

Act 583 of the 1989 Regular Session.

Act 583

SB550

By: Senator Hardin

"AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS CODE ANNOTATED TO PROVIDE FOR REGISTERED INVESTMENT COMPANIES; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Section 4-27-140 of the Arkansas Code Annotated is hereby amended by adding the following:

"27. 'Investment company' means any corporation registered with the United States Securities and Exchange Commission as an investment company under the Investment Company Act of 1940, 15 U.S.C. 80a-1, et seq."

SECTION 2. Section 4-27-601 of the Arkansas Code Annotated is hereby amended by adding the following:

"E. The board of directors of an investment company, may increase or decrease the aggregate number of shares of stock or the number of shares of stock of any class that the corporation has the authority to issue, unless a provision has been legally included in the articles of incorporation of the corporation after May 1, 1989, prohibiting an act by the board of directors to increase or decrease the aggregate number of shares of stock or the number of shares of stock of any class that the corporation has authority to issue.

1. If the board of directors of an investment company increases or decreases the aggregate number of shares of stock or the number of shares of stock of any class that the corporation has the authority to issue in accordance with Subsection E of this Section, the board of directors, before issuing any of the newly authorized stock, shall file articles supplementary for recording with the Secretary of State.

2. Articles supplementary shall include:

(i) Both as of immediately before the increase or decrease and as increased or decreased: (1) the total number of shares of stock of all classes that the corporation has authority to issue; (2) the number of shares of stock of each class; (3) the par value of the shares of stock of each class or a statement that the shares are without par value; and (4) if there are any shares of stock with par value, the aggregate par value of all the shares of all classes;

(ii) A statement that the corporation is registered as an investment company under the Investment Company Act of 1940; and

(iii) A statement that the total number of shares of capital stock that the corporation has authority to issue has been increased or decreased by the board of directors in accordance with Subsection E of this Section.

3. In order to be filed, articles supplementary shall be accompanied by an opinion of legal counsel licensed in this state familiar with the Investment Company Act of 1940 opining that the statements contained in subsections 2.(ii) and (iii) hereof are correct to the best of such counsel's knowledge and said articles supplementary shall be executed in the manner required by Section 4-27-120 of the Arkansas Code Annotated."

SECTION 3. Section 4-27-701 of the Arkansas Code Annotated is hereby amended by adding the following:

"D. If the articles of incorporation or bylaws of an investment company so provides, the corporation is not required to hold an annual meeting in any year in which no action is to be taken which requires a vote of shareholders under the Investment Company Act of 1940, unless a meeting is called by more than fifty percent (50%) of the holders of all classes of shares of the corporation or by more than fifty percent (50%) of the board of directors."

SECTION 4. Section 4-27-640 of the Arkansas Code Annotated is hereby amended by adding the following:

"G. If the articles of incorporation or bylaws of an investment company so provides, the board of directors may delegate to a committee of the board of directors or to the officers of the corporation the authority to determine the amount of, declare and distribute dividends in accordance with the policies adopted by the board of directors."

SECTION 5. Title 26, Chapter 51, Subchapter 4 of the Arkansas Code Annotated is hereby amended by adding a new section to read as follows:

"26-51-439. (a) Subchapter M of the Internal Revenue Code of 1986, as amended, 26 U.S.C. 851 through 860G, is adopted as state income tax law and shall govern all corporations which are registered as investment companies under the Investment Company Act of 1940.

(b) Any election made for federal income tax purposes under Subchapter M of the Internal Revenue Code of 1986, as amended, shall be deemed made for state income tax purposes.

(c) This Section shall take effect and be enforced for tax years beginning on or after January 1, 1988."

SECTION 6. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 7. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 8. Emergency. it is hereby found and determined by the General Assembly that present law has no provisions for registered investment companies; that such laws are needed to properly govern investment companies and to clarify the status of investment companies; and that adoption of Subchapter M of the Internal Revenue Code of 1986 is necessary to provide uniform tax laws on both the State and Federal levels for investment companies. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of public peace, health, and safety shall be in full force and effect from and after its passage and approval.

APPROVED: March 15, 1989

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