

By: Representative Ford

To: Judiciary A

HOUSE BILL NO. 570

1 AN ACT TO REENACT SECTION 91-9-9, MISSISSIPPI CODE OF 1972,
2 WHICH PROVIDES FOR THE POWERS OF FIDUCIARIES TO PROMOTE COMPLIANCE
3 WITH ENVIRONMENTAL LAWS; TO AMEND REENACTED SECTION 91-9-9,
4 MISSISSIPPI CODE OF 1972, TO EXTEND THE REPEALER; AND FOR RELATED
5 PURPOSES.

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

7 **SECTION 1.** Section 91-9-9, Mississippi Code of 1972, is
8 reenacted and amended as follows:

9 91-9-9. (1) In addition to powers, remedies and rights
10 which may be set forth in any will, trust agreement or other
11 document which is the source of authority, a trustee, executor,
12 administrator, guardian, or one acting in any other fiduciary
13 capacity, whether an individual, corporation or other entity
14 ("fiduciary") shall have the following powers, rights and remedies
15 whether or not set forth in the will, trust agreement or other
16 document which is the source of authority:

17 (a) To inspect, investigate or cause to be inspected
18 and investigated, property held by the fiduciary, including
19 interests in sole proprietorships, partnerships, or corporations
20 and any assets owned by any such business enterprise, for the
21 purpose of determining compliance with any environmental law
22 affecting such property and to respond to any actual or potential
23 violation of any environmental law affecting property held by the
24 fiduciary;

25 (b) To take on behalf of the estate or trust, any
26 action necessary to prevent, abate, or otherwise remedy any actual
27 or potential violation of any environmental law affecting property



28 held by the fiduciary, either before or after the initiation of an
29 enforcement action by any governmental body;

30 (c) To refuse to accept property in trust if the
31 fiduciary determines that any property to be donated or conveyed
32 to the trust either is contaminated by any hazardous substance, or
33 is being used or has been used for any activity directly or
34 indirectly involving any hazardous substance, which could result
35 in liability to the trust or otherwise impair the value of the
36 assets held therein;

37 (d) To settle or compromise at any time any and all
38 claims against the trust or estate which may be asserted by any
39 governmental body or private party involving the alleged violation
40 of any environmental law affecting property held in trust or in an
41 estate;

42 (e) To disclaim any power granted by any document,
43 statute, or rule of law which, in the sole discretion of the
44 fiduciary, may cause the fiduciary to incur personal liability
45 under any environmental law;

46 (f) To decline to serve as a fiduciary, if the
47 fiduciary reasonably believes that there is or may be a conflict
48 of interest between the fiduciary in its or his fiduciary capacity
49 and in its or his individual capacity, because of potential claims
50 or liabilities which may be asserted against the fiduciary on
51 behalf of the trust or estate due to the type or condition of
52 assets held therein.

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

57 (3) The fiduciary shall be entitled to charge the cost of
58 any inspection, investigation, review, abatement, response,
59 cleanup, or remedial action authorized herein against the income
60 or principal of the trust or estate. A fiduciary shall not be



61 personally liable to any beneficiary or other party for any
62 decrease in value of assets in trust or in an estate by reason of
63 the fiduciary's compliance or efforts to comply with any
64 environmental law, specifically including any reporting
65 requirement under such law. Neither the acceptance by the
66 fiduciary of property or a failure by the fiduciary to inspect or
67 investigate property shall be deemed to create any inference as to
68 whether there is or may be any liability under any environmental
69 law with respect to such property.

70 (4) For purposes of this section, "environmental law" means
71 any federal, state, or local law, rule, regulation, or ordinance
72 relating to protection of the environment or human health. For
73 purposes of this section, "hazardous substances" means any
74 substance defined as hazardous or toxic or otherwise regulated by
75 any environmental law.

76 (5) A fiduciary in its or his individual capacity shall not
77 be considered an owner or operator of any property of the trust or
78 estate for the purposes of any environmental law.

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

82 (7) The provisions of this section shall stand repealed from
83 and after July 1, 2003.

84 **SECTION 2.** This act shall take effect and be in force from
85 and after July 1, 2002.

