

By: Representative Smith (39th)

To: Judiciary A

HOUSE BILL NO. 1168
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 91-9-107, MISSISSIPPI CODE OF 1972,
2 TO INCLUDE IN THE UNIFORM TRUSTEES' POWERS THE SPECIFIC POWER TO
3 SEGREGATE OR CONSOLIDATE TRUSTS; TO REDUCE POTENTIAL
4 GENERATION-SKIPPING TAX LIABILITY; AND FOR RELATED PURPOSES.

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

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

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

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

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18 paragraph (b) shall stand repealed from and after July 1, 2002.

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

22 (3) A trustee has the power, subject to subsections (1) and
23 (2):

24 (a) To collect, hold and retain trust assets received
25 from a trustor until, in the judgment of the trustee, disposition
26 of the assets should be made; and the assets may be retained even

27 though they include an asset in which the trustee is personally
28 interested;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

121 (4) If a trustee has determined that either (a) the market
122 value of a trust is less than One Hundred Fifty Thousand Dollars
123 (\$150,000.00) and that, in relation to the costs of administration

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

136 (5) (a) Unless expressly provided to the contrary in the
137 trust instrument, a trustee may consolidate two (2) or more trusts
138 having substantially similar terms into a single trust; divide on
139 a fractional basis a single trust into two (2) or more separate
140 trusts for any reason; and may segregate by allocation to a
141 separate account or trust a specific amount from, a portion of, or
142 a specific asset included in the trust property of any trust to
143 reflect a disclaimer, to reflect or result in differences in
144 federal tax attributes, to satisfy any federal tax requirement, to
145 make federal tax elections, to reduce potential
146 generation-skipping transfer tax liability, or for any other tax
147 planning purposes or other reasons.

148 (b) A separate trust created by severance or
149 segregation must be treated as a separate trust for all purposes
150 from the effective date in which the severance or segregation is
151 effective. The effective date of the severance or segregation may
152 be retroactive. In managing, investing, administering and
153 distributing the trust property of any separate account or trust
154 and in making applicable tax elections, the trustee may consider
155 the differences in federal tax attributes and all other factors

156 the trustee believes pertinent and may make disproportionate
157 distributions from the separate trusts or accounts created.

158 (c) A trust or account created by consolidation,
159 severance or segregation under this subsection (5) must be held on
160 terms and conditions that are substantially equivalent to the
161 terms of the trust before consolidation, severance or segregation
162 so that the aggregate interests of each beneficiary are
163 substantially equivalent to the beneficiary's interests in the
164 trust or trusts before consolidation, severance or segregation.
165 In determining whether a beneficiary's aggregate interests are
166 substantially equivalent, the trustee shall consider the economic
167 value of those interests to the extent they can be valued,
168 considering actuarial factors as appropriate. If a beneficiary's
169 interest cannot be valued with any reasonable degree of certainty
170 because of the nature of the trust property, the terms of the
171 trust, or other reasons, the trustee shall base the determination
172 upon such other factors as are reasonable and appropriate under
173 the facts and circumstances applicable to that particular trust,
174 including the purposes of the trust. Provided, however, the terms
175 of any trust before consolidation, severance or segregation which
176 permit qualification of that trust for an applicable federal tax
177 deduction, exclusion, election, exemption, or other special
178 federal tax status must remain identical in the consolidated trust
179 or in each of the separate trusts or accounts created by severance
180 or segregation.

181 (d) A trustee who acts in good faith is not liable to
182 any person for taking into consideration differences in federal
183 tax attributes and other pertinent factors in administering trust
184 property of any separate account or trust, in making tax
185 elections, and making distributions pursuant to the terms of the
186 separate trust.

187 (e) Income earned on a consolidated or severed or
188 segregated amount, portion, or specific asset after the

189 consolidation or severance is effective passes with that amount,
190 portion or specific asset.

191 (f) This subsection (5) applies to all trusts whenever
192 created, whether before, on, or after July 1, 2001, and whether
193 such trusts are inter vivos or testamentary, are created by the
194 same or different instruments, by the same or different persons
195 and regardless of where created or administered.

196 (g) This subsection (5) does not limit the right of a
197 trustee acting in accordance with the applicable provisions of the
198 governing instrument to divide or consolidate trusts.

199 (h) Nothing contained in this subsection (5) shall be
200 construed as granting to any trustee a general power of
201 appointment over any trust not otherwise expressly granted in the
202 trust instrument.

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