

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: H3/29/99*

# A Bill

Act 1528 of 1999  
SENATE BILL 414

5 By: Senator Bearden  
6  
7

## For An Act To Be Entitled

9 "AN ACT TO AMEND THE 'SMALL BUSINESS ENTITY TAX PASS  
10 THROUGH ACT' AND THE REVISED 'LIMITED PARTNERSHIP  
11 ACT' OF 1991 IN ORDER TO MAKE TECHNICAL CORRECTIONS;  
12 AND FOR OTHER PURPOSES."  
13

## Subtitle

14 "TO MAKE TECHNICAL CORRECTIONS TO THE  
15 SMALL BUSINESS ENTITY TAX PASS THROUGH  
16 ACT AND THE REVISED LIMITED PARTNERSHIP  
17 ACT OF 1991."  
18  
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
22

23 SECTION 1. Subchapter 1 of Chapter 32 of Title 4 of the Arkansas Code  
24 is amended by adding the following section to the end thereof to be  
25 appropriately numbered by the Code Revision Commission:

26 "Use of fictitious names.

27 (a) No limited liability company (domestic or foreign) shall conduct  
28 any business in this state under a fictitious name unless it first files with  
29 the Secretary of State a form supplied or approved by the Secretary of State  
30 giving the following information:

31 (1) The fictitious name under which business is being or will be  
32 conducted by the applicant limited liability company;

33 (2) A brief statement of the character of business to be  
34 conducted under the fictitious name; and

35 (3) The name of the limited liability company, state of  
36 organization, and location (giving city and street address) of the registered



1 office in the state of the applicant limited liability company.

2 (b) Each such form shall be executed (without verification) in  
3 duplicate and filed with the Secretary of State. The Secretary of State  
4 shall retain one (1) counterpart; and the other counterpart, bearing the file  
5 marks of the Secretary of State, shall be returned to the limited liability  
6 company. However, the Secretary of State shall not accept such filing if the  
7 proposed fictitious name is the same as, or confusingly similar to, the name  
8 of any domestic corporation, limited liability company, limited partnership,  
9 limited liability partnership or any other entity registered with the  
10 Secretary of State, or any such foreign entity authorized to do business in  
11 the state or any name reserved or registered under §§ 4-27-402, 4-27-403, 4-  
12 32-104 or 4-43-103.

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

16 (d) If, after a filing hereunder, the applicant limited liability  
17 company is dissolved, or (being a foreign limited liability company)  
18 surrenders or forfeits its rights to do business in Arkansas or (whether a  
19 domestic or foreign limited liability company) ceases to do business in  
20 Arkansas under the specified fictitious name, such limited liability company  
21 shall be obligated to file with the Secretary of State a cancellation of its  
22 privilege hereunder. If such cancellation is not filed, the Secretary of  
23 State, upon satisfactory evidence, may cancel such privilege.

24 (e) If a limited liability company which has not filed hereunder has  
25 heretofore or shall hereafter become a party to any contract, deed,  
26 conveyance, assignment or instrument of encumbrance in which such limited  
27 liability company is referred to exclusively by a fictitious name, the  
28 obligations imposed upon such limited liability company under said instrument  
29 and the right sought to be conferred upon third parties thereunder may be  
30 enforced against it; but the rights accruing to such limited liability  
31 company under said instrument may not be enforced by the limited liability  
32 company in the courts of this state until it complies with this section and  
33 pays to the Treasurer of State a civil penalty of three hundred dollars  
34 (\$300); and in any suit by a limited liability company upon an instrument  
35 which identified it exclusively by a fictitious name, the limited liability  
36 company shall be required to allege compliance with this section.

1       (f) Compliance with this section does not give a limited liability  
 2 company an exclusive right to the use of the fictitious name; and the  
 3 registration of a fictitious name hereunder will not bar the use of the same  
 4 name as the name of any domestic entity or any foreign entity authorized to  
 5 do business in this state. But this chapter is not intended to bar any  
 6 aggrieved party, in such a situation, from applying for equitable relief  
 7 under principles of fair trade law.”

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 9       SECTION 2. Arkansas Code § 4-32-901 is amended to read as follows:

10       “§ 4-32-901. Dissolution.

11       ~~A limited liability company is dissolved and its affairs shall be wound~~  
 12 ~~up upon the happening of the first to occur of the following:~~

13       ~~(a) At the time or upon the occurrence of events specified in writing~~  
 14 ~~in the articles of organization or an operating agreement;~~

15       ~~(b) The written consent of all members;~~

16       ~~(c) An event of dissociation of a member, unless (1) the business of~~  
 17 ~~the limited liability company is continued by the consent of all the~~  
 18 ~~remaining members on or before the 90th day following the occurrence of any~~  
 19 ~~such event or (2) otherwise provided in writing in an operating agreement; or~~

20       ~~(d) Entry of a decree of judicial dissolution under § 4-32-902.~~

21       A limited liability company is dissolved and its affairs shall be wound  
 22 up upon the happening of the first to occur of the following:

23       (a) At the time or upon the occurrence of events specified in writing  
 24 in the articles of organization or an operating agreement, but if no such  
 25 time is set forth in either of the foregoing, then the limited liability  
 26 company shall have a perpetual existence;

27       (b) The written consent of all members;

28       (c) At any time there are no members, provided that, unless otherwise  
 29 provided in the articles of organization or an operating agreement, the  
 30 limited liability company is not dissolved and is not required to be wound up  
 31 if within 90 days or such other period as is provided for in the articles of  
 32 organization or an operating agreement after the occurrence of the event that  
 33 terminated the continued membership of the last remaining member, the  
 34 personal representative of the last remaining member agrees in writing to  
 35 continue the limited liability company and to the admission of the personal  
 36 representative of such member or its nominee or designee to the limited

1 liability company as a member, effective as of the occurrence of the event  
2 that terminated the continued membership of the last remaining member; and  
3 (d) The entry of a decree of judicial dissolution under § 4-32-902.”  
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5 SECTION 3. Subchapter 1 of Chapter 43 of Title 4 of the Arkansas Code  
6 is amended by adding the following section to the end thereof to be  
7 appropriately numbered by the Code Revision Commission:

8 “Use of Fictitious names.

9 (a) No limited partnership (domestic or foreign) shall conduct any  
10 business in this state under a fictitious name unless it first files with the  
11 Secretary of State a form supplied or approved by the Secretary of State  
12 giving the following information:

13 (1) The fictitious name under which business is being or will be  
14 conducted by the applicant limited partnership;

15 (2) A brief statement of the character of business to be  
16 conducted under the fictitious name; and

17 (3) The name of the limited partnership, state of organization,  
18 and location (giving city and street address) of the registered office in the  
19 state of the applicant limited partnership.

20 (b) Each such form shall be executed (without verification) in  
21 duplicate and filed with the Secretary of State. The Secretary of State  
22 shall retain one (1) counterpart; and the other counterpart, bearing the file  
23 marks of the Secretary of State, shall be returned to the limited  
24 partnership. However, the Secretary of State shall not accept such filing if  
25 the proposed fictitious name is the same as, or confusingly similar to, the  
26 name of any domestic corporation, limited liability company, limited  
27 partnership, limited liability partnership or any other entity registered  
28 with the Secretary of State, or any such foreign entity authorized to do  
29 business in the state or any name reserved or registered under §§ 4-27-402,  
30 4-27-403, 4-32-104 or 4-43-103.

31 (c) Copies of such filed forms, certified by the respective filing  
32 officers, shall be admitted in evidence where the question of filing may be  
33 material.

34 (d) If, after a filing hereunder, the applicant limited partnership is  
35 dissolved, or (being a foreign limited partnership) surrenders or forfeits  
36 its right to do business in Arkansas or (whether a domestic or foreign

1 limited partnership) ceases to do business in Arkansas under the specified  
2 fictitious name, such limited partnership shall be obligated to file with the  
3 Secretary of State a cancellation of its privilege hereunder. If such  
4 cancellation is not filed, the Secretary of State, upon satisfactory  
5 evidence, may cancel such privilege.

6 (e) If a limited partnership which has not filed hereunder has  
7 heretofore or shall hereafter become a party to any contract, deed,  
8 conveyance, assignment or instrument of encumbrance in which such limited  
9 partnership is referred to exclusively by a fictitious name, the obligations  
10 imposed upon such limited partnership under said instrument and the right  
11 sought to be conferred upon third parties thereunder may be enforced against  
12 it; but the rights accruing to such limited partnership under said instrument  
13 may not be enforced by the limited partnership in the courts of this state  
14 until it complies with this section and pays to the Treasurer of State a  
15 civil penalty of three hundred dollars (\$300); and in any suit by a limited  
16 partnership upon an instrument which identified it exclusively by a  
17 fictitious name, the limited partnership shall be required to allege  
18 compliance with this section.

19 (f) Compliance with this section does not give a limited partnership  
20 an exclusive right to the use of the fictitious name; and the registration of  
21 a fictitious name hereunder will not bar the use of the same name as the name  
22 of any domestic entity or any foreign entity authorized to do business in  
23 this state. But this chapter is not intended to bar any aggrieved party, in  
24 such a situation, from applying for equitable relief under principles of fair  
25 trade law.”

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27 SECTION 4. Subsection (c) of Arkansas Code § 4-32-802, pertaining to  
28 withdrawal from a limited liability companies, is amended to read as follows:

29 ~~“(c) Unless an operating agreement provides in writing that a member~~  
30 ~~has no power to withdraw by voluntary act from a limited liability company,~~  
31 ~~the member may do so at any time by giving thirty (30) days’ written notice~~  
32 ~~to the other members, or such other notice as is provided for in an operating~~  
33 ~~agreement. If the member has the power to withdraw but the withdrawal is a~~  
34 ~~breach of an operating agreement, or the withdrawal occurs as a result of~~  
35 ~~otherwise wrongful conduct of the member, the limited liability company may~~  
36 ~~recover from the withdrawing member damages for breach of the operating~~

~~1 agreement or as a result of the wrongful conduct, including the reasonable~~  
~~2 cost of obtaining replacement of the services the withdrawn member was~~  
~~3 obligated to perform and may offset the damages against the amount otherwise~~  
~~4 distributable to him, in addition to pursuing any remedies provided for in an~~  
~~5 operating agreement or otherwise available under applicable law. Unless~~  
~~6 otherwise provided in an operating agreement, in the case of a limited~~  
~~7 liability company for a definite term or particular undertaking, a member may~~  
~~8 not withdraw from the limited liability company before the expiration of that~~  
~~9 term or undertaking[.]~~ A member may withdraw from a limited liability company  
10 only at the time or upon the happening of an event specified in the articles  
11 of organization or an operating agreement. Unless the articles of  
12 organization or an operating agreement provide otherwise, a member may not  
13 withdraw from a limited liability company prior to the dissolution and  
14 winding up of the limited liability company.”

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16 SECTION 5. Subchapter 7 of Chapter 42 of Title 4 of the Arkansas Code  
17 is amended by adding the following section to the end thereof to be  
18 appropriately numbered by the Code Revision Commission:

19 “Use of Fictitious names.

20 (a) No registered limited liability partnership (domestic or foreign)  
21 shall conduct any business in this state under a fictitious name unless it  
22 first files with the Secretary of State a form supplied or approved by the  
23 Secretary of State giving the following information:

24 (1) The fictitious name under which business is being or will be  
25 conducted by the applicant registered limited liability partnership;

26 (2) A brief statement of the character of business to be  
27 conducted under the fictitious name; and

28 (3) The name of the registered limited liability partnership,  
29 state of organization, and location (giving city and street address) of the  
30 registered office in the state of the applicant registered limited liability  
31 partnership.

32 (b) Each such form shall be executed (without verification) in  
33 duplicate and filed with the Secretary of State. The Secretary of State  
34 shall retain one (1) counterpart; and the other counterpart, bearing the file  
35 marks of the Secretary of State, shall be returned to the registered limited  
36 liability partnership. However, the Secretary of State shall not accept such

1 filing if the proposed fictitious name is the same as, or confusingly similar  
2 to, the name of any domestic corporation, limited liability company, limited  
3 partnership, limited liability partnership or any other entity registered  
4 with the Secretary of State, or any such foreign entity authorized to do  
5 business in the state or any name reserved or registered under §§ 4-27-402,  
6 4-27-403, 4-32-104 or 4-43-103.

7 (c) Copies of such filed forms, certified by the respective filing  
8 officers, shall be admitted in evidence where the question of filing may be  
9 material.

10 (d) If, after a filing hereunder, the applicant registered limited  
11 liability partnership is dissolved, or (being a foreign registered limited  
12 liability partnership) surrenders or forfeits its rights to do business in  
13 Arkansas or (whether a domestic or foreign registered limited liability  
14 partnership) ceases to do business in Arkansas under the specified fictitious  
15 name, such registered limited liability partnership shall be obligated to  
16 file with the Secretary of State a cancellation of its privilege hereunder.  
17 If such cancellation is not filed, the Secretary of State, upon satisfactory  
18 evidence, may cancel such privilege.

19 (e) If a registered limited liability partnership which has not filed  
20 hereunder has heretofore or shall hereafter become a party to any contract,  
21 deed, conveyance, assignment or instrument of encumbrance in which such  
22 registered limited liability partnership is referred to exclusively by a  
23 fictitious name, the obligations imposed upon such registered limited  
24 liability partnership under said instrument and the right sought to be  
25 conferred upon third parties thereunder may be enforced against it; but the  
26 rights accruing to such registered limited liability partnership under said  
27 instrument may not be enforced by the registered limited liability  
28 partnership in the courts of this state until it complies with this section  
29 and pays to the Treasurer of State a civil penalty of three hundred dollars  
30 (\$300); and in any suit by a registered limited liability partnership upon an  
31 instrument which identified it exclusively by a fictitious name, the  
32 registered limited liability partnership shall be required to allege  
33 compliance with this section.

34 (f) Compliance with this section does not give a registered limited  
35 liability partnership an exclusive right to the use of the fictitious name;  
36 and the registration of a fictitious name hereunder will not bar the use of

1 the same name as the name of any domestic entity or any foreign entity  
2 authorized to do business in this state. But this chapter is not intended to  
3 bar any aggrieved party, in such a situation, from applying for equitable  
4 relief under principles of fair trade law."

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6 SECTION 6. Arkansas Code § 4-43-1110, pertaining to limited liability  
7 limited partnerships, is amended by adding a new subsection to the end  
8 thereof to be appropriately numbered by the Code Revision Commission to read  
9 as follows:

10 "With respect to a limited partnership which is simultaneously filing a  
11 certificate of limited partnership along with an application to become a  
12 registered limited liability limited partnership, the name used in the  
13 certificate of limited partnership may contain the words designating the  
14 limited partnership as a registered limited liability limited partnership as  
15 indicated in § 4-43-1110(1)(b)."

16  
17 SECTION 7. Arkansas Code 4-70-201 is amended to read as follows:

18 "4-70-201. Applicability of subchapter.

19 (a) This subchapter shall not apply to any limited partnership which  
20 has filed its certificate of limited partnership with the Secretary of State  
21 pursuant to § 4-43-201 or any successor law.

22 (b) This subchapter shall not apply to any domestic or foreign  
23 corporation or to any domestic or foreign limited partnership or limited  
24 liability company lawfully doing business in this state.

25 ~~(c) This subchapter shall not apply to any limited partnership which~~  
26 ~~has filed its certificate of limited partnership with the Secretary of State~~  
27 ~~pursuant to § 4-43-201.~~

28 ~~(d)(c)~~ This subchapter shall not apply to any limited liability  
29 company which has filed its articles of organization with the Secretary of  
30 State pursuant to § 4-32-202.

31 ~~(e)(d)~~ This subchapter shall not apply to any registered limited  
32 liability partnership which has filed its application with the Secretary of  
33 State pursuant to § 4-42-703."

34  
35 SECTION 8. Arkansas Code 4-32-103(d) pertaining to the name of a  
36 limited liability company is amended to read as follows:



1           "(d) The name of a limited liability company which performs  
2 professional service shall in addition contain the words "Professional  
3 Limited Liability Company" or "Professional Limited Company" or the  
4 abbreviations "P.L.L.C.," "P.L.C.," "PLLC," "PLC," and the words "Limited"  
5 and "Company" may be abbreviated as "Ltd." or "Co." and may not contain the  
6 name of any person who is not a member, except that the name of a ~~deceased~~  
7 former member or ~~deceased~~ member of a predecessor organization may continue  
8 to be included in the name."

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10           SECTION 9. The fictitious name provisions for limited liability  
11 companies, limited partnerships, and limited liability partnerships in  
12 Sections 1, 3 and 5 of this act shall not be applicable to any name for which  
13 an assumed name filing has been made under § 4-70-203 prior to the effective  
14 date of this act.

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16           SECTION 10. All provisions of this act of a general and permanent  
17 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
18 Code Revision Commission shall incorporate the same in the Code.

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20           SECTION 11. If any provision of this act or the application thereof to  
21 any person or circumstance is held invalid, such invalidity shall not affect  
22 other provisions or applications of the act which can be given effect without  
23 the invalid provision or application, and to this end the provisions of this  
24 act are declared to be severable.

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26           SECTION 12. All laws and parts of laws in conflict with this act are  
27 hereby repealed.

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29           SECTION 13. EMERGENCY CLAUSE. It is hereby found and determined by  
30 the Eighty-second General Assembly that the Small Business Entity Tax Pass  
31 Through Act and the Revised Limited Partnership Act of 1991 and other related  
32 acts and related laws need amending in order to better reflect the intent and  
33 operation of those laws. Therefore, an emergency is declared to exist and  
34 this act being immediately necessary for the preservation of the public  
35 peace, health and safety shall become effective on the date of its approval  
36 by the Governor. If the bill is neither approved nor vetoed by the Governor,

1 it shall become effective on the expiration of the period of time during  
2 which the Governor may veto the bill. If the bill is vetoed by the Governor  
3 and the veto is overridden, it shall become effective on the date the last  
4 house overrides the veto. Notwithstanding the foregoing, Section 4 of this  
5 act shall only apply to limited liability companies in existence on the  
6 effective date of this act in the event an election is made with the  
7 Secretary of State to have this provision apply; otherwise, the original § 4-  
8 32-802, as amended, shall apply to limited liability companies existing on  
9 the effective date of this act.

10 /s/ Bearden

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13 APPROVED: 4/15/1999  
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