

1 **State of Arkansas**  
2 **79th General Assembly**  
3 **Regular Session, 1993**  
4 **By: Senator Dowd**

# A Bill

**ACT 421 OF 1993**  
**SENATE BILL 232**

## For An Act To Be Entitled

8 "AN ACT TO AMEND THE ARKANSAS FIDUCIARY POWERS ACT OF 1961  
9 TO PROVIDE FOR INCORPORATION BY REFERENCE IN A WILL OR  
10 TRUST INSTRUMENT OF CERTAIN POWERS TO COMPLY WITH  
11 ENVIRONMENTAL LAWS; AND FOR OTHER PURPOSES."

## Subtitle

14 "AN ACT CONCERNING THE ARKANSAS FIDUCIARY POWERS ACT OF  
15 1961."

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19 SECTION 1. Arkansas Code 28-69-304 is amended by adding new subsections  
20 (33) through (38) thereto, to read as follows:

21 "(33) To inspect property held by the fiduciary, including interests in  
22 sole proprietorships, partnerships, or corporations and any assets owned by  
23 any such business enterprise, for the purpose of determining compliance with  
24 environmental laws affecting such property and to respond to any actual or  
25 threatened violation of any environmental law affecting property held by the  
26 fiduciary;

27 (34) To take, on behalf of the estate or trust, any action necessary to  
28 prevent, abate, or otherwise remedy any actual or threatened violation of any  
29 environmental law affecting property held by the fiduciary, either before or  
30 after the initiation of an enforcement action by any governmental body.

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

1           (36) To settle or compromise at any time any and all claims against the  
2 trust or estate which may be asserted by any governmental body or private  
3 party involving the alleged violation of any environmental law affecting  
4 property held in trust or in an estate;

5           (37) To disclaim any power granted by any document, statute, or rule of  
6 law which in the sole discretion of the fiduciary, may cause the fiduciary to  
7 incur personal liability under any environmental law;

8           (38) To decline to serve as a fiduciary if the fiduciary reasonably  
9 believes that there is or may be a conflict of interest between its fiduciary  
10 capacity and its individual capacity because of potential claims or  
11 liabilities which may be asserted against it on behalf of the trust or estate  
12 because of the type or condition of assets held therein."

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14           SECTION 2. Arkansas Code 28-69-301 is amended by adding new subsections  
15 (3) and (4) thereto, to read as follows:

16           "(3) Environmental law means any federal, state, or local law, rule,  
17 regulation, or ordinance relating to protection of the environment or human  
18 health.

19           (4) Hazardous substance means any substance defined as hazardous or  
20 toxic or otherwise regulated by any environmental law."

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22           SECTION 3. Subchapter 3 of Chapter 69 of Title 28, Arkansas Code, is  
23 amended by adding a new section to read as follows:

24           "28-69-305. Compliance with environmental law.

25           The fiduciary shall be entitled to charge the cost of any inspection,  
26 review, abatement, response, cleanup, or remedial action authorized herein in  
27 compliance with environmental law against the income or principal of the trust  
28 or estate. A fiduciary shall not be personally liable to any beneficiary or  
29 other party for any decrease in value of assets in trust or in an estate by  
30 reason of the fiduciary's compliance with any environmental law, specifically  
31 including any reporting requirement under such law. Neither the acceptance by  
32 the fiduciary of property or a failure by the fiduciary to inspect property  
33 shall be deemed to create any inference as to whether or not there is or may  
34 be any liability under any environmental law with respect to such property."

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1           SECTION 4. All provisions of this act of a general and permanent  
2 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
3 Code Revision Commission shall incorporate the same in the Code.

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5           SECTION 5. If any provision of this act or the application thereof to  
6 any person or circumstance is held invalid, such invalidity shall not affect  
7 other provisions or applications of the act which can be given effect without  
8 the invalid provision or application, and to this end the provisions of this  
9 act are declared to be severable.

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11           SECTION 6. All laws and parts of laws in conflict with this act are  
12 hereby repealed.

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APPROVED: 03/10/93

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