

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

DATE: 3/23/94

(Filing No. S- 500)

JUDICIARY

Reported by: Senator Conley of Cumberland

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE
SENATE
116TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 598, L.D. 1657, Bill, "An Act to Amend the Probate Code with Respect to Powers of Fiduciaries"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 18-A MRSA §1-111 is enacted to read:

§1-111. Powers of fiduciaries relating to compliance with environmental laws

(a) From the inception of the trust or estate, a fiduciary has the following powers, without court authorization, which the fiduciary may use in the fiduciary's sole discretion to comply with environmental law:

(1) To inspect and monitor property held by the fiduciary, including interests in sole proprietorships, partnerships or corporations and any assets owned by any such business enterprise, for the purpose of determining compliance with environmental law affecting the property and to respond to any actual or threatened violation of any environmental law affecting the property held by the fiduciary;

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

COMMITTEE AMENDMENT

2 (3) To refuse to accept property if the fiduciary
4 determines that any property to be donated to the trust or
6 estate either is contaminated by any hazardous substance or
8 is being used or has been used for any activity directly or
10 indirectly involving any hazardous substance that could
 result in liability to the trust or estate or otherwise
 impair the value of the assets held in the trust or estate,
 except nothing in this paragraph applies to property in the
 trust or estate at its inception;

12 (4) To settle or compromise at any time any claims against
14 the trust or estate that may be asserted by any governmental
16 body or private party involving the alleged violation of any
 environmental law affecting property held in trust or in an
 estate;

18 (5) To disclaim any power granted by any document, statute
20 or rule of law that, in the sole discretion of the
22 fiduciary, may cause the fiduciary to incur personal
 liability under any environmental law; or

24 (6) To decline to serve or to resign as a fiduciary if the
26 fiduciary reasonably believes that there is or may be a
28 conflict of interest between the fiduciary's fiduciary
30 capacity and the fiduciary's individual capacity because of
 potential claims or liabilities that may be asserted against
 the fiduciary on behalf of the trust or estate because of
 the type or condition of assets held in the trust or estate.

32 (b) For purposes of this section, "environmental law" means
34 any federal, state or local law, rule, regulation or ordinance
 relating to protection of the environment or human health. For
 purposes of this section, "hazardous substances" has the meaning
 set forth in Title 38, section 1362, subsection 1.

36 (c) The fiduciary may charge the cost of any inspection,
38 review, abatement, response, cleanup or remedial action
40 authorized in this section against the income or principal of the
42 trust or estate. A fiduciary is not personally liable to any
44 beneficiary or other party for any decrease in value of assets in
46 trust or in an estate by reason of the fiduciary's compliance
48 with any environmental law, specifically including any reporting
 requirement under the law. Neither the acceptance by the
 fiduciary of property nor a failure by the fiduciary to inspect
 property creates an inference as to whether there is or may be
 any liability under any environmental law with respect to the
 property.

2 (d) This section applies to all estates and trusts in
3 existence on and created after July 1, 1994.

4 (e) The exercise by a fiduciary of any of the powers
5 granted in this section does not constitute a transaction that is
6 affected by a substantial conflict of interest on the part of the
7 fiduciary.'

8
9 Further amend the bill by inserting at the end before the
10 statement of fact the following:

12 **FISCAL NOTE**

14 This bill allows fiduciaries to refuse to accept certain
15 properties in trust if a particular property has been
16 contaminated by hazardous waste. If a responsible party can not
17 be identified, financial responsibility for the remediation of
18 the site will revert to the Uncontrolled Sites Fund. Depending
19 on the number of such cases and the cost of remediation, the
20 costs to the fund could be significant. The exact amounts can
21 not be determined at this time.'

24 **STATEMENT OF FACT**

26 This amendment addresses certain drafting concerns with
27 regard to the initial bill. Following the approach adopted by
28 Utah, another Uniform Probate Code state, a general provision
29 applicable to all fiduciaries is placed in the general provisions
30 of Article I of the Probate Code. The term "fiduciary" is
31 already defined in section 1-201, subsection (13) of the Code to
32 include a personal representative, guardian, conservator and
33 trustee.

36 The language of the amendment is nearly identical to the
37 Uniform Probate Code language adopted in Utah and closely tracks
38 statutes adopted in several states, including Kentucky, North
39 Carolina, Rhode Island, Tennessee and Virginia, and currently
40 under consideration in others, including Massachusetts and New
41 Hampshire. Where the original bill tracked the Massachusetts
42 legislation defining "trustee" to include bankruptcy trustees and
43 other entities not expressly named in the Probate Code definition
44 of fiduciary, this amendment deletes the provision.

46 The amendment also adds a fiscal note to the bill.