

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

# A Bill

SENATE BILL 139

4  
5 By: Senator Bearden  
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## For An Act To Be Entitled

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9 "AN ACT TO ALLOW A LIMITED LIABILITY COMPANY TO  
10 CONDUCT BUSINESS IN THE STATE UNDER A FICTITIOUS NAME;  
11 AND FOR OTHER PURPOSES."

## Subtitle

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14 "TO ALLOW A LIMITED LIABILITY COMPANY TO  
15 CONDUCT BUSINESS IN THE STATE UNDER A  
16 FICTITIOUS NAME."  
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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21 SECTION 1. Arkansas Code 4-32-103 relating to the names of limited  
22 liability companies is amended by adding a new subsection to the end thereof  
23 to read as follows:

24 "(e)(1) A limited liability company (domestic or foreign) may conduct  
25 business in this state under a fictitious name if it first files with the  
26 Secretary of State, and, in case of a domestic company, with the county clerk  
27 of the county in which the company's registered office is located (unless it  
28 is located in Pulaski County), a form supplied or approved by the Secretary of  
29 State giving the following information:

30 (A) The fictitious name under which business is being or  
31 will be conducted by the applicant company;

32 (B) A brief statement of the character of business to be  
33 conducted under the fictitious name;

34 (C) The company name, state of formation, and location  
35 (giving city and street address) of the registered office in the state of the  
36 applicant company.

1           (2) Each such form shall be executed (without verification) in  
2 duplicate and filed with the Secretary of State. The Secretary of State shall  
3 retain one (1) counterpart; and the other counterpart, bearing the file marks  
4 of the Secretary of State, shall be returned to the company and, unless its  
5 registered office is in Pulaski County, filed by it with the county clerk. An  
6 index of such filings shall be maintained in each office. However, the  
7 Secretary of State shall not accept such filing unless the proposed fictitious  
8 name is distinguishable upon the records of the Secretary of State from the  
9 name of any domestic company, or any foreign company authorized to do business  
10 in the state or any name reserved or registered under this chapter.

11           (3) Copies of such filed forms, certified by the respective  
12 filing officers, shall be admitted in evidence where the question of filing  
13 may be material.

14           (4) If, after a filing under this subsection, the applicant  
15 company is dissolved, or (being a foreign corporation) surrenders or forfeits  
16 its rights to do business in Arkansas or (whether a domestic or foreign  
17 corporation) ceases to do business in Arkansas under the specified fictitious  
18 name, the company shall be obligated to file in each of the offices aforesaid  
19 a cancellation of its privilege. If such cancellation is not filed, the  
20 Secretary of State, upon satisfactory evidence, may cancel the company's  
21 privilege; in which event such cancellation shall be certified by the  
22 Secretary of State to the county clerk, who will file the cancellation without  
23 fee.

24           (5) If a company which has not filed under this subsection is or  
25 becomes a party to any contract, deed, conveyance, assignment or instrument of  
26 encumbrance in which the company is referred to exclusively by a fictitious  
27 name, the obligations imposed upon the company under the instrument and the  
28 right sought to be conferred upon third parties under the instrument may be  
29 enforced against it; but the rights accruing to the company under the  
30 instrument may not be enforced by the company in the courts of this state  
31 until it complies with this section and pays to the Treasurer of State a civil  
32 penalty of three hundred dollars (\$300).

33           (6) Compliance with this section does not give a company an  
34 exclusive right to the use of the fictitious name; and the registration of a  
35 fictitious name will not bar the use of the same name as the company name of  
36 any domestic company or any foreign company authorized to do business in this

1 state. However, this chapter is not intended to bar any aggrieved party, in  
2 such a situation, from applying for equitable relief under principles of fair  
3 trade law."

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5 SECTION 2. All provisions of this act of a general and permanent nature  
6 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
7 Revision Commission shall incorporate the same in the Code.

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9 SECTION 3. If any provision of this act or the application thereof to  
10 any person or circumstance is held invalid, such invalidity shall not affect  
11 other provisions or applications of the act which can be given effect without  
12 the invalid provision or application, and to this end the provisions of this  
13 act are declared to be severable.

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15 SECTION 4. All laws and parts of laws in conflict with this act are  
16 hereby repealed.