

By Mr. Brewer of Barre, petition of Stephen M. Brewer relative to the powers of fiduciaries. Banks and Banking.

The Commonwealth of Massachusetts

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

AN ACT RELATIVE TO THE POWERS 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 5A of chapter 195 of the General Laws,
2 as appearing in the 1990 Official Edition, is hereby amended by
3 inserting after paragraph (4) the following paragraph: —

4 (5) In addition to the powers conferred in this section, a
5 fiduciary, in its discretion, shall have the following powers:

6 (a) to inspect and monitor real and personal property to which
7 the fiduciary takes legal title (including, without limitation,
8 interests in sole proprietorships, partnerships, or corporations and
9 any assets owned by such business enterprises) or over which a
10 fiduciary may exercise control, for the purpose of determining
11 compliance with environmental laws affecting such property, and
12 to respond to actual or threatened violation(s) of any
13 environmental laws affecting such property held or controlled by
14 the fiduciary;

15 (b) to take, on behalf of an estate, trust, person or business,
16 any action necessary to prevent, abate, or otherwise remedy any
17 actual or threatened release of hazardous substances or violation
18 of any environmental laws affecting property held or controlled
19 by the fiduciary, either before or after the initiation of an
20 enforcement action by any government body;

21 (c) to refuse to accept property in trust if (i) the property either
22 is or may be contaminated by any hazardous substances, or such
23 property is being used or has been used for any activities directly
24 or indirectly involving hazardous substances, which could impair
25 the value of the assets therein held or controlled; or (ii) said
26 property may be in violation of any environmental laws;

27 (d) to settle or compromise, at any time, any and all claims
28 against the estate, trust, person or business which may be asserted
29 by any governmental body or private party, involving the alleged
30 release or threatened release of hazardous substances or the
31 alleged violation of any environmental laws affecting property
32 held by the estate or trust or owned by the person or business;

33 (e) to release or disclaim at any time or times any power granted
34 by any document or any statute or rule of law which, in the sole
35 discretion of the fiduciary, may expose the fiduciary to liability
36 under the environmental laws or impair the value of the assets
37 retained or controlled by the fiduciary;

38 (f) for purposes of this section, "environmental laws" mean any
39 federal, state, or local law, rule, regulation or ordinances relating
40 to protection of the environment or human health. For purposes
41 of this section, "hazardous substances" mean oil or any substance
42 defined as hazardous or toxic or otherwise regulated by any
43 environmental laws;

44 (g) the fiduciary shall be entitled to charge the reasonable cost
45 of any abatement, cleanup, inspection, assessment, insurance,
46 database review, or any other response or remedial action, as
47 authorized herein, against the income or principal for the estate,
48 trust, personal estate or business assets and shall not be personally
49 responsible therefor. The fiduciary shall not be personally liable
50 to any beneficiary or any other party for any decrease in value
51 or exhaustion of assets by reason of the fiduciary's reasonable
52 compliance with any environmental laws, specifically including
53 any reporting requirements under such laws.

54 (h) For purposes of this section, "fiduciary" means any
55 individual, partnership, corporation, bank, trust company, firm,
56 or other entity and any officer, employee or agent of such fiduciary
57 who is acting as an executor or administrator as defined in section
58 one of chapter one hundred ninety-seven, including a voluntary
59 executor or voluntary administrator, a guardian, or a conservator.
60 The provisions of this section shall apply to all fiduciary
61 relationships now in existence or hereafter created, and to the
62 fiduciary actions or inactions occurring either before or after the
63 effective date of this act.

1 SECTION 2. Chapter 203 of the General Laws is hereby
2 amended by inserting after section 14B the following section:

3 Section 14C. Unless expressly limited by the governing
4 instrument, a fiduciary shall have, in its discretion, the following
5 powers:

6 (a) to inspect and monitor real and personal property to which
7 the fiduciary takes legal title (including, without limitation,
8 interests in sole proprietorships, partnerships, or corporations and
9 any assets owned by such business enterprises) or over which a
10 fiduciary may exercise control, for the purpose of determining
11 compliance with environmental laws affecting such property, and
12 to respond to actual or threatened violation(s) of any
13 environmental laws affecting such property held or controlled by
14 the fiduciary;

15 (b) to take, on behalf of an estate, trust, person or business,
16 any action necessary to prevent, abate, or otherwise remedy any
17 actual or threatened release of hazardous substances or violation
18 of any environmental laws affecting property held or controlled
19 by the fiduciary, either before or after the initiation of an
20 enforcement action by any government body;

21 (c) to refuse to accept property in trust if (i) the property either
22 is or may be contaminated by any hazardous substances, or such
23 property is being used or has been used for any activities directly
24 or indirectly involving hazardous substances, which could impair
25 the value of the assets therein held or controlled; or (ii) said
26 property may be in violation of any environmental laws;

27 (d) to settle or compromise, at any time, any and all claims
28 against the estate, trust, person or business which may be asserted
29 by any governmental body or private party, involving the alleged
30 release or threatened release of hazardous substances and for the
31 alleged violation of any environmental laws affecting property
32 held by the estate or trust or owned by the person or business;

33 (e) to release or disclaim at any time or times any power granted
34 by any document or any statute or rule of law which, in the sole
35 discretion of the fiduciary, may expose the fiduciary to liability
36 under the environmental laws or impair the value of the assets
37 retained or controlled by the fiduciary;

38 (f) for purposes of this section, “environmental laws” mean any
39 federal, state, or local law, rule, regulation or ordinance relating
40 to protection of the environment or human health. For purposes
41 of this section, “hazardous substances” mean oil or any substance
42 defined as hazardous or toxic or otherwise regulated by any
43 environmental laws;

44 (g) the fiduciary shall be entitled to charge the reasonable cost
45 of any abatement, cleanup, inspection, assessment, insurance,
46 database review, or any other response or remedial action, as
47 authorized herein, against the income or principal for the estate,
48 trust, personal estate or business assets and shall not be personally
49 responsible therefor. The fiduciary shall not be personally liable
50 to any beneficiary or any other party for any decrease in value
51 or exhaustion of assets by reason of the fiduciary’s reasonable
52 compliance with any environmental laws, specifically including
53 any reporting requirements under such laws.

54 (h) For purposes of this paragraph, a “fiduciary” means any
55 individual, partnership, corporation, bank, trust company, firm,
56 or other entity and any officer, employee or agent of such
57 fiduciary, (i) who is acting in any of the following capacities: (A)
58 trustee under a will or inter vivos instrument creating a trust under
59 which the trustee takes title to, or otherwise controls or manages,
60 property for the purpose of protecting or conserving such property
61 under the ordinary rules applied in the courts of the common-
62 wealth; (B) a court-appointed receiver; (C) a trustee appointed in
63 proceedings under federal bankruptcy laws; (D) an assignee or a
64 trustee acting under an assignment made for the benefit of
65 creditors pursuant to sections forty through forty-two of chapter
66 two hundred and three; or (E) a trustee, pursuant to an indenture
67 agreement or similar financing agreement, for debt securities,
68 certificates of interest of participation in any such debt securities,
69 or any successor thereto, and (ii) who holds legal title to, controls,
70 or manages, directly or indirectly, any site or vessel as fiduciary
71 for purposes of administering an estate or trust of which such site
72 or vessel is a part. The provisions of this paragraph shall apply
73 to all fiduciary relationships now in existence or hereafter created,
74 and to the fiduciary actions or inactions occurring either before
75 or after the effective date of this act.