

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

A Bill

SENATE BILL

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

1 therein;

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

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

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

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

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

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

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

25 "28-69-305. Compliance with environmental law.

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

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

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

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

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