

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995
4 By: Senator Malone

A Bill

SENATE BILL 207

For An Act To Be Entitled

8 "AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS CODE OF
9 1987 ANNOTATED TO ESTABLISH PROCEDURES FOR THE MERGER OF
10 FOR PROFIT CORPORATIONS INTO NOT-FOR-PROFIT CORPORATIONS;
11 TO ESTABLISH PROCEDURES FOR THE CONVERSION OF FOR PROFIT
12 CORPORATIONS INTO NOT-FOR-PROFIT CORPORATIONS; AND FOR
13 OTHER PURPOSES."

Subtitle

16 "AN ACT TO ESTABLISH PROCEDURES FOR THE
17 MERGER AND CONVERSION OF FOR PROFIT
18 CORPORATIONS INTO NOT-FOR-PROFIT
19 CORPORATIONS."

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

24 SECTION 1. Ark. Code Ann. § 4-28-301 is amended to read as follows:
25 "4-28-301. Definition.

26 As used in this subchapter, the terms corporation, foreign corporation,
27 not-for-profit corporation, and board of directors shall have the same
28 meaning as stated in the definition of those terms in § 4-28-202, except that
29 with respect to the merger of one or more for profit corporations into a not-
30 for-profit corporation, the term corporation means a domestic for profit
31 corporation as well as a domestic not-for-profit corporation."

33 SECTION 2. Ark. Code Ann. § 4-28-302 is amended to add subsection (c)
34 to read as follows:

35 "(c) Pursuant to a plan of merger approved in the manner provided in

1 this subchapter, any one or more domestic for profit corporations may merge
2 into one not-for-profit corporation which has been recognized by the Internal
3 Revenue Service as exempt from federal income tax under § 501(c)(3) of the
4 Internal Revenue Code of 1986, as amended, or under the corresponding
5 provision of any future Internal Revenue law. Each corporation shall adopt a
6 plan of merger which sets forth the information described in subsection (b)
7 of this section and which provides that the not-for-profit corporation will
8 be the surviving corporation. No officer, director or shareholder, other
9 than a not-for-profit corporation recognized as exempt under § 501(c)(3), may
10 receive or keep anything as a result of such a merger other than a membership
11 in the surviving not-for-profit corporation. Upon approval of the plan of
12 merger, articles of merger shall be executed by each corporation and filed
13 with the Secretary of State in the manner provided in this subchapter."
14

15 SECTION 3. Ark. Code Ann. § 4-33-140 is amended by adding a new
16 subsection (37) to read as follows:

17 "(37) Domestic business corporation means a corporation organized
18 under the business corporation laws of this state."
19

20 SECTION 4. Ark. Code Ann. § 4-33-1101 is amended by adding a new
21 subsection (d) to read as follows:

22 "(d) Subject to the limitations set forth in § 4-33-1102(c), one or
23 more domestic business corporations may merge into one public benefit or
24 religious corporation, if the merger is approved by the chancery court as
25 provided in § 4-33-1102(c), and if the plan of merger is approved as provided
26 in § 4-33-1103. Upon approval, articles of merger shall be delivered to the
27 Secretary of State as prescribed in § 4-33-1104."
28

29 SECTION 5. Ark. Code Ann. § 4-33-1102 is amended by adding a new
30 subsection (c) to read as follows:

31 "(c) A public benefit or religious domestic corporation which has been
32 recognized by the Internal Revenue Service as exempt from federal income tax
33 under § 501(c)(3) of the Internal Revenue Code of 1986, as amended, or under
34 the corresponding provision of any future Internal Revenue law, may merge
35 with a domestic business corporation only upon the prior approval by order of

1 the chancery court of the county in which the public benefit or religious
2 corporation's principal office in this state is located, but only if the
3 public benefit or religious corporation is the surviving corporation which
4 continues to be a public benefit or religious corporation after the merger.
5 No officer, director or shareholder, other than a public benefit or religious
6 corporation, may receive or keep any money or property as a result of such a
7 merger other than a membership in the surviving public benefit or religious
8 corporation. The court shall approve the transaction if it is in the public
9 interest."

10

11 SECTION 6. Ark. Code Ann. § 4-33-1104 is amended by adding a new
12 subsection (5) to read as follows:

13 "(5) if court approval is required pursuant to § 4-33-1102(c), a copy
14 of the court order approving the merger."

15

16 SECTION 7. Ark. Code Ann. § 4-27-1101 is amended by adding a new
17 subsection D to read as follows:

18 "D. If the Board of Directors of each corporation adopts and its
19 shareholders, if required by § 4-27-1103, approve a plan of merger, one (1)
20 or more domestic corporations may merge into a not-for-profit corporation
21 subject to the restrictions of § 4-28-302(c), or into a public benefit or
22 religious corporation subject to the restrictions of § 4-33-1101(d). The
23 plan of merger must set forth the information prescribed in subsection B of
24 this section and must provide that the not-for-profit or public benefit or
25 religious corporation shall be the surviving corporation, and the plan of
26 merger may set forth those items described in subsection C of this section.
27 After the plan of merger is approved as required in § 4-27-1103, the
28 surviving corporation shall deliver to the Secretary of State for filing
29 articles of merger setting forth the information prescribed in § 4-27-1105.
30 Such a merger takes effect upon the date of filing with the Secretary of
31 State or the effective date specified in the Articles of Merger, whichever is
32 later."

33

34 SECTION 8. Ark. Code Ann. § 4-26-1001 is amended by adding a new
35 subsection (c) to read as follows:

1 "(c) If the Board of Directors of each corporation adopts and its
2 shareholders, if required by § 4-27-1103, approve a plan of merger, one (1)
3 or more domestic corporations may merge into a not-for-profit corporation
4 subject to the restrictions of § 4-28-302(c), or into a public benefit or
5 religious corporation subject to the restrictions of § 4-33-1101(d). The
6 plan of merger must set forth the information prescribed in subsection (b) of
7 this section and must provide that the not-for-profit or public benefit or
8 religious corporation shall be the surviving corporation, and the plan of
9 merger may set forth those items described in subsection (b) of this section.
10 After the plan of merger is approved as required in § 4-27-1103, the
11 surviving corporation shall deliver to the Secretary of State for filing
12 articles of merger setting forth the information prescribed in § 4-27-1105.
13 Such a merger takes effect upon the date of filing with the Secretary of
14 State or the effective date specified in the Articles of Merger, whichever is
15 later."

16

17 SECTION 9. Ark. Code Ann. § 4-33-1701 is amended to read as follows:

18 "4-33-1701. Application to existing domestic corporations.

19 (a) All provisions of this chapter shall apply to all domestic
20 corporations incorporated on or after January 1, 1994, as specified in §
21 4-33-1706. A corporation incorporated prior to January 1, 1994, under any
22 general statute of this state providing for incorporation of nonprofit
23 corporations may elect to be governed by the provisions of this chapter by
24 amending its articles of incorporation to provide that it shall be so
25 governed. Such election may be made at any time on or after midnight,
26 December 31, 1993, but once made shall be irrevocable. The amendment to the
27 articles of incorporation effecting such election must be approved by the
28 affirmative vote of at least two-thirds (2/3) of the members of the
29 corporation or if such corporation has no members, by the affirmative vote of
30 at least two-thirds (2/3) of the directors of the corporation. Domestic
31 corporations existing prior to midnight, December 31, 1993, which do not
32 elect to be governed by its provisions shall continue to be governed by
33 preexisting law. Except for any applicable corporate franchise tax laws or
34 any applicable income tax exemption laws referenced herein, nothing in this
35 chapter shall be deemed to apply to domestic corporations or associations

1 regulated by the Insurance Commissioner under title 23 of the Arkansas Code
2 or related laws as nonprofit corporations including but not limited to
3 hospital or medical service corporations, health maintenance organizations,
4 and fraternal benefit societies.

5 (b) Any corporation for profit which was originally incorporated under
6 any of the business corporation laws of this state, but which has changed its
7 character to be operated primarily or exclusively for religious, educational
8 or other charitable purposes of a kind normally recognized as exempt from
9 federal income tax under § 501(c)(3) of the Internal Revenue Code of 1986, as
10 amended, may elect to be governed by the provisions of this chapter by
11 amending its articles of incorporation to provide that it shall be so
12 governed."

13

14 SECTION 10. Ark. Code Ann. § 4-33-1707 is amended to read as follows:

15 "4-33-1707. Public benefit, mutual benefit and religious corporations.

16 Upon electing to be governed by the provisions of this chapter, each
17 domestic corporation existing on January 1, 1994, that becomes subject to
18 this chapter shall be designated as a public benefit, mutual benefit or
19 religious corporation as follows:

20 (1) Any corporation designated by statute as a public benefit
21 corporation, a mutual benefit corporation or a religious corporation is the
22 type of corporation designated by statute;

23 (2) Any corporation that does not come within subsection (1) but is
24 organized primarily or exclusively for religious purposes is a religious
25 corporation;

26 (3) Any corporation that does not come within subsection (1) or (2) but
27 that is recognized as exempt under section 501(c)(3) of the Internal Revenue
28 Code, or any successor section, is a public benefit corporation;

29 (4) Any corporation that does not come within subsection (1), (2), or
30 (3), but that is organized for a public or charitable purpose and that upon
31 dissolution must distribute its assets to a public benefit corporation, the
32 United States, a state or a person that is recognized as exempt under section
33 501(c)(3) of the Internal Revenue Code, or any successor section, is a public
34 benefit corporation; (5) A corporation electing under Ark. Code Ann. § 4-
35 33-1701(b) to become subject to the provisions of this chapter shall file

1 with the Internal Revenue Service in a timely manner an application for
2 recognition of exemption from federal income tax under § 501(c) of the
3 Internal Revenue Code of 1986, as amended. If the Internal Revenue Service
4 determines that the corporation is entitled to exemption under § 501(c)(3),
5 the corporation shall be a religious corporation if its purposes are
6 primarily or exclusively religious, otherwise the corporation shall be a
7 public benefit corporation. If the Internal Revenue Service determines that
8 the corporation is not entitled to exemption under § 501(c)(3), or that it is
9 entitled to exemption under some other provision of § 501(c), the corporation
10 shall be a mutual benefit corporation;

11 (6) Any corporation that does not come within subsection (1), (2), (3),
12 (4), or (5) is a mutual benefit corporation."

13

14 SECTION 11. All provisions of this act of a general and permanent
15 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
16 Code Revision Commission shall incorporate the same in the Code.

17

18 SECTION 12. If any provision of this act or the application thereof to
19 any person or circumstance is held invalid, such invalidity shall not affect
20 other provisions or applications of the act which can be given effect without
21 the invalid provision or application, and to this end the provisions of this
22 act are declared to be severable.

23

24 SECTION 13. All laws and parts of laws in conflict with this act are
25 hereby repealed.

26

27

28

29

30

31

32

33

34

35

1
2
3
4
5
6
7