

*****Adopted***
AMENDMENT No. 1 PROPOSED TO**

House Bill NO. 571

By Senator(s) Committee

**Amend by striking all after the enacting clause and inserting
in lieu thereof the following:**

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. * * *

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

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

157 (c) A trust or account created by consolidation,
158 severance or segregation under this subsection (5) must be held on
159 terms and conditions that are substantially equivalent to the
160 terms of the trust before consolidation, severance or segregation
161 so that the aggregate interests of each beneficiary are
162 substantially equivalent to the beneficiary's interests in the
163 trust or trusts before consolidation, severance or segregation.
164 In determining whether a beneficiary's aggregate interests are
165 substantially equivalent, the trustee shall consider the economic

166 value of those interests to the extent they can be valued,
167 considering actuarial factors as appropriate. If a beneficiary's
168 interest cannot be valued with any reasonable degree of certainty
169 because of the nature of the trust property, the terms of the
170 trust, or other reasons, the trustee shall base the determination
171 upon such other factors as are reasonable and appropriate under
172 the facts and circumstances applicable to that particular trust,
173 including the purposes of the trust. Provided, however, the terms
174 of any trust before consolidation, severance or segregation which
175 permit qualification of that trust for an applicable federal tax
176 deduction, exclusion, election, exemption, or other special
177 federal tax status must remain identical in the consolidated trust
178 or in each of the separate trusts or accounts created by severance
179 or segregation.

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

186 (e) Income earned on a consolidated or severed or
187 segregated amount, portion, or specific asset after the
188 consolidation or severance is effective passes with that amount,
189 portion or specific asset.

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

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

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

201 trust instrument.

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

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO AMEND SECTION 91-9-107, MISSISSIPPI CODE OF 1972,
2 TO DELETE THE REPEALER ON CERTAIN POWERS OF A TRUSTEE RELATED TO
3 COMPLIANCE WITH ENVIRONMENTAL LAWS AFFECTING PROPERTY HELD BY
4 FIDUCIARIES; AND FOR RELATED PURPOSES.