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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993



ENROLLED

HOUSE BILL No. 2251

(By Delegates *Williams, Carper, Phillips,
H. White, Rutledge and Harrison*)



Passed April 9 1993

In Effect Ninety Days from Passage

ENROLLED
H. B. 2251

(By DELEGATES WILLIAMS, CARPER, PHILLIPS, H. WHITE,
RUTLEDGE AND HARRISON)

[Passed April 9, 1993; in effect ninety days from passage.]

AN ACT to amend article five, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen, relating to providing fiduciaries with specific statutory powers to respond to environmental problems.

Be it enacted by the Legislature of West Virginia:

That article five, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section fourteen, to read as follows:

ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.

§44-5-14. Powers of fiduciaries regarding environmental laws.

1 (a) For purposes of this section:

2 (1) "environmental law" means any federal, state or
3 local law, rule, regulation or ordinance relating to the
4 regulation of hazardous substances or hazardous wastes,
5 air pollution, water pollution and underground storage
6 tanks;

7 (2) "hazardous substance" means any substance
8 defined as hazardous in the Comprehensive Environ-
9 mental Response, Compensation and Liability Act

10 (“CERCLA”) [42 U.S.C. 9601, et seq.(1980) as amended]
11 and regulations promulgated thereunder;

12 (3) “hazardous waste” means a waste characterized or
13 listed as hazardous in the Resource, Conservation and
14 Recovery Act (“RCRA”) [42 U.S.C. 6901, et seq. as
15 amended] and regulations promulgated thereunder;

16 (4) “fiduciary” means a fiduciary as defined by section
17 one-d, article four-d, chapter thirty-one of this code.

18 (b) In addition to powers, remedies and rights which
19 may be set forth in any will, trust agreement or other
20 document which is the source of authority, a trustee,
21 executor, administrator, guardian, or one acting in any
22 other fiduciary capacity, whether an individual, corpo-
23 ration or other entity (“fiduciary”) has the following
24 powers, rights and remedies whether or not set forth in
25 the will, trust agreement or other document which is the
26 source of authority:

27 (1) To inspect property held by the fiduciary including
28 interests in sole proprietorships, partnerships or
29 corporations and any assets owned by any such business
30 enterprise, for the purpose of determining compliance
31 with any environmental law affecting such property and
32 to take necessary or reasonable action, including
33 reporting to the appropriate regulatory authority as
34 may be otherwise required by law, with respect to any
35 actual or potential violation of any environmental law
36 affecting property held by the fiduciary;

37 (2) To take, on behalf of the estate or trust, any action
38 necessary to prevent, abate or otherwise remedy any
39 actual or threatened violation of any environmental law
40 affecting property held by the fiduciary, either before
41 or after the initiation of an enforcement action by any
42 governmental body;

43 (3) To refuse to accept property in trust or estate if
44 the fiduciary determines any property to be donated or
45 conveyed to the trust or estate is contaminated by any
46 hazardous substance or hazardous waste or is being used
47 or has been used for any activity directly or indirectly
48 involving any violation of an environmental law which

49 is reasonably likely to result in liability to the fiduciary:
50 *Provided*, That such refusal shall not be construed to
51 limit the liability of the trust or estate or its income or
52 principal, for any liability such trust or estate may
53 otherwise have in connection with any environmental
54 law, but only to limit the liability of the fiduciary.
55 Property not accepted into a trust or estate by the
56 fiduciary may revert to the grantor or its successors or
57 pass by the laws of descent and distribution, as may
58 otherwise be provided by law.

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

64 (5) To decline to serve as a fiduciary if the fiduciary
65 reasonably believes that there is or may be a conflict of
66 interest between it and its fiduciary capacity and in its
67 individual capacity because of potential claims or
68 liabilities which may be asserted against it on behalf of
69 the trust or estate because of the type or condition of
70 assets held therein.

71 (c) The fiduciary is entitled to charge the cost of any
72 inspection, review, abatement, response, cleanup or
73 remedial action authorized herein against the income or
74 principal of the trust or estate.

75 (d) A fiduciary is not personally liable to any bene-
76 ficiary or other party for any decrease in value of assets
77 in trust or in an estate by reason of the fiduciary's
78 compliance with any environmental law, specifically
79 including any reporting requirement under such law.

80 (e) Neither the acceptance by the fiduciary of property
81 nor the failure by the fiduciary to inspect property
82 creates any inference as to whether or not there is or
83 may be any liability under any environmental law with
84 respect to such property.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Handwritten Signature]
.....
Chairman Senate Committee

[Handwritten Signature]
.....
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

[Handwritten Signature]
.....
Clerk of the Senate

[Handwritten Signature]
.....
Clerk of the House of Delegates

[Handwritten Signature]
.....
President of the Senate

[Handwritten Signature]
.....
Speaker of the House of Delegates

The within *is approved* this the *12th*
day of *May*, 1993.

[Handwritten Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/20/93

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