

By: Representative Martinson

To: Appropriations

HOUSE BILL NO. 889

1 AN ACT TO AMEND SECTION 91-9-107, MISSISSIPPI CODE OF 1972,
 2 TO PROVIDE THAT IF THE MARKET VALUE OF A TRUST IS LESS THAN
 3 \$150,000.00 AND THE AGGREGATE AMOUNT OF THE FEES CHARGED TO THE
 4 TRUST BENEFICIARIES DURING A CALENDAR YEAR IS MORE THAN ONE-THIRD
 5 OF THE AMOUNT OF THE INCOME EARNED BY THE TRUST DURING THE SAME
 6 YEAR THAT OTHERWISE WOULD BE PAYABLE TO THE BENEFICIARIES, THEN
 7 THREE-FIFTHS OF THE BENEFICIARIES OF THE CURRENT INCOME OF THE
 8 TRUST PROPERTY MAY SEEK COURT APPROVAL TO TERMINATE THE TRUST; AND
 9 FOR RELATED PURPOSES.

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

11 **SECTION 1.** Section 91-9-107, Mississippi Code of 1972, is
 12 amended as follows:

13 91-9-107. (1) From time of creation of the trust until
 14 final distribution of the assets of the trust, a trustee has the
 15 power to perform, without court authorization, every act which a
 16 prudent man would perform for the purposes of the trust including,
 17 but not limited to:

18 (a) The powers specified in subsection (3) of this
 19 section, and

20 (b) Those powers, rights and remedies set forth in
 21 Section 91-9-9, related to compliance with environmental laws
 22 affecting property held by fiduciaries. The provisions of this
 23 paragraph (b) shall stand repealed from and after July 1, 2008.

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

27 (3) A trustee has the power, subject to subsections (1) and
 28 (2):

29 (a) To collect, hold and retain trust assets received
 30 from a trustor until, in the judgment of the trustee, disposition

31 of the assets should be made; and the assets may be retained even
32 though they include an asset in which the trustee is personally
33 interested;

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

35 (c) To continue or participate in the operation of any
36 business or other enterprise, and to effect incorporation,
37 dissolution or other change in the form of the organization of the
38 business or enterprise;

39 (d) To acquire an undivided interest in a trust asset
40 in which the trustee, in any trust capacity, holds an undivided
41 interest;

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

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

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

53 (h) To make ordinary or extraordinary repairs or
54 alterations in buildings, improvements or other structures; to
55 demolish any improvements; to raze existing or erect new party
56 walls, buildings or improvements;

57 (i) To subdivide, develop or dedicate land to public
58 use; or to make or obtain the vacation of plats and adjust
59 boundaries; or to adjust differences in valuation on exchange or
60 partition by giving or receiving consideration; or to dedicate
61 easements to public use without consideration;

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

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

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

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

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

74 (o) To sell or exercise stock subscription or
75 conversion rights; to consent, directly or through a committee or
76 other agent, to the reorganization, consolidation, merger,
77 dissolution or liquidation of a corporation or other business
78 enterprise;

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

83 (q) To insure the assets of the trust against damage or
84 loss, and the trustee against liability with respect to third
85 persons;

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

92 (s) To pay or contest any claim; to settle a claim by
93 or against the trust by compromise, arbitration or otherwise; and

94 to release, in whole or in part, any claim belonging to the trust
95 to the extent that the claim is uncollectible;

96 (t) To pay taxes, assessments, compensation of the
97 trustee, and other expenses incurred in the collection, care,
98 administration and protection of the trust;

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

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

110 (w) To effect distribution of property and money in
111 divided or undivided interests and to adjust resulting differences
112 in valuation;

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

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

123 (z) To execute and deliver all instruments which will
124 accomplish or facilitate the exercise of the powers vested in the
125 trustee.

126 (4) If a trustee has determined that either (a) the market
127 value of a trust is less than One Hundred Fifty Thousand Dollars
128 (\$150,000.00) and that, in relation to the costs of administration
129 of the trust, the continuance of the trust pursuant to its
130 existing terms will defeat or substantially impair the
131 accomplishment of the purposes of the trust; or (b) the trust no
132 longer has a legitimate purpose or that its purpose is being
133 thwarted with respect to any trust in any amount; then the trustee
134 may seek court approval to terminate the trust and the court, in
135 its discretion, may approve that termination. If the market value
136 of a trust is less than One Hundred Fifty Thousand Dollars
137 (\$150,000.00), and the aggregate amount of the fees charged to the
138 trust beneficiaries during a calendar year for the administration
139 costs of the trustee, accounting costs and other related costs is
140 more than one-third (1/3) of the amount of the income earned by
141 the trust during the same year that otherwise would be payable to
142 the beneficiaries, then three-fifths (3/5) of the beneficiaries of
143 the current income of the trust property may seek court approval
144 to terminate the trust and the court, in its discretion, may
145 approve that termination. In any case in which a trust is
146 terminated under the authority of this subsection, the court may
147 provide for the distribution of trust property, including
148 principal and undistributed income, to the beneficiaries in a
149 manner which conforms as nearly as possible to the intention of
150 the settlor and the court shall make appropriate provisions for
151 the appointment of a guardian in the case of a minor beneficiary.

152 (5) (a) Unless expressly provided to the contrary in the
153 trust instrument, a trustee may consolidate two (2) or more trusts
154 having substantially similar terms into a single trust; divide on
155 a fractional basis a single trust into two (2) or more separate
156 trusts for any reason; and may segregate by allocation to a
157 separate account or trust a specific amount from, a portion of, or
158 a specific asset included in the trust property of any trust to

159 reflect a disclaimer, to reflect or result in differences in
160 federal tax attributes, to satisfy any federal tax requirement, to
161 make federal tax elections, to reduce potential
162 generation-skipping transfer tax liability, or for any other tax
163 planning purposes or other reasons.

164 (b) A separate trust created by severance or
165 segregation must be treated as a separate trust for all purposes
166 from the effective date in which the severance or segregation is
167 effective. The effective date of the severance or segregation may
168 be retroactive. In managing, investing, administering and
169 distributing the trust property of any separate account or trust
170 and in making applicable tax elections, the trustee may consider
171 the differences in federal tax attributes and all other factors
172 the trustee believes pertinent and may make disproportionate
173 distributions from the separate trusts or accounts created.

174 (c) A trust or account created by consolidation,
175 severance or segregation under this subsection (5) must be held on
176 terms and conditions that are substantially equivalent to the
177 terms of the trust before consolidation, severance or segregation
178 so that the aggregate interests of each beneficiary are
179 substantially equivalent to the beneficiary's interests in the
180 trust or trusts before consolidation, severance or segregation.
181 In determining whether a beneficiary's aggregate interests are
182 substantially equivalent, the trustee shall consider the economic
183 value of those interests to the extent they can be valued,
184 considering actuarial factors as appropriate. If a beneficiary's
185 interest cannot be valued with any reasonable degree of certainty
186 because of the nature of the trust property, the terms of the
187 trust, or other reasons, the trustee shall base the determination
188 upon such other factors as are reasonable and appropriate under
189 the facts and circumstances applicable to that particular trust,
190 including the purposes of the trust. Provided, however, the terms
191 of any trust before consolidation, severance or segregation which

192 permit qualification of that trust for an applicable federal tax
193 deduction, exclusion, election, exemption, or other special
194 federal tax status must remain identical in the consolidated trust
195 or in each of the separate trusts or accounts created by severance
196 or segregation.

197 (d) A trustee who acts in good faith is not liable to
198 any person for taking into consideration differences in federal
199 tax attributes and other pertinent factors in administering trust
200 property of any separate account or trust, in making tax
201 elections, and making distributions pursuant to the terms of the
202 separate trust.

203 (e) Income earned on a consolidated or severed or
204 segregated amount, portion, or specific asset after the
205 consolidation or severance is effective passes with that amount,
206 portion or specific asset.

207 (f) This subsection (5) applies to all trusts whenever
208 created, whether before, on, or after July 1, 2001, and whether
209 such trusts are inter vivos or testamentary, are created by the
210 same or different instruments, by the same or different persons
211 and regardless of where created or administered.

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

215 (h) Nothing contained in this subsection (5) shall be
216 construed as granting to any trustee a general power of
217 appointment over any trust not otherwise expressly granted in the
218 trust instrument.

219 **SECTION 2.** This act shall take effect and be in force from
220 and after July 1, 2005.