

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4
5 By: Representative Capp
6 By: Senator Teague
7

As Engrossed: H3/20/19

A Bill

HOUSE BILL 1516

For An Act To Be Entitled

9 AN ACT TO ALLOW A FOUNDATION TO SERVE AS A FIDUCIARY;
10 TO PROVIDE FOR A FOUNDATION TO SERVE AS AN EXECUTOR
11 OF AN ESTATE; AND FOR OTHER PURPOSES.

Subtitle

15 TO ALLOW A FOUNDATION TO SERVE AS A
16 FIDUCIARY; AND TO PROVIDE FOR A
17 FOUNDATION TO SERVE AS AN EXECUTOR OF AN
18 ESTATE.

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

23 SECTION 1. Arkansas Code § 23-51-102(a)(14), concerning the definition
24 of "company" under the Arkansas Trust Institutions Act, is amended to read as
25 follows:

26 (14) "Company" includes a bank, trust company, subsidiary trust
27 company, corporation, limited liability company, partnership, association,
28 business trust, foundation, or another trust;

30 SECTION 2. Arkansas Code § 23-51-102(a)(54), concerning the definition
31 of "unauthorized trust activity" under the Arkansas Trust Institutions Act,
32 is amended to read as follows:

33 (54)(A) "Unauthorized trust activity" means:

34 ~~(A)(i)~~ A company, other than one identified in § 23-
35 51-165(a), acting as a fiduciary within this state;

36 ~~(B)(ii)~~ A company engaging in a trust business in



1 this state at any office of the company that is not its principal office, if
 2 ~~it~~ the company is a state trust institution, or that is not a trust office or
 3 a representative trust office of the company; or

4 ~~(C)(iii)~~ An out-of-state trust institution engaging
 5 in a trust business in this state at any time an order issued by the
 6 commissioner ~~pursuant to~~ under § 23-51-182 is in effect~~+~~.

7 (B) "Unauthorized trust activity" does not include a
 8 foundation serving as a fiduciary;

9
 10 SECTION 3. Arkansas Code § 23-51-102(a), concerning definitions under
 11 the Arkansas Trust Institutions Act, is amended to add an additional
 12 subdivision to read as follows:

13 (57)(A) "Foundation" means an organization that:

14 (i) Is organized and operated for religious,
 15 educational, or charitable purposes, as defined in section 501(c)(3) of the
 16 Internal Revenue Code of 1986, 26 U.S.C. § 501(c)(3), as it existed on
 17 January 1, 2019;

18 (ii) Has equity capital of at least one million
 19 dollars (\$1,000,000);

20 (iii) Has fiduciary liability insurance coverage
 21 with policy limits of not less than two million dollars (\$2,000,000);

22 (iv) Adopts and maintains written fiduciary policies
 23 and procedures;

24 (v) Has an annual independent audit that covers
 25 fiduciary activities and assets; and

26 (vi)(a) Is serving as a fiduciary for a trust or
 27 estate whose assets are less than seven hundred fifty thousand dollars
 28 (\$750,000).

29 (b) Subdivision (a)(57)(A)(vi)(a) of this
 30 section does not apply if

31 (1) The foundation is the sole remainder
 32 beneficiary of the trust or estate; or

33 (2) The remainder beneficiary is an
 34 organization that is supported by the foundation.

35 (B) "Foundation" does not include a private foundation as
 36 defined in section 509(a) of the Internal Revenue Code of 1986, 26 U.S.C. §

1 509(a).

2
3 SECTION 4. Arkansas Code § 23-51-165 is amended to read as follows:
4 23-51-165. Companies authorized to act as fiduciaries.

5 (a) ~~No~~ A company shall not act as a fiduciary in this state except:

6 (1) A state trust company;

7 (2) A state bank;

8 (3) An association organized under the laws of this state and
9 authorized to act as a fiduciary ~~pursuant to~~ under § 23-37-101 et seq.;

10 (4) A national bank having its principal office in this state
11 and authorized by the United States Comptroller of the Currency to act as a
12 fiduciary ~~pursuant to~~ under 12 U.S.C. § 92a;

13 (5) A federally chartered savings association having its
14 principal office in this state and authorized by its federal chartering
15 authority to act as a fiduciary;

16 (6) A subsidiary trust company authorized to act as a fiduciary
17 under § 23-47-801 et seq.;

18 (7) An out-of-state bank with a branch in this state established
19 or maintained ~~pursuant to~~ under the Arkansas Interstate Banking and Branching
20 Act, § 23-48-901 et seq., or a trust office licensed by the Bank Commissioner
21 ~~pursuant to~~ under this chapter;

22 (8) An out-of-state trust company with a trust office licensed
23 by the commissioner ~~pursuant to~~ under this chapter; or

24 (9) A foundation.

25 (b) ~~No~~ A company shall not engage in an unauthorized trust activity.

26
27 SECTION 5. Arkansas Code § 23-51-166, concerning activities that are
28 not considered trust business under the Arkansas Trust Institutions Act, is
29 amended to add an additional subdivision to read as follows:

30 (12) If the company is a foundation, serving as a fiduciary.

31
32 /s/Capp