

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: H3/25/99 S3/30/99

A Bill

Act 1366 of 1999
HOUSE BILL 2140

5 By: Representatives Napper, Courtway
6
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For An Act To Be Entitled

9 "AN ACT TO ESTABLISH A *FILING PROCEDURE FOR* FOREIGN
10 BUSINESS TRUSTS; AND FOR OTHER PURPOSES. "

Subtitle

13 "TO ESTABLISH A *FILING PROCEDURE FOR*
14 FOREIGN BUSINESS TRUSTS. "

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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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19 SECTION 1. For purposes of this Act "Business trust" means a foreign
20 unincorporated association or trust created by an instrument under which
21 property is held and managed by trustees for the benefit and profit of such
22 persons as are, or may become the holders of transferable certificate
23 evidencing beneficial interest in the trust.
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25 SECTION 2. (a) Business Trust for the purpose of this statute shall be
26 foreign. A foreign business trust includes every foreign business trust.

27 (b) Requirements to do business. Any foreign business trust desiring
28 to transact business in this state shall deliver to the Secretary of State:

29 (1) A form provided by the Secretary of State's Office or an
30 executed copy of the articles, declaration of trust or trust agreement by
31 which the trust was created and all amendments thereto, or a true copy thereof
32 certified to be such by a trustee of the trust before a notary or by a public
33 official of another state territory or country in whose office an executed
34 copy thereof is on file;

35 (2) A verified list of the names, residences and post office
36 addresses of its trustees;

1 (3) An affidavit setting forth its assumed business name, if any;
2 and

3 (4) A foreign business trust shall deliver to the Secretary of
4 State the location of its principal office, the name of its registered agent
5 for service and its irrevocable consent to service of process duly signed by a
6 majority of its trustees to bind the business trust by such irrevocable
7 consent.

8 (c) When a foreign business trust has complied with the delivery
9 requirements as provided in this section, the Secretary of State shall, after
10 determining that all requirements have been met, file such delivered documents
11 of foreign business trusts and such foreign business trusts may thereupon
12 commence business.

13 (d) Upon the filing of the form provided by the Secretary of State or
14 the copy of articles, declaration of trust or trust agreement and the payment
15 of a filing fee, in compliance with the laws of the State of Arkansas, the
16 Secretary of State shall issue to the trustee named in the form or articles,
17 declaration of trust or trust agreement, a certificate showing that such
18 declaration of trust has been on file in this office; whereupon, such
19 association shall be authorized to transact business in this state; provided
20 that all other applicable laws have been followed.

21 (e) The articles, declaration of trust or trust agreement by which any
22 foreign business trust was created may be amended in the manner specified
23 therein, or in such manner as is valid under the law applicable to such
24 foreign business trust, provided that no such amendment shall be legally
25 effected in the state until a copy thereof has been filed with the Secretary
26 of State.

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28 SECTION 3. Any foreign business trust shall be subject to such
29 applicable provisions of law from time to time in effect with respect to
30 foreign corporations doing business in Arkansas. These shall include, without
31 limitation, applicable provisions of law as relate to the issuance of
32 securities, filing the required statements or reports, service of process,
33 general grants of power to act, withdrawal, right to sue and be sued,
34 limitation of individual liability of shareholders, and rights to acquire,
35 mortgage, sell, lease, operate and otherwise deal in or with real and personal
36 property.

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2 SECTION 4. (a) Any foreign business trust who desires to withdraw from
3 or discontinue doing trust business shall furnish to the Secretary of State
4 satisfactory evidence of its release and discharge from all obligation
5 undertaken by it and after the foreign business trust has furnished that
6 evidence to the Secretary of State, the secretary shall withdraw any authority
7 to do a trust business previously issued to that foreign business trust, and
8 thereafter the foreign business trust shall not be permitted to use and shall
9 not undertake the administration of any trust business in the State of
10 Arkansas.

11 (b) No person may transact or conduct business within the state under
12 any articles, declaration of trust or trust agreement without first complying
13 with the provisions and requirements of this chapter, and no person organized
14 to do business under any such articles, declaration of trust or trust
15 agreement may offer to sell, barter, or exchange any unit, share, contract,
16 notes, bond, mortgage, oil or mineral lease, or other securities, without
17 first having to comply with the provisions and requirements of this chapter.

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19 SECTION 5. (a) Pursuant to an agreement of merger or consolidation, a
20 foreign business trust may merge or consolidate with or into one (1) or more
21 foreign business trusts or other business entities formed or organized or
22 existing under the laws of the state or any other state or the United States
23 or any foreign country or other foreign jurisdiction, with such foreign
24 business trust or other business entity, as the agreement shall provide, being
25 the surviving or resulting business trust or other business entity unless
26 otherwise provided in the governing instrument of a foreign business trust. A
27 merger or consolidation shall be approved by each business trust which is to
28 merge or consolidate by all of the trustees and the beneficial owners of such
29 business trust.

30 (b) If a business trust is merging or consolidating under this section,
31 the business trust or other business entity surviving or resulting in or from
32 the merger or consolidation shall file a certificate of merger or
33 consolidation in the office of the Secretary of State. The certificate of
34 merger or consolidation shall state:

35 (1) The name and jurisdiction of formation or organization of
36 each of the business trusts or other business entities which are to merge or

1 consolidate;

2 (2) That an agreement of merger or consolidation has been
3 approved and executed by each of the business trusts or other business
4 entities which are to merge or consolidate;

5 (3) The name of the surviving or resulting business trust or
6 other business entity;

7 (4) The future effective date or time (which shall be a date or
8 time certain) of the merger or consolidation if it is not to be effective upon
9 the certificate of merger or consolidation; the effective date can be no later
10 than ninety (90) days after the filing of the original documents;

11 (5) That the executed agreement of merger or consolidation is on
12 file at the principal place of business of the surviving or resulting business
13 trust or other business entity, and shall state the address thereof;

14 (6) That a copy of the agreement of merger or consolidation will
15 be furnished by the surviving or resulting business trust or other business
16 entity, on request and without cost, to any beneficial owner of any business
17 trust or any person holding an interest in any other business entity which is
18 to merge or consolidate;

19 (7) If the surviving or resulting entity is not a business trust
20 or other business entity formed or organized or existing under the laws of the
21 State of Arkansas, a statement that such surviving or resulting other
22 business entity agrees that it may be served with process in the state in any
23 action, suit or proceeding for the enforcement of any business trust which is
24 to merge or consolidate, irrevocably appointing the Secretary of State as its
25 agent to accept service of process in any such action, suit or proceeding and
26 specifying the address to which a copy of such process shall be mailed to it
27 by the Secretary of State. In the event of service hereunder upon the
28 Secretary of State, the plaintiff in any such action, suit or proceeding shall
29 furnish the Secretary of State with the address specified in the certificate
30 of merger or consolidation provided for in this section and any other address
31 which the plaintiff may elect to furnish, together with copies of such process
32 as required by the Secretary of State, and the Secretary of State shall notify
33 such surviving or resulting other business entity thereof at all such
34 addresses furnished by the plaintiff by letter. Such letter shall enclose a
35 copy of the process and any other papers served upon the Secretary of State.
36 It shall be the duty of the plaintiff in the event of such service to serve

1 process and any other papers in duplicate, to notify the Secretary of State
2 that service in being made pursuant to this subsection, and to pay the
3 Secretary of State the sum of twenty-five dollars (\$25.00) for use of the
4 state, which sum shall be taxed as part of the costs in the proceeding, if the
5 plaintiff shall prevail therein.

6 (c) Unless a future effective date or time is provided in a certificate
7 of merger or consolidation, in which event a merger or consolidation shall be
8 effective at any such future effective date or time, a merger or consolidation
9 shall be effective upon the filing in the office of the Secretary of State of
10 a certificate of merger or consolidation.

11 (d) A certificate of merger or consolidation shall act as a certificate
12 of cancellation for a foreign business trust which is not the surviving or
13 resulting entity in the merger or consolidation.

14 (e) When any merger or consolidation shall have become effective under
15 this section, for all purposes of the laws of the state, all of the rights,
16 privileges and powers of each of the business trusts and other business
17 entities that have merged or consolidated, and all property, real, personal
18 and mixed, and all debts due to any of said business trusts and other business
19 entities, as well as all other things and causes of action belonging to each
20 of such business trusts and other business entities, shall be vested in the
21 surviving or resulting business trust or other business entity, and shall
22 thereafter be the property of the surviving or resulting business trust or
23 other business entity as they were of each of the business trusts and other
24 business entities that have merged or consolidated, and the title to any real
25 property vested by deed or otherwise, under the laws of the state, in any of
26 such business trusts and other business entities, shall not revert or be in
27 any way impaired by reason of this chapter, but all rights of creditors and
28 all liens upon any property of any of said business trusts and other business
29 entities shall be preserved unimpaired, and all debts, liabilities and duties
30 of each of the said business trusts and other business entities that have
31 merged or consolidated shall thenceforth attach to the surviving or resulting
32 business trust or other business entity, and may be enforced against it to the
33 same extent as if said debts, liabilities and duties had been incurred or
34 contracted by it.

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36 SECTION 6. (a) The Secretary of State shall collect the following fees

1 when the documents described in this subsection are delivered to him for
2 filing:

DOCUMENT	FEE
<u>(1) Articles of Business Trust.....</u>	<u>300.00</u>
<u>(2) Business Trust's statement of change of registered</u> <u>agent or registered office or both.....</u>	<u>25.00</u>
<u>(3) Agent's statement of resignation.....</u>	<u>No fee</u>
<u>(4) Amendment of Articles of Business Trust.....</u>	<u>300.00</u>
<u>(5) Articles of merger.....</u>	<u>100.00</u>
<u>(6) Articles of Dissolution.....</u>	<u>300.00</u>
<u>(7) Application for amended certificate of authority.....</u>	<u>300.00</u>
<u>(8) Application for certificate of withdrawal.....</u>	<u>300.00</u>
<u>(9) Any other document required or permitted to be filed</u> <u>by this chapter.....</u>	<u>25.00</u>

17 (b) The Secretary of State shall collect a fee of twenty-five dollars
18 (\$25.00) each time process is served on him under this chapter. The party to a
19 proceeding causing service of process is entitled to recover this fee as costs
20 if he prevails in the proceeding.

21 (c) The Secretary of State shall collect the following fees for copying
22 and certifying the copy of any filed document relating to a domestic or
23 foreign Business Trust:

- 24 (1) Fifty cents (\$ 0.50) a page for copying; and
- 25 (2) Five dollars (\$5.00) for the certificate.

27 SECTION 7. All provisions of this act of a general and permanent nature
28 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
29 Revision Commission shall incorporate the same in the Code.

31 SECTION 8. If any provision of this act or the application thereof to
32 any person or circumstance is held invalid, such invalidity shall not affect
33 other provisions or applications of the act which can be given effect without
34 the invalid provision or application, and to this end the provisions of this
35 act are declared to be severable.

