

By: Senator(s) Turner

To: Judiciary

SENATE BILL NO. 2645

1 AN ACT TO AMEND SECTION 91-9-9, MISSISSIPPI CODE OF 1972, TO
2 DELETE THE REPEALER ON THE POWER OF A FIDUCIARY TO PROMOTE
3 COMPLIANCE WITH ENVIRONMENTAL LAWS; TO AMEND SECTIONS 91-7-47,
4 91-7-63, 91-9-107 AND 93-13-15, MISSISSIPPI CODE OF 1972, TO
5 CONFORM; AND FOR RELATED 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 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 * * *

83 **SECTION 2.** Section 91-7-47, Mississippi Code of 1972, is
84 amended as follows:

85 91-7-47. (1) Every executor or administrator with the will
86 annexed, who has qualified, shall have the right to the possession
87 of all the personal estate of the deceased, unless otherwise
88 directed in the will; and he shall take all proper steps to
89 acquire possession of any part thereof that may be withheld from
90 him, and shall manage the same for the best interest of those
91 concerned, consistently with the will, and according to law. He
92 shall have the proper appraisements made, return true and complete
93 inventories except as otherwise provided by law, shall collect all



94 debts due the estate as speedily as may be, pay all debts that may
95 be due from it which are properly probated and registered, so far
96 as the means in his hands will allow, shall settle his accounts as
97 often as the law may require, pay all the legacies and bequests as
98 far as the estate may be sufficient, and shall well and truly
99 execute the will if the law permit. He shall also have a right to
100 the possession of the real estate so far as may be necessary to
101 execute the will, and may have proper remedy therefor.

102 (2) In addition to the rights and duties contained in this
103 section, he shall also have those rights, powers and remedies as
104 set forth in Section 91-9-9. * * *

105 **SECTION 3.** Section 91-7-63, Mississippi Code of 1972, is
106 amended as follows:

107 91-7-63. (1) Letters of administration shall be granted by
108 the chancery court of the county in which the intestate had, at
109 the time of his death, a fixed place of residence; but if the
110 intestate did not have a fixed place of residence, then by the
111 chancery court of the county where the intestate died, or that in
112 which his personal property or some part of it may be. The court
113 shall grant letters of administration to the relative who may
114 apply, preferring first the husband or wife and then such others
115 as may be next entitled to distribution if not disqualified,
116 selecting amongst those who may stand in equal right the person or
117 persons best calculated to manage the estate; or the court may
118 select a stranger, a trust company organized under the laws of
119 this state, or of a national bank doing business in this state, if
120 the kindred be incompetent. If such person does not apply for
121 administration within thirty (30) days from the death of an
122 intestate, the court may grant administration to a creditor or to
123 any other suitable person.

124 (2) In addition to the rights and duties of the
125 administrator contained in this chapter, he shall also have those
126 rights, powers and remedies as set forth in Section 91-9-9. * * *



127 **SECTION 4.** Section 91-9-107, Mississippi Code of 1972, is
128 amended as follows:

129 91-9-107. (1) From time of creation of the trust until
130 final distribution of the assets of the trust, a trustee has the
131 power to perform, without court authorization, every act which a
132 prudent man would perform for the purposes of the trust, including
133 but not limited to:

134 (a) The powers specified in subsection (3) of this
135 section, and

136 (b) Those powers, rights and remedies set forth in
137 Section 91-9-9, related to compliance with environmental laws
138 affecting property held by fiduciaries. * * *

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

142 (3) A trustee has the power, subject to subsections (1) and
143 (2):

144 (a) To collect, hold and retain trust assets received
145 from a trustor until, in the judgment of the trustee, disposition
146 of the assets should be made; and the assets may be retained even
147 though they include an asset in which the trustee is personally
148 interested;

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

150 (c) To continue or participate in the operation of any
151 business or other enterprise, and to effect incorporation,
152 dissolution or other change in the form of the organization of the
153 business or enterprise;

154 (d) To acquire an undivided interest in a trust asset
155 in which the trustee, in any trust capacity, holds an undivided
156 interest;

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



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

161 (g) To acquire or dispose of an asset, for cash or on
162 credit, at public or private sale; and to manage, develop,
163 improve, exchange, partition, change the character of, or abandon
164 a trust asset or any interest therein; and to encumber, mortgage
165 or pledge a trust asset for a term within or extending beyond the
166 term of the trust, in connection with the exercise of any power
167 vested in the trustee;

168 (h) To make ordinary or extraordinary repairs or
169 alterations in buildings, improvements or other structures; to
170 demolish any improvements; to raze existing or erect new party
171 walls, buildings or improvements;

172 (i) To subdivide, develop or dedicate land to public
173 use; or to make or obtain the vacation of plats and adjust
174 boundaries; or to adjust differences in valuation on exchange or
175 partition by giving or receiving consideration; or to dedicate
176 easements to public use without consideration;

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

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

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

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

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

189 (o) To sell or exercise stock subscription or
190 conversion rights; to consent, directly or through a committee or
191 other agent, to the reorganization, consolidation, merger,



192 dissolution or liquidation of a corporation or other business
193 enterprise;

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

198 (q) To insure the assets of the trust against damage or
199 loss, and the trustee against liability with respect to third
200 persons;

201 (r) To borrow money to be repaid from trust assets or
202 otherwise; to advance money for the protection of the trust and
203 for all expenses, losses and liability sustained in the
204 administration of the trust or because of the holding or ownership
205 of any trust assets, for which advances with any interest the
206 trustee has a lien on the trust assets as against the beneficiary;

207 (s) To pay or contest any claim; to settle a claim by
208 or against the trust by compromise, arbitration or otherwise; and
209 to release, in whole or in part, any claim belonging to the trust
210 to the extent that the claim is uncollectible;

211 (t) To pay taxes, assessments, compensation of the
212 trustee, and other expenses incurred in the collection, care,
213 administration and protection of the trust;

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

218 (v) To pay any sum distributable to a beneficiary under
219 legal disability, without liability to the trustee, by paying the
220 sum to the beneficiary or by using same for his benefit or by
221 paying the sum for the use of the beneficiary either to a legal
222 representative appointed by the court, or if none, to a relative
223 or to an adult person with whom beneficiary is residing, who is
224 believed to be reliable by trustee;



225 (w) To effect distribution of property and money in
226 divided or undivided interests and to adjust resulting differences
227 in valuation;

228 (x) To employ persons, including attorneys, auditors,
229 investment advisors or agents, even if they are associated with
230 the trustee, to advise or assist the trustee in the performance of
231 his administrative duties; to act without independent
232 investigation upon their recommendations; and instead of acting
233 personally, to employ one or more agents to perform any act of
234 administration, whether or not discretionary;

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

238 (z) To execute and deliver all instruments which will
239 accomplish or facilitate the exercise of the powers vested in the
240 trustee.

241 (4) If a trustee has determined that either (a) the market
242 value of a trust is less than One Hundred Fifty Thousand Dollars
243 (\$150,000.00) and that, in relation to the costs of administration
244 of the trust, the continuance of the trust pursuant to its
245 existing terms will defeat or substantially impair the
246 accomplishment of the purposes of the trust; or (b) the trust no
247 longer has a legitimate purpose or that its purpose is being
248 thwarted with respect to any trust in any amount; then the trustee
249 may seek court approval to terminate the trust and the court, in
250 its discretion, may approve such termination. In such a case, the
251 court may provide for the distribution of trust property,
252 including principal and undistributed income, to the beneficiaries
253 in a manner which conforms as nearly as possible to the intention
254 of the settlor and the court shall make appropriate provisions for
255 the appointment of a guardian in the case of a minor beneficiary.

256 (5) (a) Unless expressly provided to the contrary in the
257 trust instrument, a trustee may consolidate two (2) or more trusts



258 having substantially similar terms into a single trust; divide on
259 a fractional basis a single trust into two (2) or more separate
260 trusts for any reason; and may segregate by allocation to a
261 separate account or trust a specific amount from, a portion of, or
262 a specific asset included in the trust property of any trust to
263 reflect a disclaimer, to reflect or result in differences in
264 federal tax attributes, to satisfy any federal tax requirement, to
265 make federal tax elections, to reduce potential
266 generation-skipping transfer tax liability, or for any other tax
267 planning purposes or other reasons.

268 (b) A separate trust created by severance or
269 segregation must be treated as a separate trust for all purposes
270 from the effective date in which the severance or segregation is
271 effective. The effective date of the severance or segregation may
272 be retroactive. In managing, investing, administering and
273 distributing the trust property of any separate account or trust
274 and in making applicable tax elections, the trustee may consider
275 the differences in federal tax attributes and all other factors
276 the trustee believes pertinent and may make disproportionate
277 distributions from the separate trusts or accounts created.

278 (c) A trust or account created by consolidation,
279 severance or segregation under this subsection (5) must be held on
280 terms and conditions that are substantially equivalent to the
281 terms of the trust before consolidation, severance or segregation
282 so that the aggregate interests of each beneficiary are
283 substantially equivalent to the beneficiary's interests in the
284 trust or trusts before consolidation, severance or segregation.
285 In determining whether a beneficiary's aggregate interests are
286 substantially equivalent, the trustee shall consider the economic
287 value of those interests to the extent they can be valued,
288 considering actuarial factors as appropriate. If a beneficiary's
289 interest cannot be valued with any reasonable degree of certainty
290 because of the nature of the trust property, the terms of the



291 trust, or other reasons, the trustee shall base the determination
292 upon such other factors as are reasonable and appropriate under
293 the facts and circumstances applicable to that particular trust,
294 including the purposes of the trust. Provided, however, the terms
295 of any trust before consolidation, severance or segregation which
296 permit qualification of that trust for an applicable federal tax
297 deduction, exclusion, election, exemption, or other special
298 federal tax status must remain identical in the consolidated trust
299 or in each of the separate trusts or accounts created by severance
300 or segregation.

301 (d) A trustee who acts in good faith is not liable to
302 any person for taking into consideration differences in federal
303 tax attributes and other pertinent factors in administering trust
304 property of any separate account or trust, in making tax
305 elections, and making distributions pursuant to the terms of the
306 separate trust.

307 (e) Income earned on a consolidated or severed or
308 segregated amount, portion, or specific asset after the
309 consolidation or severance is effective passes with that amount,
310 portion or specific asset.

311 (f) This subsection (5) applies to all trusts whenever
312 created, whether before, on, or after July 1, 2001, and whether
313 such trusts are inter vivos or testamentary, are created by the
314 same or different instruments, by the same or different persons
315 and regardless of where created or administered.

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

319 (h) Nothing contained in this subsection (5) shall be
320 construed as granting to any trustee a general power of
321 appointment over any trust not otherwise expressly granted in the
322 trust instrument.



323 **SECTION 5.** Section 93-13-15, Mississippi Code of 1972, is
324 amended as follows:

325 93-13-15. (1) (a) Every guardian of any ward heretofore or
326 who may be hereafter appointed by any chancery court or chancery
327 clerk whose act is approved by the chancery court, or by any
328 chancellor, is in fact a general guardian to the extent of his
329 appointment according to the terms of the order or decree of
330 appointment, such as: guardian of the estate of the ward is the
331 general guardian of the ward and his estate; the guardian of the
332 person and estate of a ward is the general guardian of the person
333 and estate of such ward; the guardian of the person only of a ward
334 is the general guardian of the ward named.

335 (b) In addition to the rights and duties of the
336 guardian contained in this chapter, he shall also have those
337 rights, powers and remedies as set forth in Section 91-9-9. * * *

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

342 (3) After May 5, 1960, all orders or decrees appointing any
343 guardian or ward shall designate such guardian as "general"
344 guardian.

345 **SECTION 6.** This act shall take effect and be in force from
346 and after June 30, 2002.

