HOUSE DOCKET, NO. 1935 FILED ON: 1/20/2011

HOUSE . . . . . No. 1276

The Commonwealth of Massachusetts

PRESENTED BY:

Demetrius J. Atsalis

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act relative to third party assistance to trustees and further regulating trust instruments.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Demetrius J. Atsalis	*2nd Barnstable*

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HOUSE . . . . . No. 1276

By Mr. Atsalis of Barnstable, a petition (accompanied by bill, House, No. 1276) of Demetrius J. Atsalis relative to third party assistance to trustees and further regulating trust instruments. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *1252* OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to third party assistance to trustees and further regulating trust instruments.

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

Chapter 203 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after Section 14B, the following two new sections:-

Section 14C. With respect to a third person dealing with a trustee or assisting a trustee in the conduct of a transaction, if the third person acts in good faith and for a valuable consideration and without actual knowledge that the trustee is exceeding the trustee's powers or improperly exercising them:

(a) The third person is not bound to inquire whether the trustee has power to act or is properly exercising a power and may assume without inquiry the existence of a trust power and its proper exercise.

(b) The third person is fully protected in dealing with or assisting the trustee just as if the trustee has and is properly exercising the power the trustee purports to exercise.

Section 14D.

(a) A third person may receive a certification of trust in lieu of receiving a copy of the trust instrument to establish the existence or terms of the trust.

15 certification of trust may be executed voluntarily or at the request of the person with
16 whom the trustee is dealing.

17 (b) The certification of trust may confirm the following facts or contain the following
18 information:

19 (1) The existence of the trust and date of execution of the trust instrument.

20 (2) The identity of the settlor or settlors of the trust.

21 (3) The identity of the currently acting trustee or trustees of the trust.

22 (4) The powers of the trustee.

23 (5) The revocability or irrevocability of the trust and the identity of any person holding
24 any power to revoke the trust.

25 (6) When there are multiple trustees, the signature authority of the trustees, indicating
26 whether all or less than all of the currently acting trustees are required to sign in order to exercise
27 various powers of the trustee.

28 (7) The trust identification number, whether a social security number or an employer
29 identification number.

30 (8) The manner in which title to trust assets should be taken.

31 (c) The certification shall contain a statement that the trust has not been revoked,
32 modified, or amended in any manner which would cause the representations contained in the
33 certification of trust to be incorrect and shall contain a statement that it is being signed by all of
34 the currently acting trustees of the trust. The certification shall be in the form of an
35 acknowledged declaration signed by all currently acting trustees of the trust.

36 (d) The certification of trust shall not be required to contain the dispositive provisions of
37 the trust which set forth the distribution of the trust estate.

38 (e) A person may require that the trustee offering the certification of trust provide copies
39 of those excerpts from the original trust documents and amendments thereto which designate the
40 trustee and confer upon the trustee the power to act in the pending transaction. Nothing in this
41 section is intended to require or imply an obligation to provide the dispositive provisions of the
42 trust or the entire trust and amendments thereto.

43 (f) A person who acts in reliance upon a certification of trust without actual knowledge
44 that the representations contained therein are incorrect is not liable to any person for so acting
45 and the reliant will be fully protected and released to the same extent as though all such
46 representations had been correct. A person who does not have actual knowledge that the facts

47 contained in the certification of trust are incorrect may assume without inquiry the existence of
48 the facts contained in the certification of trust. Actual knowledge shall not be inferred solely
49 from the fact that a copy of all or part of the trust instrument is held by the person relying upon
50 the trust certification. Any transaction, and any lien created thereby, entered into by the trustee
51 named in the certification of trust and a person acting in reliance upon a certification of trust
52 shall be enforceable against the trust assets. However, if the person has actual knowledge that
53 such trustee is acting outside the scope of the trust, then the transaction is not enforceable against
54 the trust assets. Nothing contained herein shall limit the rights of the beneficiaries of the trust
55 against the trustee.

56 (g) A third person who acts in good faith pursuant to a certification under this section is
57 not bound to ensure the proper application of trust property paid or delivered to the recipient
58 thereof.

59 (h) A person's failure to demand a certification of trust does not affect the protection
60 provided that person by section fourteen C, and no inference as to whether that person has acted
61 in good faith may be drawn from the failure to demand a certification of trust.

62 Nothing in this section is intended to create an implication that a person is liable for
63 acting in reliance upon a certification of trust under circumstances where the requirements of this
64 section are not satisfied.