, arbitration or otherwise; and
88 to release, in whole or in part, any claim belonging to the trust
89 to the extent that the claim is uncollectible;

90 (t) To pay taxes, assessments, compensation of the
91 trustee, and other expenses incurred in the collection, care,
92 administration and protection of the trust;

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

97 (v) To pay any sum distributable to a beneficiary under
98 legal disability, without liability to the trustee, by paying the
99 sum to the beneficiary or by using same for his benefit or by
100 paying the sum for the use of the beneficiary either to a legal
101 representative appointed by the court, or if none, to a relative
102 or to an adult person with whom beneficiary is residing, who is
103 believed to be reliable by trustee;

104 (w) To effect distribution of property and money in
105 divided or undivided interests and to adjust resulting differences
106 in valuation;

107 (x) To employ persons, including attorneys, auditors,
108 investment advisors or agents, even if they are associated with
109 the trustee, to advise or assist the trustee in the performance of
110 his administrative duties; to act without independent
111 investigation upon their recommendations; and instead of acting
112 personally, to employ one or more agents to perform any act of
113 administration, whether or not discretionary;

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

117 (z) To execute and deliver all instruments which will
118 accomplish or facilitate the exercise of the powers vested in the
119 trustee.

120 (4) If a trustee has determined that either (a) the market
121 value of a trust is less than One Hundred Fifty Thousand Dollars
122 (\$150,000.00) and that, in relation to the costs of administration

123 of the trust, the continuance of the trust pursuant to its
124 existing terms will defeat or substantially impair the
125 accomplishment of the purposes of the trust; or (b) the trust no
126 longer has a legitimate purpose or that its purpose is being
127 thwarted with respect to any trust in any amount; then the trustee
128 may seek court approval to terminate the trust and the court, in
129 its discretion, may approve such termination. In such a case, the
130 court may provide for the distribution of trust property,
131 including principal and undistributed income, to the beneficiaries
132 in a manner which conforms as nearly as possible to the intention
133 of the settlor and the court shall make appropriate provisions for
134 the appointment of a guardian in the case of a minor beneficiary.

135 SECTION 2. This act shall take effect and be in force from
136 and after July 1, 2001.