

State of Arkansas
92nd General Assembly
Regular Session, 2019

As Engrossed: H3/20/19 S4/1/19
A Bill

HOUSE BILL 1516

By: Representative Capp
By: Senator Teague

For An Act To Be Entitled

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

Subtitle

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

509(a).

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

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

- (1) A state trust company;
- (2) A state bank;
- (3) An association organized under the laws of this state and authorized to act as a fiduciary ~~pursuant to~~ under § 23-37-101 et seq.;
- (4) A national bank having its principal office in this state and authorized by the United States Comptroller of the Currency to act as a fiduciary ~~pursuant to~~ under 12 U.S.C. § 92a;
- (5) A federally chartered savings association having its principal office in this state and authorized by its federal chartering authority to act as a fiduciary;
- (6) A subsidiary trust company authorized to act as a fiduciary under § 23-47-801 et seq.;
- (7) An out-of-state bank with a branch in this state established or maintained ~~pursuant to~~ under the Arkansas Interstate Banking and Branching Act, § 23-48-901 et seq., or a trust office licensed by the Bank Commissioner ~~pursuant to~~ under this chapter;
- (8) An out-of-state trust company with a trust office licensed by the commissioner ~~pursuant to~~ under this chapter; or
- (9) A foundation.

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

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

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

/s/Capp

APPROVED: 4/10/19