

BY: Economic Matters Committee

AMENDMENTS TO HOUSE BILL NO. 774

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, strike “Corporations -”; strike beginning with “requiring” in line 7 down through “circumstances;” in line 9; in line 21, after “circumstances;” insert “requiring the Comptroller, the Secretary of Labor, Licensing, and Regulation, and the State Department of Assessments and Taxation to certify certain lists of business trusts that are delinquent in making certain payments or filing certain reports; providing for forfeiture of a business trust’s right to do business in Maryland and the right to use its name under certain circumstances; providing for the reinstatement of a business trust’s right to do business in Maryland and to use its name under certain circumstances; establishing certain penalties; prohibiting prosecution for certain violations after a certain date under certain circumstances; requiring a business trust to submit a certain annual report on personal property; providing for a delayed effective date;”.

AMENDMENT NO. 2

On page 1, after line 22, insert:

“BY repealing and reenacting, with amendments,

Article - Corporations and Associations

Section 1-203(4)

Annotated Code of Maryland

(1993 Replacement Volume and 1998 Supplement)”;

in line 25, strike “12-702” and substitute “12-810”; and after line 28, insert:

“BY repealing and reenacting, with amendments,

Article - Tax - Property

Section 11-101(a)

Annotated Code of Maryland

(Over)

(1994 Replacement Volume and 1998 Supplement)”).

AMENDMENT NO. 3

On page 2, after line 1, insert:

“1-203.

In addition to any organization and capitalization fee required under § 1-204 of this article, the Department shall collect the following fees:

(4) For each of the following documents recorded or filed the fee is \$50:

(i) Certificate of limited partnership, certificate of limited liability partnership, articles of organization of a limited liability company, CERTIFICATE OF TRUST OF A BUSINESS TRUST, including certificates of amendment and certificates of cancellation, certificates of reinstatement, and articles of reinstatement; and

(ii) Any statement filed by a partnership under Title 9 of this article.”.

AMENDMENT NO. 4

On page 6, in line 33, strike “EVERY BUSINESS TRUST SHALL FILE”; in the same line, after the second “TRUST” insert “FILED BY A BUSINESS TRUST”; and in line 34, strike “THAT”.

AMENDMENT NO. 5

On page 8, strike beginning with the colon in line 32 down through “(2)” in line 35; and strike beginning with “; AND” in line 35 down through “AGENT” in line 37.

AMENDMENT NO. 6

On pages 9 and 10, strike in their entirety the lines beginning with line 22 on page 9 through line 22 on page 10, inclusive, and substitute:

“THE NAME OF EACH BUSINESS TRUST AS SET FORTH IN ITS CERTIFICATE OF TRUST SHALL COMPLY WITH THE REQUIREMENTS OF TITLE 1, SUBTITLE 5 OF THIS ARTICLE.”.

AMENDMENT NO. 7

On page 18, in line 5, after the second “THE” insert “OUTSTANDING”; in the same line,

strike “OWNERS” and substitute “INTERESTS”; and after line 14, insert:

“(C) THE MERGER OR CONSOLIDATION SHALL BE APPROVED BY ANY OTHER BUSINESS ENTITY PARTY TO THE MERGER OR CONSOLIDATION IN THE MANNER REQUIRED BY THE CHARTER, DECLARATION OF TRUST, PARTNERSHIP AGREEMENT, OR OTHER ORGANIZATION DOCUMENT OF THE ENTITY AND THE LAWS OF THE JURISDICTION WHERE THE ENTITY IS ORGANIZED.”.

On page 19, in line 6, strike “SURVIVING OR RESULTING ENTITY” and substitute “SUCCESSOR”; in line 13, strike “CHARTER” and substitute “CERTIFICATE OF TRUST”; and in line 15, strike “SURVIVING OR RESULTING BUSINESS” and substitute “SUCCESSOR”.

On page 20, in line 9, strike “OR”; in line 10, after “INSTRUMENT” insert “OR CERTIFICATE OF TRUST”; in lines 29 and 30, strike “SURVIVING AND RESULTING BUSINESS” and substitute “SUCCESSOR”; and in line 33, strike “SURVIVING OR RESULTING BUSINESS” and substitute “SUCCESSOR”.

On page 21, in line 12, strike “SURVIVING OR RESULTING BUSINESS” and substitute “SUCCESSOR”; and in line 24, strike “SURVIVING OR RESULTING” and substitute “SUCCESSOR”.

AMENDMENT NO. 8

On page 23, strike beginning with the first “THE” in line 24 down through “(B)” in line 36; in line 36, strike “(A)” and substitute “(B)”; and in the same line, strike “ALL OTHER”.

On page 24, in line 1, strike “(C)” and substitute “(B) (1)”; in line 3, strike “SUBSECTION (A) OF THIS SECTION” and substitute “§ 1-203.2 OF THIS ARTICLE”; in line 5, strike “UP TO \$50” and substitute “\$30”; and strike in their entirety lines 6 through 8, inclusive.

AMENDMENT NO. 9

On page 24, after line 5, insert:

“(2) THE FEES COLLECTED UNDER THIS SUBSECTION SHALL BE CREDITED TO THE FUND CREATED UNDER § 9-401.2(3)(B) OF THE COMMERCIAL LAW

(Over)

ARTICLE.”.

AMENDMENT NO. 10

On page 24, after line 8, insert:

“SUBTITLE 8. FORFEITURE.

12-801.

(A) (1) EXCEPT WITH RESPECT TO A TAX COLLECTIBLE LOCALLY, THE STATE COMPTROLLER SHALL CERTIFY TO THE DEPARTMENT, AS SOON AS PRACTICABLE AFTER OCTOBER 1 OF EACH YEAR, A LIST OF EVERY MARYLAND BUSINESS TRUST THAT HAS NOT PAID A TAX THAT WAS DUE BEFORE OCTOBER 1 OF THE YEAR.

(2) WHEN THE COMPTROLLER CERTIFIES THE LIST TO THE DEPARTMENT, THE COMPTROLLER SHALL MAIL TO EACH LISTED BUSINESS TRUST, AT THE BUSINESS TRUST’S ADDRESS AS IT APPEARS ON THE COMPTROLLER’S RECORDS, A NOTICE THAT THE BUSINESS TRUST’S RIGHT TO DO BUSINESS IN THE STATE AND THE RIGHT TO THE USE OF ITS NAME WILL BE FORFEITED UNLESS THE BUSINESS TRUST PAYS ALL TAXES, INTEREST, AND PENALTIES DUE.

(3) THE FAILURE OF A BUSINESS TRUST TO RECEIVE THE NOTICE MAILED IN ACCORDANCE WITH PARAGRAPH (2) OF THIS SUBSECTION DOES NOT AFFECT THE FORFEITURE OF THE BUSINESS TRUST’S RIGHT TO DO BUSINESS IN THE STATE OR TO USE ITS NAME.

(B) (1) AS SOON AS PRACTICABLE AFTER OCTOBER 1 OF EACH YEAR, THE SECRETARY OF LABOR, LICENSING, AND REGULATION SHALL CERTIFY TO THE DEPARTMENT A LIST OF EVERY MARYLAND BUSINESS TRUST THAT HAS NOT PAID AN UNEMPLOYMENT INSURANCE CONTRIBUTION OR MADE A REIMBURSEMENT PAYMENT THAT WAS DUE BEFORE OCTOBER 1 OF THE YEAR.

(2) WHEN THE SECRETARY CERTIFIES THE LIST TO THE DEPARTMENT, THE SECRETARY SHALL MAIL TO EACH LISTED BUSINESS TRUST, AT

THE BUSINESS TRUST'S ADDRESS AS IT APPEARS ON THE SECRETARY'S RECORDS, A NOTICE THAT THE BUSINESS TRUST'S RIGHT TO DO BUSINESS IN THE STATE AND THE RIGHT TO THE USE OF ITS NAME WILL BE FORFEITED UNLESS THE BUSINESS TRUST PAYS ALL CONTRIBUTIONS, REIMBURSEMENT PAYMENTS, INTEREST, AND PENALTIES DUE.

(3) THE FAILURE OF A BUSINESS TRUST TO RECEIVE THE NOTICE MAILED IN ACCORDANCE WITH PARAGRAPH (2) OF THIS SUBSECTION DOES NOT AFFECT THE FORFEITURE OF THE BUSINESS TRUST'S RIGHT TO DO BUSINESS IN THE STATE OR TO USE ITS NAME.

(C) AS SOON AS PRACTICABLE AFTER OCTOBER 1 OF EACH YEAR, THE DEPARTMENT SHALL CERTIFY A LIST OF EVERY MARYLAND BUSINESS TRUST THAT HAS NOT FILED AN ANNUAL REPORT WITH THE DEPARTMENT AS REQUIRED BY LAW OR HAS NOT PAID A TAX THAT WAS DUE BEFORE OCTOBER 1 OF THE YEAR.

(D) AFTER THE LISTS ARE CERTIFIED, THE DEPARTMENT SHALL ISSUE A PROCLAMATION DECLARING, FOR EACH BUSINESS TRUST INCLUDED ON A LIST, THAT THE RIGHT TO DO BUSINESS IN THE STATE AND TO USE THE NAME OF THE BUSINESS TRUST IS FORFEITED AS OF THE DATE OF THE PROCLAMATION, WITHOUT PROCEEDINGS OF ANY KIND AT LAW OR AT EQUITY.

12-802.

(A) (1) WITHIN 10 DAYS AFTER THE ISSUANCE OF A PROCLAMATION UNDER (D) OF THIS SECTION, THE DEPARTMENT SHALL MAIL NOTICE OF THE PROCLAMATION TO EACH BUSINESS TRUST COMPANY NAMED IN THE PROCLAMATION.

(2) THE NOTICE SHALL BE ADDRESSED TO THE BUSINESS TRUST AT THE BUSINESS TRUST'S MAILING ADDRESS ON FILE WITH THE DEPARTMENT OR, IF NONE, AT ANY OTHER ADDRESS FOR THE BUSINESS TRUST APPEARING ON THE RECORDS OF THE DEPARTMENT.

(Over)

(B) A BUSINESS TRUST THAT PAYS ALL TAXES, UNEMPLOYMENT INSURANCE CONTRIBUTIONS, REIMBURSEMENT PAYMENTS, INTEREST, AND PENALTIES DUE WITHIN 60 DAYS AFTER THE ISSUANCE OF THE PROCLAMATION SHALL HAVE ITS RIGHT TO DO BUSINESS IN THE STATE AND TO USE ITS NAME REINSTATED IN ACCORDANCE WITH § 12-805 OF THIS SUBTITLE RETROACTIVE TO THE DATE OF FORFEITURE.

12-803.

(A) IF THE DEPARTMENT IS SATISFIED THAT A BUSINESS TRUST NAMED IN A PROCLAMATION ISSUED UNDER § 12-802(D) OF THIS SUBTITLE HAS NOT FAILED TO PAY THE TAXES, UNEMPLOYMENT INSURANCE CONTRIBUTIONS, OR REIMBURSEMENT PAYMENTS, OR TO FILE THE REPORT WITHIN THE PERIOD SPECIFIED IN § 12-801 OF THIS SUBTITLE, OR THAT THE BUSINESS TRUST HAS BEEN MISTAKENLY REPORTED TO THE DEPARTMENT BY THE STATE COMPTROLLER OR THE SECRETARY OF LABOR, LICENSING, AND REGULATION, THE DEPARTMENT MAY FILE IN ITS RECORDS A PROCLAMATION CORRECTING THE MISTAKE.

(B) THE EFFECT OF A PROCLAMATION CORRECTING A MISTAKE UNDER SUBSECTION (A) OF THIS SECTION IS TO RESTORE THE RIGHT OF THE BUSINESS TRUST TO DO BUSINESS IN THE STATE AND TO USE THE NAME OF THE BUSINESS TRUST AS IF THE RIGHT HAD AT ALL TIMES REMAINED IN FULL FORCE AND EFFECT.

12-804.

THIS SUBTITLE DOES NOT REPEAL, SUPERSEDE, OR IN ANY MANNER AFFECT ANY REMEDY OR PROVISION OF LAW:

(1) FOR THE COLLECTION OF TAXES, UNEMPLOYMENT INSURANCE CONTRIBUTIONS, OR REIMBURSEMENT PAYMENTS AND AND INTEREST AND PENALTIES DUE; OR

(2) TO COMPEL THE FILING OF ANNUAL REPORTS.

12-805.

IF THE AUTHORITY OF A BUSINESS TRUST TO DO BUSINESS IN THE STATE AND TO USE ITS NAME HAS BEEN FORFEITED FOR NONPAYMENT OF TAXES, UNEMPLOYMENT INSURANCE CONTRIBUTIONS, OR REIMBURSEMENT PAYMENTS, OR FOR FAILURE TO FILE AN ANNUAL REPORT, THE BUSINESS TRUST MAY APPLY FOR REINSTATEMENT BY FILING A CERTIFICATE OF REINSTATEMENT WITH THE DEPARTMENT IN ACCORDANCE WITH § 12-806 OF THIS SUBTITLE.

12-806.

A CERTIFICATE OF REINSTATEMENT SHALL INCLUDE:

(1) THE NAME OF THE BUSINESS TRUST AT THE TIME ITS RIGHT TO DO BUSINESS IN THE STATE WAS FORFEITED;

(2) THE NAME THAT THE BUSINESS TRUST WILL USE AFTER REINSTATEMENT, WHICH SHALL COMPLY WITH THE PROVISIONS OF THIS ARTICLE WITH RESPECT TO BUSINESS TRUST NAMES;

(3) THE ADDRESS OF THE PRINCIPAL OFFICE OF THE BUSINESS TRUST IN THE STATE IF DIFFERENT FROM ITS PRINCIPAL OFFICE IN THE STATE AT THE TIME THE RIGHT TO DO BUSINESS IN THE STATE WAS FORFEITED; AND

(4) THE NAME AND ADDRESS OF THE RESIDENT AGENT OF THE BUSINESS TRUST.

12-807.

THE DEPARTMENT MAY NOT ACCEPT A CERTIFICATE OF REINSTATEMENT FOR RECORD UNLESS:

(1) ALL ANNUAL REPORTS REQUIRED TO BE FILED BY THE BUSINESS TRUST, OR WHICH WOULD HAVE BEEN REQUIRED IF THE RIGHT TO DO BUSINESS IN

(Over)

THE STATE HAD NOT BEEN FORFEITED, ARE FILED; AND

(2) UNEMPLOYMENT INSURANCE CONTRIBUTIONS OR REIMBURSEMENT PAYMENTS, ALL STATE AND LOCAL TAXES, EXCEPT TAXES ON REAL ESTATE, AND ALL INTEREST AND PENALTIES DUE BY THE BUSINESS TRUST, OR WHICH WOULD HAVE BECOME DUE IF THE RIGHT TO DO BUSINESS HAD NOT BEEN FORFEITED, ARE PAID, WHETHER OR NOT BARRED BY LIMITATIONS.

12-808.

EXCEPT IN A PROCEEDING BY THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS, THE ACCEPTANCE OF A CERTIFICATE OF REINSTATEMENT FOR RECORD BY THE DEPARTMENT IS CONCLUSIVE EVIDENCE OF:

(1) THE PAYMENT OF ALL FEES, TAXES, UNEMPLOYMENT INSURANCE CONTRIBUTIONS, AND REIMBURSEMENT PAYMENTS REQUIRED TO BE PAID;

(2) THE FILING OF ALL REPORTS REQUIRED TO BE FILED; AND

(3) THE REINSTATEMENT OF THE RIGHT OF THE BUSINESS TRUST TO DO BUSINESS IN THE STATE.

12-809.

(A) ANY PERSON THAT TRANSACTS BUSINESS IN THE NAME OF, OR FOR THE ACCOUNT OF, A BUSINESS TRUST KNOWING THAT THE BUSINESS TRUST'S RIGHT TO DO BUSINESS IN THE STATE HAS BEEN FORFEITED AND HAS NOT BEEN REINSTATED AT THE TIME THE BUSINESS WAS TRANSACTED IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE OF NOT MORE THAN \$500.

(B) A PROSECUTION FOR A VIOLATION OF SUBSECTION (A) OF THIS SECTION, CONCERNING ACTS ALLEGED TO HAVE OCCURRED WHILE THE RIGHT OF

A BUSINESS TRUST TO DO BUSINESS IN THE STATE WAS FORFEITED, MAY NOT BE INSTITUTED AFTER THE DATE THAT A CERTIFICATE OF REINSTATEMENT OF THE BUSINESS TRUST IS FILED.

12-810.

THE FORFEITURE OF THE RIGHT TO DO BUSINESS IN THE STATE AND THE RIGHT TO THE USE OF THE NAME OF THE BUSINESS TRUST UNDER THIS TITLE DOES NOT:

(1) IMPAIR THE VALIDITY OF A CONTRACT ENTERED INTO BY THE BUSINESS TRUST OR ANY ACT OF THE BUSINESS TRUST BEFORE OR AFTER THE FORFEITURE; OR

(2) PREVENT THE BUSINESS TRUST FROM DEFENDING ANY ACTION, SUIT, OR PROCEEDING IN A COURT OF THE STATE.

Article - Tax - Property

11-101.

(a) On or before April 15 of each year, a person shall submit a report on personal property to the Department if:

(1) the person is a BUSINESS TRUST, domestic corporation, limited liability company, limited liability partnership, or limited partnership;

(2) the person is a foreign corporation, foreign limited liability company, foreign limited liability partnership, or foreign limited partnership registered or qualified to do business in the State; or

(3) the person owns or during the preceding calendar year owned property that is subject to property tax.”.

(Over)

AMENDMENT NO. 11

On page 24, in lines 17 and 18, strike “October 1, 1999” and substitute “January 1, 2000”; and in lines 19, 21, 23, and 28, in each instance, strike “October 1, 1999” and substitute “January 1, 2000”.