

SENATE No. 829

By Ms. Pines, a petition (accompanied by bill, Senate, No. 829) of Lois G. Pines for legislation relative to the liability of fiduciaries. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Four.

AN ACT RELATING TO THE LIABILITY OF FIDUCIARIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 14A of Chapter 203 of the General Laws,
2 as appearing in the 1990 Official Edition, is hereby amended as
3 follows:

4 (a) By restating the second paragraph of said section in its
5 entirety to read: "In the absence of his own personal fault a trustee
6 shall not be personally liable either for obligations arising from
7 ownership or control of property of the trust estate or for torts
8 committed in the course of administration of the trust estate."; and

9 (b) By adding the following additional paragraphs at the end of
10 said section:

11 "The provisions of this section shall apply to trustees and trust
12 estates of all trusts created or declared by written instrument,
13 whether or not under trusts of the donative type associated with
14 probate practice, including without limitation trusts and associa-
15 tions described in section one of chapter one hundred eighty-two."

16 "Notwithstanding the foregoing, in any action or proceeding
17 brought by the Attorney General or the Department of
18 Environmental Protection under a law of the Commonwealth
19 intended to protect the environment, which law imposes personal
20 liability without fault upon owners or operators of property by
21 virtue of such ownership or operation, any trustee who is not a
22 "fiduciary" within the meaning of section 2 of chapter 21E shall
23 be entitled to the limitation of liability provided in this

24 section 14A only if (a) the trustees of said trust do not, jointly or
25 severally, directly or indirectly, own a majority of the beneficial
26 interest in the trust; and (b) either (i) said trust has outstanding a
27 class of securities registered under the Securities Exchange Act
28 of 1934; or (ii) the trustee complies with all applicable require-
29 ments of subsection (b) of the definition of "Owner" or
30 "Operator" set forth in section 2 of chapter 21E and complies with
31 any request for information received by him from the Attorney
32 General or the Department of Environmental Protection pursuant
33 to section 14C of this chapter."

34 "Nothing in this section 14A shall affect any liability of a
35 person other than liability in such person's capacity as trustee."

1 SECTION 2. Chapter 203 of the General Laws, as appearing in
2 the 1990 Official Edition, is hereby amended by adding thereto a
3 new Section 14C, as follows:

4 "Any trustee, other than (a) a trustee of a trust having a class of
5 securities registered under the Securities Exchange Act of 1934 or
6 (b) a trustee under a will or inter vivos instrument creating a trust
7 under which a trustee takes title to, or otherwise controls or
8 manages, property for the purpose of protecting or conserving
9 such property under the ordinary rules applied in the courts of the
10 Commonwealth, shall provide in writing to the Attorney General
11 or the Department of Environmental Protection, within 30 days of
12 receipt of a written request from said requesting agency stating
13 that the information therein requested is required in connection
14 with an investigatory or enforcement proceeding under a law of
15 the Commonwealth intended to protect the environment, the
16 following information: (i) the names, addresses and tax
17 identification numbers of all persons who are, or have at any time
18 within the preceding five years been, beneficiaries of said trust
19 according to its records; (ii) the percentage interest under the trust
20 held by each such beneficiary; (iii) a list of all transfers reflected
21 in the records of the trust of the beneficial interests in the trust
22 that have occurred within the immediately preceding five years,
23 identifying each transferor and transferee, the date of the transfer,
24 and the percentage of beneficial interest in the trust transferred;
25 and (iv) if any beneficiary identified is neither an individual nor a
26 corporation, all information in the possession of the trustee with

27 respect to the beneficial ownership of each trust, partnership, or
28 other entity that has any direct or indirect beneficial interest in the
29 trust estate.”

1 SECTION 3. Section 17 of Chapter 195 of the General Laws,
2 as appearing in the 1990 Official Edition, is hereby amended by
3 restating the second paragraph of said section in its entirety to
4 read: “In the absence of his own personal fault an executor or
5 administrator shall not be individually liable either for obligations
6 arising from ownership or control of the estate or for torts
7 committed in the course of administration of the estate.”

1 SECTION 4. Section 37 of Chapter 201 of the General Laws,
2 as appearing in the 1990 Official Edition, is hereby amended by
3 restating subparagraph (b) of said section in its entirety to read:
4 “In the absence of his own personal fault a conservator or
5 guardian shall not be individually liable either for obligations
6 arising from ownership or control of property of the estate or for
7 torts committed in the course of administration of the estate.”

