

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

SENATE BILL 414

5 By: Senator Bearden
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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 ACT'
11 OF 1991 IN ORDER TO MAKE TECHNICAL CORRECTIONS; AND
12 FOR OTHER PURPOSES."

Subtitle

13
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."
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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 shall
4 retain one (1) counterpart; and the other counterpart, bearing the file marks
5 of the Secretary of State, shall be returned to the limited liability company.
6 However, the Secretary of State shall not accept such filing if the proposed
7 fictitious name is the same as, or confusingly similar to, the name of any
8 domestic corporation, limited liability company, limited partnership, limited
9 liability partnership or any other entity registered with the Secretary of
10 State, or any such foreign entity authorized to do business in the state or
11 any name reserved or registered under §§ 4-27-402, 4-27-403, 4-32-104 or 4-43-
12 103.

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 company
31 under said instrument may not be enforced by the limited liability company in
32 the courts of this state until it complies with this section and pays to the
33 Treasurer of State a civil penalty of three hundred dollars (\$300); and in any
34 suit by a limited liability company upon an instrument which identified it
35 exclusively by a fictitious name, the limited liability company shall be
36 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 do
 5 business in this state. But this chapter is not intended to bar any aggrieved
 6 party, in such a situation, from applying for equitable relief under
 7 principles of fair trade law."

8
 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 remaining~~
 18 ~~members on or before the 90th day following the occurrence of any such event~~
 19 ~~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 time
 25 is set forth in either of the foregoing, then the limited liability company
 26 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 personal
 34 representative of the last remaining member agrees in writing to continue the
 35 limited liability company and to the admission of the personal representative
 36 of such member or its nominee or designee to the limited liability company as

1 a member, effective as of the occurrence of the event that terminated the
2 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 shall
22 retain one (1) counterpart; and the other counterpart, bearing the file marks
23 of the Secretary of State, shall be returned to the limited partnership.
24 However, the Secretary of State shall not accept such filing if the proposed
25 fictitious name is the same as, or confusingly similar to, the name of any
26 domestic corporation, limited liability company, limited partnership, limited
27 liability partnership or any other entity registered with the Secretary of
28 State, or any such foreign entity authorized to do business in the state or
29 any name reserved or registered under §§ 4-27-402, 4-27-403, 4-32-104 or 4-43-
30 103.

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 its
36 right to do business in Arkansas or (whether a domestic or foreign limited

1 partnership) ceases to do business in Arkansas under the specified fictitious
2 name, such limited partnership shall be obligated to file with the Secretary
3 of State a cancellation of its privilege hereunder. If such cancellation is
4 not filed, the Secretary of State, upon satisfactory evidence, may cancel such
5 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 civil
15 penalty of three hundred dollars (\$300); and in any suit by a limited
16 partnership upon an instrument which identified it exclusively by a fictitious
17 name, the limited partnership shall be required to allege compliance with this
18 section.

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

26
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 to~~
32 ~~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
only at the time or upon the happening of an event specified in the articles
of organization or an operating agreement. Unless the articles of
organization or an operating agreement provide otherwise, a member may not
withdraw from a limited liability company prior to the dissolution and winding
up of the limited liability company."

15
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 shall
34 retain one (1) counterpart; and the other counterpart, bearing the file marks
35 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 with
4 the Secretary of State, or any such foreign entity authorized to do business
5 in the state or any name reserved or registered under §§ 4-27-402, 4-27-403,
6 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 file
16 with the Secretary of State a cancellation of its privilege hereunder. If
17 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 partnership
28 in the courts of this state until it complies with this section and pays to
29 the Treasurer of State a civil penalty of three hundred dollars (\$300); and in
30 any suit by a registered limited liability partnership upon an instrument
31 which identified it exclusively by a fictitious name, the registered limited
32 liability partnership shall be required to allege compliance with this
33 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."

5
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 thereof
8 to be appropriately numbered by the Code Revision Commission to read as
9 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 company
29 which has filed its articles of organization with the Secretary of State
30 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 Limited
3 Liability Company" or "Professional Limited Company" or the abbreviations
4 "P.L.L.C.," "P.L.C.," "PLLC," "PLC," and the words "Limited" and "Company" may
5 be abbreviated as "Ltd." or "Co." and may not contain the name of any person
6 who is not a member, except that the name of a ~~deceased~~ former member or
7 ~~deceased~~ member of a predecessor organization may continue to be included in
8 the name."

9
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.

19
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.

25
26 SECTION 12. All laws and parts of laws in conflict with this act are
27 hereby repealed.

28
29 SECTION 13. EMERGENCY CLAUSE. It is hereby found and determined by the
30 Eighty-second General Assembly that the Small Business Entity Tax Pass Through
31 Act and the Revised Limited Partnership Act of 1991 and other related acts and
32 related laws need amending in order to better reflect the intent and operation
33 of those laws. Therefore, an emergency is declared to exist and this act being
34 immediately necessary for the preservation of the public peace, health and
35 safety shall become effective on the date of its approval by the Governor. If
36 the bill is neither approved nor vetoed by the Governor, it shall become

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

9 /s/ Bearden

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