S T A T E  O F  N E W  Y O R K

6128

2009-2010 Regular Sessions

I N  A S S E M B L Y

February 25, 2009

Introduced by M. of A. SCHIMMINGER, TOWNS, ORTIZ -- Multi-Sponsored by -- M. of A. CLARK, COOK, HOOPER, JOHN, MAGEE, McENENY, MILLMAN, PHEFFER, SEMINERIO -- read once and referred to the Committee on Judiciary

AN ACT to establish a business trust law, constituting chapter 4-A of the consolidated laws; and to amend the general associations law, in relation to business trusts

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. A new consolidated chapter, to be chapter 4-A of the consolidated laws, is enacted to read as follows:

CHAPTER 4-A OF THE CONSOLIDATED LAWS

BUSINESS TRUST LAW


| Article | | Section |
|---|---|---|
| 1. | Short title and definitions. | (SS101-102) |
| 2. | Business trusts. | (SS201-218) |
| 3. | Merger and consolidation. | (SS301-305) |
| 4. | Dissolution. | (SS401-405) |
| 5. | Miscellaneous. | (SS501-510) |
| 6. | Savings clauses; effective date. | (SS601-606) |


ARTICLE 1

SHORT TITLE AND DEFINITIONS


Section 101. Short title.
102. Definitions.


S 101. Short title. This chapter shall be known and may be cited as the "business trust law".

S 102. Definitions. As used in this chapter:

a. "Beneficial owner" shall mean any owner of a beneficial interest in a business trust, the fact of ownership to be determined and evidenced (whether by means of registration, the issuance of certificates or

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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otherwise) in conformity to the applicable provisions of the governing instrument of the business trust.

b. "Business trust" shall mean an unincorporated organization which:

(1) is created by a trust instrument under which property is or will be held, managed, administered, controlled, invested, reinvested or operated, or business or professional activities are carried on or will be carried on, by a trustee or trustees for the benefit of such person or persons who are or may become entitled to a beneficial interest in the trust property including but not limited to a trust of the type known at common law as a "business trust" or "Massachusetts trust" or a trust qualifying as a real estate investment trust under S 856, et seq., of the United States Internal Revenue Code of 1986, as amended, or under any successor provision (whether or not a "business trust"; as such term is used in the United States Bankruptcy Code, 11 U.S.C. S 101(9)), or a trust qualifying as a real estate mortgage investment conduit under S 860D of the United States Internal Revenue Code of 1986, as amended, or under any successor provision; and

(2) files a certificate of business trust pursuant to section two hundred twelve of this chapter. Any such organization so organized shall be a business trust and a separate legal entity. A business trust may be organized to carry on any lawful business or activity, whether or not conducted for profit, including without limitation for any of the purposes referred to in paragraph one of this subdivision except to do in this state any business for which another provision of law specifically requires some other business entity or natural person to be formed or used.

c. "Governing instrument" shall mean any written trust instrument which creates a business trust, provides for the affairs of the business trust and conduct of its business. The governing instrument:

(1) may provide that a person shall become a beneficial owner and shall become bound by the governing instrument if such person, or a representative authorized by such person orally, in writing or by other action such as payment for a beneficial interest, complies with the conditions for becoming a beneficial owner set forth in the governing instrument or any other writing and acquires a beneficial interest; and

(2) may consist of one or more written agreements, instruments or other writings, and may include or incorporate by-laws containing provisions relating to the business of the business trust, the conduct of its affairs and its rights or powers or the rights or powers of its trustees, beneficial owners, agents or employees.

d. "Other business entity" shall mean any person other than a natural person or domestic business trust.

e. "Person" shall mean any association, corporation, joint stock company, estate, general partnership (including any registered limited liability partnership or foreign limited liability partnership), limited association, limited liability company (including a professional service limited liability company), joint venture, limited partnership, natural person, real estate investment trust, business trust or other trust, custodian, nominee, or any other individual or entity in its own or any representative capacity.

f. "Trustee" shall mean the person or persons appointed as a trustee in accordance with the governing instrument of a business trust, and may include all the beneficial owners or any number of such owners.

## ARTICLE 2
## BUSINESS TRUSTS

Section 201. Contributions by beneficial owners.

202. Liability of beneficial owners, trustees and agents.
203. Business transactions of a beneficial owner with a business trust.
204. Legal proceedings.
205. Rights of beneficial owners in trust property.
206. Management of business trust.
207. Trustee in state.
208. Existence of business trust.
209. Applicability of trust law.
210. Business trust name.
211. Reservation of business trust name.
212. Certificate of business trust.
213. Amendment of the certificate of business trust.
214. Cancellation of certificate of business trust.
215. Restated certificate of trust.
216. Execution of certificates.
217. Delivery to the department of state.
218. Execution, amendment or cancellation by judicial act.

S 201. Contributions by beneficial owners. a. A contribution of a beneficial owner to a business trust may be made in cash, property or services rendered, or by a promissory note or other obligation to contribute cash or property or to perform services; provided, however, that a person may become a beneficial owner of a business trust and may receive a beneficial interest in a business trust without making a contribution or being obligated to make a contribution to the business trust.

b. Except as provided in the governing instrument, a beneficial owner shall be obligated to the business trust to perform any promise, to contribute cash or property or to perform services that is otherwise enforceable pursuant to law, even if the beneficial owner is unable to perform because of death, disability or any other reason. Except as provided in the governing instrument, a beneficial owner who fails to make the required contribution of property or services, shall be obligated, at the option of the business trust, to contribute cash equal to that portion of the value as stated in the records of the business trust, if so stated, of the contribution that has not been made. Such option shall be in addition to, not in lieu of, any other rights including the right to specific performance that the business trust may enforce against such beneficial owner under the governing instrument or applicable law.

c. Unless otherwise provided in the governing instrument and except as provided in section two hundred two of this article, the obligation of a beneficial owner to make a contribution, or to return money or other property paid or distributed in violation of this chapter may be compromised only by the consent of all beneficial owners. A conditional obligation of a beneficial owner to make a contribution, or return money or other property to a business trust shall not be enforced unless the conditions of the obligation have been satisfied or waived as to or by such beneficial owner. Conditional obligations shall include contributions payable upon a discretionary call of a business trust or a beneficial owner prior to the time the call occurs.

d. A governing instrument may provide that the interest of any beneficial owner who fails to make any required contribution shall be subject to specified consequences of such failure. Such consequences may include, but are not limited to, reduction or elimination of the defaulting beneficial owner's interest in the business trust, subordi-

nation of the defaulting beneficial owner's interest to those of nondefaulting beneficial owners, a forced sale of the defaulting beneficial owner's beneficial interest, forfeiture of the defaulting beneficial owner's beneficial interest, the lending by the other beneficial owners of the amount necessary to meet the defaulting beneficial owner's commitment, a fixing of the value of the defaulting beneficial owner's beneficial interest by appraisal or by formula and redemption or sale of such defaulting beneficial owner's beneficial interest at such value, or any other consequences.

S 202. Liability of beneficial owners, trustees and agents. a. Neither a beneficial owner or trustee of a business trust nor an agent of a business trust (including a person having more than one such capacity) shall be liable for any debts, obligations or liabilities of the business trust or each other, whether arising in tort, contract or otherwise, solely by reason of being a beneficial owner, trustee or agent acting or omitting to act in such capacity or participating as an employee, consultant, contractor or otherwise in the conduct of the business of the business trust.

b. Notwithstanding the provisions of subdivision a of this section, all or specified beneficial owners of a business trust may be liable for all or specified debts, obligations or liabilities of a business trust if (1) a statement to such effect is specifically contained in the certificate of business trust of the business trust, and (2) any such beneficial owner so liable shall have either (A) specifically consented in writing (i) to the adoption of such provision, or (ii) to be bound by such provision, or (B) specifically voted for the adoption of such provision. The absence of either such statement in the certificate of business trust or such consent or vote of any such beneficial owner shall in no way affect or impair the ability of a beneficial owner to act as a guarantor or surety for, provide collateral for or otherwise be liable for the debts, obligations or liabilities of a business trust as authorized pursuant to section two hundred three of this article.

S 203. Business transactions of a beneficial owner with a business trust. Except as may be provided in the governing instrument of a business trust, a beneficial owner may lend money to, borrow money from, act as a guarantor or surety for, provide collateral for the obligations of, and transact other business with the business trust and, subject to other applicable provisions of law, have the same rights and obligations with respect thereto as a person who is not a beneficial owner.

S 204. Legal proceedings. a. A business trust may sue and be sued, and service of process may be effectuated by service of a summons and complaint, or a summons with notice, as provided by rule three hundred five of the civil practice law and rules, upon at least one trustee of the business trust or the registered agent for service of process of the business trust, if any, as provided by subdivision three of section three hundred eight and rule three hundred eighteen of the civil practice law and rules, in the manner provided by section three hundred eight of the civil practice law and rules. Furthermore, a business trust may be sued for debts and other obligations or liabilities contracted or incurred by the trustees or by the duly authorized agents of such trustees, in the performance of their duties under the governing instrument of the business trust, and for any damages to persons or property resulting from the negligence of such trustees or agents acting in the performance of such duties. Notwithstanding any other provision of this section, in the event that the governing instrument of a business trust creates one or more series as provided in paragraph two of subdivision b

of section two hundred six of this article, and if separate and distinct records are maintained for any such series and the assets associated with any such series are held and accounted for separately from the other assets of the business trust, or any other series thereof, and if the governing instrument so provides, and notice of the limitation on liabilities of such series is set forth in the certificate of business trust of the business trust, then the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a particular series shall be enforceable against the assets of such series only, and not against the assets of the business trust generally.

b. A trustee of a business trust or the registered agent of the business trust for service of process as provided by subdivision three of section three hundred eight and rule three hundred eighteen of the civil practice law and rules, may be served with process in the manner prescribed in subdivision a of this section in all civil actions or proceedings brought in this state involving or relating to the activities of the business trust or a violation by a trustee of a duty to the business trust or any beneficial owner thereof, whether or not the trustee is a trustee at the time suit is commenced. Every resident or nonresident of this state who accepts election or appointment as a trustee or serves as a trustee of a business trust shall, by such acceptance of service as a trustee, be deemed to have consented to the appointment of the New York trustee or registered agent of the business trust as required by section two hundred seven of this article, as such person's agent upon whom service of process may be made as provided in this section. Such acceptance of service shall signify the consent of such trustee that any process when so served shall be of the same legal force and validity as if served upon such trustee within this state and such appointment of such New York trustee or registered agent shall be irrevocable.

c. In the governing instrument of a business trust or other writing, a trustee may consent to be subject to the nonexclusive jurisdiction of the courts of or arbitration in a specified jurisdiction, or the exclusive jurisdiction of the courts of this state, and to be served with legal process in the manner prescribed in such governing instrument of the business trust or other writing.

d. A partnership (whether general or limited), corporation or other business entity formed or organized under the laws of any foreign country or other jurisdiction other than this state shall not be deemed to be doing business in this state solely by reason of its being a trustee of a business trust.

e. The secretary of state shall be the agent of every domestic business trust and every authorized foreign business trust upon whom process against the business trust may be served. No domestic or foreign business trust may be formed or authorized to do business in this state under this chapter unless in its certificate of business trust or in its application for authority it designates the secretary of state as such agent. Any designated post office address to which the secretary of state shall mail a copy of process served upon him or her as agent of a domestic business trust or a foreign business trust shall continue until the filing of a certificate under this article directing the mailing to a different post office address.

f. Service of process on the secretary of state as agent of a domestic business trust or authorized foreign business trust shall be made by delivering a copy personally to and leaving with the secretary of state or his or her deputy, or with any person authorized by the secretary of

state to receive such service, at the office of the department of state in the city of Albany, duplicate copies of such process together with the statutory fee, which fee shall be a taxable disbursement. Service of process on such business trust shall be complete when the secretary of state is so served. The secretary of state shall promptly send one such copy by certified mail, return receipt requested, to such business trust at the post office address on file in the department of state specified for such purpose. The secretary of state shall keep a record of each process served upon the secretary of state pursuant to this chapter, including the date of such service and the action taken by the secretary of state with reference thereto.

g. Nothing in this section shall be construed in a manner inconsistent with any provision of article three of the civil practice law and rules, nor shall anything in this section limit or affect the right to serve process in any other manner provided by law. This section is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.

S 205. Rights of beneficial owners in trust property. a. Except as otherwise provided in the governing instrument of a business trust, a beneficial owner shall have an undivided beneficial interest in the property of the business trust and shall share in the profits and losses of the business trust in the proportion (expressed as a percentage) of the entire undivided beneficial interest in the business trust owned by such beneficial owner. The governing instrument of a business trust may provide that the business trust or the trustees, acting for and on behalf of the business trust, shall be deemed to hold beneficial ownership of any income earned on the securities of the business trust issued by any business entities formed, organized or existing under the laws of any jurisdiction, including the laws of any foreign country.

b. No creditor of a beneficial owner shall have any right, in such capacity, to obtain possession of or otherwise exercise legal or equitable remedies with respect to the property of the business trust.

c. A beneficial owner's beneficial interest in a business trust shall be personal property notwithstanding the nature of the property of the trust. Except as otherwise provided in the governing instrument of a business trust, a beneficial owner has no interest in any specific property of the business trust.

d. A beneficial owner's beneficial interest in a business trust shall be freely transferable, except as provided in the governing instrument of the business trust.

e. Except as otherwise provided in the governing instrument of a business trust, when a beneficial owner becomes entitled to receive a distribution, such beneficial owner shall have the status of and be entitled to all remedies available to a creditor of the business trust with respect to the distribution. A governing instrument may provide for the establishment of record dates with respect to allocations and distributions by the business trust.

S 206. Management of business trust. a. The business and affairs of a business trust shall be managed by or under the direction of its trustees. To the extent provided in the governing instrument of a business trust, any person (including a beneficial owner) shall be entitled to direct the trustees in the management of a business trust. Except as otherwise provided in the governing instrument of a business trust, neither the power to give direction to a trustee nor the exercise thereof by any person (including a beneficial owner) shall cause such person to be a trustee.

b. A governing instrument may include any provision relating to the management of the business and affairs of the business trust, and the rights, duties and obligations of the trustees, beneficial owners and other persons, which is not contrary to the provisions of this chapter and, without limitation:

(1) may provide for classes, groups or series of trustees or beneficial owners, or classes, groups or series of beneficial interests, having such relative rights, powers and duties as the governing instrument may provide, and may make provision for the future creation of additional classes, groups or series of trustees, beneficial owners or beneficial interests, having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior or subordinate to existing classes, groups or series of trustees, beneficial owners or beneficial interests;

(2) may establish or provide for the establishment of designated series of trustees, beneficial owners or beneficial interests having separate rights, powers or duties with respect to specified property or obligations of the business trust or profits and losses associated with specified property or obligations, and any such series may have a separate business purpose or investment objective;

(3) may provide for the taking of any action, including amendment of the governing instrument, the accomplishment of a merger or consolidation, the appointment of one or more trustees, the sale, lease, exchange, transfer, pledge or other disposition of all or any part of the assets of the business trust or the assets of any series, or the dissolution of the business trust, or may provide for the taking of any action to create a class, group or series of beneficial interests that was not previously outstanding, in any case without the vote or approval of any particular trustee or beneficial owner, or class, group or series of trustees or beneficial owners;

(4) may grant or deny to all or certain trustees or beneficial owners, or a specified class, group or series of trustees or beneficial owners, the right to vote, separately or with any or all other classes, groups, or series of the trustees or beneficial owners, on any matter, such voting being on a per capita, number, financial interest, class, group, series or any other basis;

(5) may, to the extent that voting rights are granted in the governing instrument, establish provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on, waiver of any such notice, action by consent without a meeting, the establishment of record dates, quorum requirements, voting in person, by proxy or in any other manner, or any other matter with respect to the exercise of any such right to vote;

(6) may provide for the present or future creation of more than one business trust, including the creation of a future business trust to which all or any part of the assets, liabilities, profits or losses of any existing business trust will be transferred, and for the conversion of beneficial interests in an existing business trust, or series thereof into beneficial interests in the separate business trust or series thereof; and

(7) may provide for the appointment, election or engagement, either as agents or independent contractors of the business trust or as delegates of the trustees, as officers, employees, managers or other persons who may manage the business and affairs of the business trust and may have such titles and such relative rights, powers and duties as the governing instrument shall provide. Except to the extent otherwise provided in the

governing instrument of a business trust, the trustees shall choose and supervise such officers, managers, employees and other persons.

c. To the extent that, at law or in equity, a trustee has duties (including fiduciary duties) and liabilities relating thereto to a business trust or to a beneficial owner:

(1) any such trustee acting under a governing instrument shall not be liable to the business trust or to any such beneficial owner for the trustee's good faith reliance on the provisions of such governing instrument; and

(2) the trustee's duties and liabilities may be expanded or restricted by provisions in a governing instrument.

d. To the extent that, at law or in equity, an officer, employee, manager or other person designated pursuant to paragraph seven of subdivision b of this section has duties (including fiduciary duties) and liabilities relating thereto to a business trust, a beneficial owner or a trustee:

(1) any such officer, employee, manager or other person acting under a governing instrument shall not be liable to the business trust, any beneficial owner or any trustee for such person's good faith reliance on the provisions of such governing instrument; and

(2) the duties and liabilities of an officer, employee, manager or other person acting pursuant to paragraph seven of subdivision b of this section may be expanded or restricted by provisions in a governing instrument.

S 207. Trustee in state. a. Every domestic business trust shall at all times have at least one trustee who, in the case of a natural person, shall be a resident of this state or which, in all other cases, has its principal place of business in this state.

b. Notwithstanding the provisions of subdivision a of this section, no business trust which is, becomes or will become prior to or within one hundred eighty days following the first issuance of beneficial interests, a registered investment company under the Investment Company Act of 1940, as amended, shall be required to have a trustee who is a resident of this state or have a principal place of business in this state as long as such business trust shall have and maintain in this state:

(1) a registered office, which need not be a place of business in this state; and

(2) a registered agent for service of process on the business trust, who may be either an individual resident in this state whose business office is identical with such business trust's registered office, a domestic corporation, or a foreign corporation authorized to transact business in this state, having a business office identical with such registered office.

c. Any business trust adopting or maintaining a registered office and registered agent in this state under subdivision b of this section may, upon adoption of such registered office and registered agent, change the location of its registered office in this state to any other place in the state, or may change the registered agent to any other person or entity by filing an amendment to its certificate of business trust in accordance with the applicable provisions of this article. If a business trust which is an investment company registered as aforesaid maintains a registered office and registered agent in this state under subdivision b of this section, then the reference in paragraph three of subdivision a of section two hundred twelve of this article to the "name and address of at least one trustee that meets the requirements of this section" shall be deemed a reference to the name and the business address of the

registered agent and registered office maintained under this section, and the certificate of business trust filed under section two hundred twelve of this article shall reflect such information in lieu of the information otherwise required by paragraph three of subdivision a of section two hundred twelve of this article.

d. Service of process upon a registered agent maintained by a business trust pursuant to subdivision b of this section shall be effective as if served upon one of the trustees of the business trust pursuant to section two hundred four of this article.

S 208. Existence of business trust. a. Except as otherwise provided in the governing instrument of a business trust, the business trust shall have perpetual existence.

b. Except as otherwise provided in the governing instrument of a business trust, the death, incapacity, dissolution, termination or bankruptcy of a beneficial owner shall not result in the termination or dissolution of a business trust.

S 209. Applicability of trust law. Except as otherwise provided in the governing instrument of a business trust or in this chapter, the laws of the state pertaining to trusts including the common law of business trusts are applicable to business trusts organized under this chapter; provided, however, that for purposes of taxation a business trust shall be classified as a corporation, an association, a partnership, a trust or otherwise, as shall be determined under the United States Internal Revenue Code of 1986, as amended, or under any successor provision.

S 210. Business trust name. The name of each business trust as set forth in its certificate of business trust and the name of each foreign business trust as set forth in its application for authority:

a. shall contain without abbreviation the words "Business Trust" or the abbreviation "B.T." or "BT";

b. shall be such as to distinguish it from the name of (1) any other domestic business trust as defined in subdivision b of section one hundred two of this chapter, (2) any foreign business trust authorized to do business as a foreign business trust in this state, or (3) a fictitious name of a foreign business trust authorized to do business as a foreign business trust in this state appearing on an application filed pursuant to section five hundred four of this chapter;

c. shall, unless the business trust or foreign business trust shall have complied with the provisions of section one hundred thirty of the general business law, be the name used by the business trust in its conduct of business;

d. shall not contain any word or phrase, or any abbreviation or derivative thereof, the use of which is prohibited or restricted by any other statute of this state, unless in the latter case the restrictions have been complied with;

e. shall not contain the following words, phrases or any abbreviation or derivative thereof:

| | | |
|---|---|---|
| board of trade | state police | urban development |
| chamber of commerce | state trooper | urban relocation |
| community renewal | tenant relocation | corporation |
| incorporated | partnership | limited liability company; |

f. shall not contain the following words, or any abbreviation or derivative thereof:

| | | |
|---|---|---|
| acceptance | doctor | lawyer |
| annuity | endowment | loan |

| | | |
|---|---|---|
| assurance | fidelity | mortgage |
| attorney | finance | savings |
| bank | guaranty | surety |
| benefit | indemnity | title |
| bond | insurance | underwriter |
| casualty | investment | |

unless the approval of the superintendent of banks or the superintendent of insurance, as appropriate, is attached to the certificate of business trust, application for authority or amendment thereof; or unless the word "doctor" or "lawyer" or an abbreviation or derivative thereof is used in a context which clearly denotes a purpose other than the practice of law or medicine;

g. shall not, unless the approval of the office of temporary and disability assistance or office of children and family services is attached to the certificate of business trust or application for authority or amendment thereof, contain the words "blind" or "handicapped" or the phrase "physically or mentally challenged". Such approval shall be granted by the office of temporary and disability assistance or office of children and family services if in its opinion the words "blind" or "handicapped" or "physically or mentally challenged" as used in the proposed name will not tend to mislead or confuse the public into believing that the business trust or foreign business trust is organized for charitable or nonprofit purposes related to the blind or the handicapped;

h. shall not, unless the approval of the attorney general is attached to the certificate of business trust or application for authority, contain the word "exchange" or any abbreviation or derivative thereof. Such approval shall not be granted by the attorney general if in his or her opinion the use of the word "exchange" in the business trust's proposed name would falsely imply that the business trust conducts its business at a place where trade is carried on in securities or commodities by brokers, dealers or merchants; and

i. shall not contain any word or phrase, or any abbreviation or derivative thereof, the use of which is prohibited or restricted by any other statute of this state, unless in the latter case the restrictions have been complied with.

S 211. Reservation of business trust name. a. Subject to the provisions of section two hundred ten of this article, the exclusive right to the use of a name may be reserved by:

(1) any person intending to organize or cause the organization of a business trust under this chapter;

(2) any domestic business trust or any foreign business trust authorized to do business in this state intending to change its name;

(3) any foreign business trust intending to apply for authority to do business in this state and to adopt that name; and

(4) any person intending to organize a foreign business trust and intending to have it apply for authority to do business in this state.

b. A fictitious name for use pursuant to section five hundred four of this chapter may be reserved by:

(1) any foreign business trust intending to apply for authority to do business in this state pursuant to subdivision a of section five hundred four of this chapter;

(2) any authorized foreign business trust intending to change the fictitious name under which it does business in this state; and

(3) any authorized foreign business trust that has changed its name in its jurisdiction of organization, such new name not being available in this state.

c. Application to reserve a business trust name shall be delivered to the department of state. It shall set forth the name and address of the applicant, the name to be reserved, and a statement of the basis for the application under subdivision a or b of this section. The secretary of state may require that there be included in the application a statement as to the nature of the business to be conducted by the business trust, it being sufficient to state either alone or with any other purposes, that the business trust intends to conduct any lawful act or activity for which business trusts may be formed under this chapter, provided that it also shall state that it is not intended to be formed to engage in any act or activity requiring the consent or approval of any state official, department, board or agency or other body without such consent or approval first being obtained. If the name is available for use by the applicant for a business trust, the department of state shall reserve the name for the use of the applicant for a period of sixty days and issue a certificate of reservation. The restrictions and qualifications set forth in section two hundred ten of this article shall not be waived by the issuance of a certificate of reservation. The certificate of reservation shall include the name of the applicant, the name reserved and the date of reservation. The certificate of reservation, or in lieu thereof an affidavit by the applicant or by his or her agent or attorney that the certificate of reservation has been lost or destroyed, shall accompany the certificate of business trust or the application for authority when either is delivered to the department of state.

d. The department of state may extend the reservation for additional periods of not more than sixty days each, upon the written request of the applicant or his or her attorney in fact or agent delivered to the department of state and filed before expiration of the reservation period then in effect. Such request shall have attached to it the certificate of reservation of name. No more than two such extensions shall be granted.

e. Upon request of the applicant delivered to the department of state before the expiration of the reservation period, the department shall cancel the reservation.

S 212. Certificate of business trust. a. In order to form a business trust, a certificate of business trust shall be executed in accordance with section two hundred sixteen of this article. The certificate, entitled "Certificate of business trust of ... (name of business trust) under section two hundred twelve of the Business Trust Law," shall be delivered to the department of state in accordance with section two hundred seventeen of this article and shall set forth:

(1) the name of the business trust;

(2) if the business trust is to have a registered agent, the name and address of such registered agent within this state and a statement that the registered agent is to be the agent of the business trust upon whom process against it may be served;

(3) the name and address of at least one trustee that meets the requirements of section two hundred seven of this article and if different the address of the principal place of business of the business trust;

(4) the designation of the secretary of state as agent of the business trust upon whom process against it may be served and the post office

address within or without this state to which the secretary of state shall mail a copy of any process against the business trust served upon him or her;

(5) the latest date upon which the business trust is to dissolve or that its existence is perpetual;

(6) if all or specified classes of beneficial owners are to be liable in their capacity as beneficial owners for all or specified debts, obligations or liabilities of the business trust as authorized pursuant to section two hundred two of this article, a statement that all or specified beneficial owners are so liable for such debts, obligations or liabilities in their capacity as beneficial owners of the business trust as authorized pursuant to section two hundred two of this article; and

(7) any other provisions, not inconsistent with law, that the trustees determine to include therein including, but not limited to, the business purpose for which the business trust is formed.

b. A business trust is formed at the time of the filing of the initial certificate of business trust with the department of state or at any later time not to exceed sixty days from the date of filing specified in the certificate of business trust. The filing of the certificate shall, in the absence of actual fraud, be conclusive evidence of the formation of the business trust as of the time of filing or the effective date if later, except in an action or special proceeding brought by the attorney general.

c. Within one hundred twenty days after the effectiveness of the initial certificate of business trust, a copy of the same or a notice containing the substance thereof shall be published once in each week for six successive weeks, in two newspapers of the county in which the principal place of business of the business trust is located, to be designated by the county clerk, one of which newspapers shall be a newspaper published in the city or town in which the principal place of business is intended to be located, if a newspaper be published therein, or, if no newspaper is published therein, in the newspaper nearest thereto, and proof of such publication by the affidavit of the printer or publisher of each of such newspapers must be filed with the department of state. The notice shall include: (1) the name of the business trust; (2) the date of filing of the certificate of business trust with the department of state; (3) the county within this state, in which the principal place of business in this state of the business trust is to be located; (4) a statement that the secretary of state has been designated as agent of the business trust upon whom process against it may be served and the post office address within or without this state to which the secretary of state shall mail a copy of any process against it served upon him or her; (5) if the business trust is to have a registered agent, his or her name and address within this state and a statement that the registered agent is to be agent of the business trust upon whom process against it may be served; (6) the name and address of at least one trustee that meets the requirements of section two hundred seven of this article and if different the address of the principal place of business of the business trust; (7) the latest date upon which the business trust is to dissolve or that its existence is perpetual; and (8) the character or purpose of the business of such business trust. Failure to cause such notice to be published or to file such proof within one hundred twenty days of the effective date of the initial certificate of business trust shall prohibit the business trust from maintaining any action or special proceeding in this state unless and until such business trust cause such notice to be published and files such proof of

publication. The failure of a business trust to cause such notice to be published or to file proof of publication shall not impair the validity of any contract or act of the business trust or the right of the business trust or the right of any other party to the contract to maintain any action or special proceeding thereon, and shall not prevent the business trust from defending any action or special proceeding in this state.

S 213. Amendment of the certificate of business trust. a. A certificate of business trust is amended by delivery to the department of state of a certificate of amendment thereto entitled "Certificate of amendment of the certificate of business trust of... (name of business trust) under section two hundred thirteen of the Business Trust Law," and executed in accordance with section two hundred sixteen of this article.

b. The certificate of amendment may set forth only such provisions as are included in the initial certificate of business trust on file at the time of making such amendment.

c. The certificate of amendment shall set forth:

(1) the name of the business trust and, if it has been changed, the name under which it was formed;

(2) the date of filing of its certificate of business trust; and

(3) each amendment effected thereby, setting forth the subject matter of each provision of the certificate of business trust that is to be amended or eliminated and the full text of the provision or provisions, if any, which are to be substituted or added.

d. A trustee, who becomes aware that any statement in a certificate of business trust was false in any material respect when made or that a matter described has changed making the certificate inaccurate in any material respect, shall amend the certificate within seventy-five days of becoming aware of such fact.

e. A certificate of business trust may be amended at any time for any other proper purpose which the trustees may determine.

f. A certificate of amendment shall be effective at the time of its filing with the department of state.

S 214. Cancellation of certificate of business trust. a. Within ninety days following the dissolution and the commencement of winding up of a business trust, or at any time there are no trustees a certificate of cancellation shall be filed with the department of state entitled, "Certificate of cancellation of... (name of business trust) under section two hundred fourteen of the Business Trust Law," and executed in accordance with section two hundred sixteen of this article. The certificate of cancellation shall set forth:

(1) the name of the business trust, and if it has been changed the name under which it was formed;

(2) the date of filing of its certificate of business trust and each subsequent amendment thereto;

(3) the event giving rise to the filing of the certificate of cancellation; and

(4) any other information the trustees determine to include therein.

b. The cancellation of the certificate of business trust shall be effective at the time of the filing of the certificate of cancellation.

c. The cancellation of the certificate of business trust shall not affect the liability of the trustees or the beneficial owners during the period of winding up and termination of the business trust.

S 215. Restated certificate of trust. a. A business trust may restate in a single certificate the text of its certificate of trust, without

making any amendment thereby. Alternatively, a business trust may restate in a single certificate the text of its certificate of trust and as amended thereby to effect any one or more of the amendments authorized by this chapter.

b. The restated certificate of trust shall be executed by at least one of the trustees in accordance with section two hundred sixteen of this article.

c. The restated certificate shall be delivered to the department of state in accordance with section two hundred seventeen of this article and shall set forth:

(1) the name of the business trust and, if it has been changed, the name under which it was formed;

(2) the date of filing of its certificate of trust;

(3) if the restated certificate restates the text of the certificate of trust without making any amendments, then a statement that the text of the certificate of trust is thereby restated without amendment to read as therein set forth in full; and

(4) if the restated certificate restates the text of the certificate of trust and is amended thereby, then a statement that the certificate of trust is amended to effect one or more of the amendments authorized by this chapter, specifying each such amendment and that the text of the certificate of trust is thereby restated as amended to read as therein set forth in full.

d. Any amendments affected by the restatement of the certificate of trust shall be subject to the provisions of this chapter which would apply if a separate certificate of amendment were filed to effect such amendment.

S 216. Execution of certificates. a. Each certificate required by this chapter to be delivered to the department of state shall be executed in the following manner:

(1) a certificate of business trust shall be signed by all of the trustees of the business trust;

(2) a restated certificate of business trust or amended and restated certificate of business trust shall be signed by at least one of the trustees of the business trust;

(3) a certificate of cancellation shall be signed by all of the trustees or as otherwise provided in the governing instrument of the business trust;

(4) if a business trust is filing a certificate of merger or consolidation, the certificate of merger or consolidation shall be signed by all of the trustees or as otherwise provided in the governing instrument of the business trust, or if the certificate of merger or consolidation is being filed by another business entity, the certificate of merger or consolidation shall be signed by a person authorized to execute such instrument on behalf of such other business entity; and

(5) all other certificates shall be signed by at least one trustee of the business trust.

b. Any trustee may sign a certificate by an attorney in fact. Powers of attorney relating to the signing of a certificate as an attorney in fact need not be delivered to the department of state nor provided as evidence of authority by the person filing, but shall be retained in the records of the business trust.

c. Each certificate shall be signed and verified, or affirmed under penalties of perjury.

d. Each certificate must be dated, and the name and capacity of each signer shall be stated beneath or opposite his or her signature.

S 217. Delivery to the department of state. Every signed certificate of business trust, a restated certificate of business trust and any signed certificate of amendment or other certificates filed pursuant to this article, and any judicial decree of amendment or cancellation shall be delivered to the department of state. If the certificate delivered to the department of state for filing complies as to form with the requirements of law and the filing fee, if any, required by any statute in connection therewith has been paid, the certificate shall be filed and indexed by the department of state. The department of state shall not review such certificates for legal sufficiency, but shall limit its review to the requirements set forth in this section.

S 218. Execution, amendment or cancellation by judicial act. If a person required by section two hundred twelve, two hundred thirteen or two hundred fourteen of this article to execute a certificate of business trust, a restated certificate of business trust, or an amendment or cancellation thereof fails or refuses to do so, any beneficial owner and any permitted assignee of a beneficial owner, who is adversely affected by the failure or refusal, may petition the supreme court in the judicial district in which the office of the business trust is located to direct the execution of such certificate. If the court finds that such certificate should be executed and that such person has failed or refused to execute such certificate, it shall order such person to file the appropriate certificate.

## ARTICLE 3
## MERGER AND CONSOLIDATION

Section 301. Definitions.
302. Merger and consolidation.
303. Procedures for merger or consolidation.
304. Certificate of merger or consolidation; contents.
305. Effect of merger or consolidation.

S 301. Definitions. As used in this article:

a. "Consolidation" shall mean a procedure by which a business trust and one or more other business trusts or other business entities consolidate into a single business trust or other business entity that shall be a new business trust or other business entity to be formed pursuant to the consolidation.

b. "Merger" shall mean a procedure by which a business trust and one or more other business trusts or other business entities merge into a single business trust or the business entity that shall be one of the constituent business trusts or other business entities.

S 302. Merger and consolidation. Pursuant to an agreement of merger or consolidation, and to the extent not expressly prohibited by law, a domestic business trust may merge or consolidate with or into one or more business trusts or other business entities formed or organized or existing under the laws of this state, any other state, the United States or any foreign country or other foreign jurisdiction, with such domestic business trust or other business entity as the agreement shall provide being the surviving or resulting entity.

S 303. Procedures for merger or consolidation. a. The rights or securities of, or interests in a business trust or other business entity that is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interest in the surviving or resulting business trust or other business entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interest

in, a business trust or other business entity that is not the surviving or resulting business trust or other business entity in the merger or consolidation.

b. Every business trust or other business entity shall adopt an agreement of merger or consolidation, setting forth the terms and conditions of the conversion of the beneficial interests of the beneficial owners of the business trust into interests in the surviving or resulting business trust or other business entity or the cash or other consideration to be paid or delivered in exchange for beneficial interests in each business trust, or a combination thereof.

c. The agreement of merger or consolidation shall be approved on behalf of each domestic business trust (1) by such beneficial owners and trustees as shall be required by the governing instrument of the business trust, which shall not be less than beneficial owners owning a majority of the beneficial interests in the business trust, or (2) if no provision is made, by all of the beneficial owners and all of the trustees.

d. Notwithstanding an authorization by the relevant number of beneficial owners and trustees, the agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment, if any, contained in the agreement of merger or consolidation.

S 304. Certificate of merger or consolidation; contents. After approval of the agreement of merger or consolidation by each business trust or other business entity merging or consolidating under this article, unless the merger or consolidation is terminated pursuant to subdivision d of section three hundred three of this article, a certificate of merger or consolidation, entitled "Certificate of merger (or consolidation) of ... and ... into ... (names of business trusts or other business entities)", shall be signed and verified or affirmed under penalties of perjury on behalf of each business trust and other business entity and delivered to the department of state. The certificate of merger or consolidation shall set forth:

a. the name and jurisdiction of formation or organization of each of the business trusts or other business entities which is to merge or consolidate;

b. for each domestic business trust that is to merge or consolidate, the date when its initial certificate of business trust was filed by the department of state pursuant to this chapter, and, as to each foreign business trust or other foreign business entity which is to merge or consolidate, the jurisdiction and date of its formation and the date when its application for authority to do business in this state was filed by the department of state, and its fictitious name used within this state pursuant to section two hundred ten of this chapter, if applicable, or if no such application has been filed, a statement to such effect;

c. that an agreement of merger or consolidation has been approved and executed by each of the business trusts or other business entities which is to merge or consolidate;

d. the name of the surviving or resulting business trust or other business entity;

e. the future effective date or time, which shall be a date or time certain, of the merger or consolidation in accordance with the agreement of merger or consolidation, if it is not to be effective upon the filing of the certificate of merger or consolidation;

f. if a domestic business trust is the surviving business trust, such changes in its certificate of business trust as shall be necessary by reason of the merger;

g. if a domestic business trust is the resulting business trust in a consolidation, the matters required to be set forth under section two hundred twelve of this chapter;

h. if the surviving or resulting entity is not a domestic business trust, an agreement that such surviving or resulting entity may be served with process in this state in any action or special proceeding for the enforcement of any liability or obligation of any domestic business trust previously amenable to suit in this state that is to merge or consolidate, and for the enforcement as provided in this chapter of the right of beneficial owners of any domestic business trust to receive payment for their interests against the surviving or resulting entity;

i. a designation of the secretary of state as the agent for the surviving or resulting entity upon whom process against it may be served in the manner set forth in section two hundred four of this chapter in any action or special proceeding, and a post office address, within or without this state, to which the secretary of state shall mail a copy of any process served upon him or her. Such post office address shall supersede any prior address designated as the address to which process shall be mailed;

j. that the agreement of merger or consolidation is on file at a place of business of the surviving or resulting entity, and shall state the address thereof; and

k. that a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting entity, on request and without cost, to any beneficial owner or trustee of any domestic business trust or any person holding an interest in any other business entity that is to merge or consolidate.

S 305. Effect of merger or consolidation. a. Upon the effective date of any merger or consolidation pursuant to this chapter, for all purposes of the laws of this state, all of the rights, privileges, immunities, powers and purposes of each of the business trusts and other business entities that have merged or consolidated, and all property, real, personal and mixed, tangible and intangible, and all debts, obligations, liabilities, penalties and duties of such business trusts and other business entities, as well as all other things belonging to each of such business trusts and other business entities, shall be vested in the surviving or resulting business trust or other business entity, and shall thereafter be the property of the surviving or resulting business trust or other business entity as they were of each of the business trusts and other business entities that have merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of this state, in any such business trusts and other business entities shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of any such business trusts and other business entities shall be preserved unimpaired, and all debts, obligations, liabilities, penalties and duties of each of such business trusts and other business entities that have merged or consolidated shall thenceforth attach to the surviving or resulting business trust or other business entity and may be enforced against it to the same extent as if such debts, obligations, liabilities and duties have been incurred or contracted by it.

b. Upon the effective date of any merger or consolidation, no action, suit or proceeding, civil or criminal, then pending by or against any

constituent business trust or other business entity in its common name shall abate or be discontinued by reason of such merger or consolidation, but may be prosecuted by or may proceed against such surviving or resulting business trust or other business entity.

c. Unless otherwise agreed by the entities participating in the merger, a merger or consolidation of a domestic business trust, including a domestic business trust that is not the surviving or resulting entity in the merger or consolidation, shall not require such domestic business trust to wind up its affairs under section four hundred one of this chapter.

d. A certificate of merger or consolidation shall act as a certificate of cancellation for a business trust that is not the surviving or resulting entity in the merger or consolidation.

e. Notwithstanding any provision of the governing instrument of a business trust, a governing instrument of a business trust containing a specific reference to this subdivision may provide that an agreement of merger or consolidation approved in accordance with subdivision a of this section may:

(1) effect any amendment to the governing instrument of the business trust, or

(2) effect the adoption of a new governing instrument of the business trust if it is the surviving or resulting business trust in the merger or consolidation. Any amendment to the governing instrument of a business trust or adoption of a new governing instrument of the business trust made pursuant to this paragraph shall be effective upon the effective date of the merger or consolidation. The provisions of this section shall not be construed to limit the accomplishment of a merger or consolidation or of any of the matters referred to in this subdivision by any other means provided for in the governing instrument of a business trust or other agreement or as otherwise permitted by law, including that the governing instrument of any constituent business trust to the merger or consolidation shall be the governing instrument of the surviving or resulting domestic business trust.

## ARTICLE 4
## DISSOLUTION

Section 401. Dissolution.
402. Judicial dissolution.
403. Winding up.
404. Distribution of assets.
405. Winding up of a series.

S 401. Dissolution. A business trust shall be dissolved and its affairs shall be wound up upon the happening of the occurrence of the first of the following:

a. at the time, if any, provided in the certificate of business trust;

b. at the time or upon the happening of events specified in the governing instrument of the business trust;

c. unless otherwise specified in the governing instrument of the business trust, upon the consent of a majority of the beneficial owners; or

d. pursuant to a decree of judicial dissolution pursuant to section four hundred two of this article.

Upon the winding up of a business trust pursuant to this section, a certificate of cancellation of the business trust shall be filed by applicant pursuant to section two hundred fourteen of this chapter.

S 402. Judicial dissolution. On application by a majority of the beneficial owners or a trustee, the supreme court in the judicial district in which:

a. the principal place of business of the business trust; or

b. the address of the trustee, as designated in the certificate of business trust, is located, may decree dissolution of a business trust whenever it is not reasonably practicable to carry on the business in conformity with the governing instrument of the business trust. A certified copy of the order of dissolution shall be filed by the applicant with the department of state within thirty days of its issuance. A certificate of cancellation of the business trust shall be filed by the applicant pursuant to section two hundred fourteen of this chapter.

S 403. Winding up. a. In the event of a dissolution of a business trust, except for a dissolution pursuant to section four hundred two of this article, unless otherwise provided in the governing instrument of the business trust, the beneficial owners may wind up the affairs of the business trust. Upon cause shown, the supreme court in the judicial district in which the office of the business trust is located may wind up the affairs of the business trust upon application of any trustee or of the majority of beneficial owners, their legal representatives or assignees, and in connection therewith may appoint a receiver or liquidating trustee.

b. Upon dissolution of a business trust, the persons winding up the affairs of the business trust may, in the name of and for and on behalf of the business trust, prosecute and defend suits, whether civil, criminal or administrative, settle and close the business of the business trust, dispose of and convey the property of the business trust, discharge the liabilities of the business trust, and distribute to the beneficial owners any remaining assets of the business trust, all without affecting the liability of beneficial owners participating in the winding up of the business trust's affairs.

S 404. Distribution of assets. Upon the winding up of a business trust, the assets shall be distributed as follows:

a. to creditors of the business trust, including beneficial owners who are creditors, to the extent permitted by law, in satisfaction of liabilities of the business trust whether by payment or by establishment of adequate reserves; and

b. except as provided in the governing instrument of the business trust, to beneficial owners, first for the return of their contributions, if any, and secondly respecting their beneficial interests in the business trust as set forth in section two hundred five of this chapter.

S 405. Winding up of a series. Except to the extent otherwise provided in the governing instrument of the business trust, a series established in accordance with section two hundred six of this chapter may be dissolved and its affairs wound up without causing the dissolution of the business trust or any other series thereof. Unless otherwise provided in the governing instrument of the business trust, the dissolution, winding up, liquidation or termination of the business trust or any series thereof shall not affect the limitation of liability with respect to a series established in accordance with section two hundred six of this chapter. A series established in accordance with section two hundred six of this chapter is dissolved and its affairs shall be wound up at the time or upon the happening of events specified in the governing instrument of the business trust. Except to the extent otherwise provided in the governing instrument of a business trust, the death,

incapacity, dissolution, termination or bankruptcy of a beneficial owner of such series shall not result in the termination or dissolution of such series and such series may not be terminated or revoked by a beneficial owner of such series or other person except in accordance with the terms of the governing instrument of the business trust.

ARTICLE 5
MISCELLANEOUS

Section 501. Derivative actions.
502. Indemnification.
503. Fees.
504. Application for authority for a foreign business trust; contents.
505. Amendments to application for authority.
506. Application for authority; effect.
507. Surrender of certificate of authority.
508. Termination of existence.
509. Doing business without certificate of authority.
510. Violations.

S 501. Derivative actions. a. A beneficial owner may bring a derivative action in the right of a business trust to recover a judgment in its favor if the trustees with authority to do so have refused to bring the action or if an effort to cause those trustees to bring the action is not likely to succeed.

b. In any such action, the plaintiff shall be a beneficial owner at the time of bringing the action and shall have been a beneficial owner at the time of the transaction of which the plaintiff complains or the plaintiff's status as a beneficial owner or interest shall have devolved upon plaintiff by operation of law or pursuant to the terms of the governing instrument of the business trust from a person who was a beneficial owner at the time of the transaction.

c. In any such action, the complaint shall set forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by the trustees, or the reasons for not making such effort.

d. If a derivative action is successful, in whole or in part, or if anything is received by a business trust as a result of a judgment, compromise or settlement of such action, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees. If anything is so received by the plaintiff, the court shall make such award of plaintiff's expenses payable out of those proceeds and direct plaintiff to remit to the business trust the remainder thereof, and if those proceeds are insufficient to reimburse plaintiff's reasonable expenses, the court may direct that any such award of plaintiff's expenses or a portion thereof be paid by the business trust.

e. A beneficial owner's right to bring a derivative action may be subject to such additional standards and restrictions, if any, as are set forth in the governing instrument of the business trust including, without limitation, the requirement that beneficial owners owning a specified minimum beneficial interest in the business trust join in the bringing of the derivative action.

S 502. Indemnification. a. Subject to such standards and restrictions, if any, as are set forth in the governing instrument of a business trust, a business trust shall have the power to indemnify and hold harmless any trustee or beneficial owner or other person from and against any and all claims and demands whatsoever.

b. The absence of a provision for indemnity in the governing instrument of a business trust shall not be construed to deprive any trustee or beneficial owner or other person of any right to indemnity which is otherwise available to such person under the laws of this state or otherwise.

S 503. Fees. Except as otherwise provided, the department of state shall collect the following fees pursuant to this chapter:

a. For the reservation of a business trust name pursuant to section two hundred eleven of this chapter, twenty dollars.

b. For filing a certificate of business trust pursuant to section two hundred twelve of this chapter, two hundred dollars.

c. For filing a certificate of amendment to the certificate of business trust pursuant to section two hundred thirteen of this chapter to change the location of the registered office or to change the registered agent, thirty dollars.

d. For filing a certificate of amendment to the certificate of business trust pursuant to section two hundred thirteen of this chapter, other than a change of or change of location of the registered office of a registered agent, sixty dollars.

e. For filing a certificate of cancellation pursuant to section two hundred fourteen of this chapter, sixty dollars.

f. For filing a restated certificate of business trust pursuant to section two hundred fifteen of this chapter, two hundred dollars.

g. For filing a certificate of cancellation in accordance with a judicial order pursuant to section two hundred eighteen of this chapter, sixty dollars.

h. For filing a certificate of merger or consolidation pursuant to section three hundred four of this chapter, sixty dollars.

i. For filing an application for authority pursuant to section five hundred four of this article, two hundred dollars.

j. For filing an amendment to an application for authority pursuant to section five hundred five of this article to change the registered agent or the post office address or location of the registered agent, twenty dollars.

k. For filing an amendment to an application for authority pursuant to section five hundred six of this article, other than a change of, or change of address or location of a registered agent, sixty dollars.

l. For filing a certificate of surrender of authority pursuant to section five hundred seven of this article, sixty dollars.

m. For filing a certificate of termination of existence pursuant to section five hundred eight of this article, sixty dollars.

n. For accepting service of process on behalf of a business trust, forty dollars.

o. For filing an affidavit of publication pursuant to section two hundred twelve or five hundred four of this chapter, twenty-five dollars.

S 504. Application for authority for a foreign business trust; contents. a. Before doing business in this state, a foreign business trust shall apply for authority to do business in this state by submitting to the department of state (1) a certificate of existence or, if no such certificate is issued by the jurisdiction of organization, a certified copy of the certificate of business trust and all subsequent amendments thereto or, if no certificate of business trust has been filed, a certified copy of the instrument filed as its organizational basis and all amendments thereof (if such certificate or instrument is in a foreign language, a translation thereof under oath of the translator

shall be attached thereto) and (2) an application for authority as a foreign business trust entitled "Application for authority of ... (name of business trust) under S 504 of the Business Trust Law," signed and verified or affirmed under penalties of perjury by a trustee and setting forth:

(A) the name of the foreign business trust and, if a foreign business trust's name is not acceptable for authorization pursuant to section two hundred ten of this chapter, the fictitious name under which it proposes to apply for authority to do business in this state, which name shall be in compliance with section two hundred ten of this chapter and shall be used by the foreign business trust in all its dealings with the department of state and in the conduct of its business in this state. A filing under section one hundred thirty of the general business law shall not constitute the adoption of a fictitious name;

(B) the jurisdiction and date of its organization;

(C) a designation of the secretary of state as its agent upon whom process against it may be served and post office address within this state to which the secretary of state shall mail a copy of any process against it served upon him or her;

(D) if it is to have a registered agent, the name and address within the state of the registered agent and a statement that the registered agent is to be its agent upon whom process may be served;

(E) the address of the office required to be maintained in the jurisdiction of its organization by the laws of that jurisdiction or, if not so required, of the principal office of the foreign business trust;

(F) the name and business address of at least one trustee;

(G) a statement that the foreign business trust is in existence in the jurisdiction of its organization at the time of the filing of such application; and

(H) the name and business address of the authorized officer in its jurisdiction of its organization where a copy of its certificate of business trust is filed and, if no public filing of its certificate of business trust is required by the law of its jurisdiction of organization, a statement that the business trust shall provide, on request, a copy thereof with all amendments thereto (if such documents are in a foreign language, a translation in English thereof under oath of the translator shall be attached thereto), and the name and post office address of the person responsible for providing such copies.

b. Without excluding other activities which may not constitute doing business in this state, a foreign business trust shall not be considered to be doing business in this state for the purposes of this chapter, by reason of carrying on in this state any one or more of the following activities:

(1) maintaining or defending any action or proceeding, whether judicial, administrative, arbitrative or otherwise, or effecting settlement of claims or disputes;

(2) holding meetings of its trustees or beneficial owners;

(3) maintaining bank accounts; or

(4) maintaining offices or agencies only for the transfer, exchange and registration of its beneficial ownership interests, or appointing and managing depositories with relation to its beneficial ownership interests.

c. The specification in subdivision b of this section shall not establish a standard for activities which may subject a foreign business trust to service of process under this chapter or any other statute of this state.

d. Within one hundred twenty days after the filing of the application for authority with the department of state, a copy of the same or a notice containing the substance thereof shall be published once in each week for six successive weeks, in two newspapers of the county within this state in which the principal place of business of the foreign business trust is located, to be designated by the county clerk, one of which newspapers shall be a newspaper published in the city or town in which the principal place of business in this state of the foreign business trust is intended to be located, if a newspaper be published therein; or if no newspaper is published therein, in the newspaper nearest thereto, and proof of such publication by the affidavit of the printer or publisher of each of such newspapers must be filed with the department of state. The notice shall include: (1) the name of the foreign business trust and any fictitious name under which it has applied for authority to conduct business in this state; (2) the date of filing of the application for authority with the department of state; (3) the jurisdiction and date of its organization; (4) the county within this state, in which the principal place of business in this state of the foreign business trust is to be located; (5) a statement that the secretary of state has been designated as agent of the foreign business trust upon whom process against it may be served and the post office address within or without this state to which the secretary of state shall mail a copy of any process against it served upon him or her; (6) if the foreign business trust is to have a registered agent, his or her name and address within this state and a statement that the registered agent is to be the agent of the foreign business trust upon whom process against it may be served; (7) the address of the office required to be maintained in the jurisdiction of its organization by the laws of that jurisdiction or, if not so required, of the principal office of the foreign business trust; (8) the name and business address of at least one trustee; (9) the name and business address of the authorized officer in its jurisdiction of organization where a copy of its certificate of business trust is filed, or, if no public filing of its certificate of organization is required by the law of its jurisdiction of organization, a statement that the foreign business trust shall provide, on request, a copy thereof with all amendments thereto (if such documents are in foreign language, a translation in English thereof under oath of the translator shall be attached thereto), and the name and post office address of the person responsible for providing such copies; and (10) the character or purpose of the business of such foreign business trust. Failure to cause such notice to be published or to file such proof within one hundred twenty days of the filing of the application for authority shall prohibit the foreign business trust from maintaining any action or special proceeding in this state unless and until such foreign business trust causes such notice to be published and files such proof of publication. The failure of a foreign business trust to cause such notice to be published or to file proof of publication shall not impair the validity of any contract or act of the foreign business trust or the right of any other party to the contract to maintain any action or special proceeding thereon, and shall not prevent the foreign business trust from defending any action or special proceeding in this state.

S 505. Amendments to application for authority. a. A foreign business trust may amend its application for authority from time to time if the amendments contain only such provisions as might be lawfully contained in an application for authority at the time of making such amendment.

b. Every foreign business trust which has received a filing receipt evidencing authority, shall, within ninety days after the change of any of the information required to be set forth in its application for authority pursuant to section five hundred four of this article, deliver an amendment to its application to the department of state entitled "Certificate of amendment of application for authority of ... (name of business trust) under S 505 of the Business Trust Law," signed and verified or affirmed under penalties of perjury by a trustee. The certificate shall state:

(1) the name of the foreign business trust as it appears on the index of names of existing domestic and authorized foreign business trusts of any type or kind in the department of state, and the fictitious name, if any, the foreign business trust has agreed to use in this state pursuant to section five hundred four of this article;

(2) the jurisdiction of its organization;

(3) the date it was authorized to do business in this state;

(4) each amendment effected thereby; and

(5) if the true name of the foreign business trust is to be changed, a statement that the change of name has been effected under the laws of the jurisdiction of its organization and the date the change was so effected.

S 506. Application for authority; effect. a. Upon filing by the department of state of the application for authority, the foreign business trust shall be authorized to do business in this state. Such authority shall continue so long as it retains its authority to do business in the jurisdiction of its organization and its authority to do business has not been surrendered, suspended or annulled in accordance with the law.

b. A foreign business trust which has received a certificate of authority shall have such powers to conduct business in this state as are permitted by the laws of the jurisdiction in which it was organized, but not greater than those of a domestic business trust; provided, that this subdivision shall not affect the powers of the foreign business trust outside this state.

S 507. Surrender of certificate of authority. a. A foreign business trust may surrender its certificate of authority by delivering to the department of state a certificate entitled, "Certificate of surrender of authority of ... (name of business trust)" signed and verified or affirmed under penalties of perjury by a trustee, receiver or other person authorized by law to wind up such business trust. The authority of the foreign business trust to do business in this state shall terminate on the filing by the department of state of the certificate of surrender of authority. A surrender shall not terminate the authority of the secretary of state to accept service of process on the foreign business trust with respect to causes of action arising out of doing business in this state.

b. The certificate of surrender of authority shall state:

(1) the name of the foreign business trust as it appears on the index of names of existing domestic and authorized foreign business trusts of any type or kind in the department of state, and the fictitious name, if any, the foreign business trust has agreed to use in this state pursuant to section five hundred four of this article;

(2) the jurisdiction where it was organized;

(3) the date on which its certificate of authority to do business in this state was filed by the department of state;

(4) that it surrenders its authority to do business in this state;

(5) that it revokes the authority of its registered agent, if any, previously designated, and that it consents that process against it in any action or special proceeding based upon any liability or obligation incurred by it within this state before the filing of the certificate of surrender may be served on the secretary of state in the manner set forth in section two hundred four of this chapter; and

(6) a post office address within or without this state to which the secretary of state shall mail a copy of any process against it served upon him or her. The post office address may be changed by delivering to the department of state a certificate of amendment under section five hundred five of this article.

S 508. Termination of existence. When a foreign business trust which has received a certificate of authority is dissolved or its authority to conduct its business or existence is otherwise terminated or cancelled in the jurisdiction of its organization or when such foreign business trust is merged into or consolidated with another foreign business entity, (a) a certificate of the secretary of state, or official performing the equivalent function as to business trust records, in the jurisdiction of organization of such business trust attesting to the occurrence of any such event, or (b) a certified copy of an order or decree of a court of such jurisdiction directing the dissolution of such foreign business trust, the termination of its existence or the surrender of its authority, shall be delivered to the department of state. The filing of the certificate, order or decree shall have the same effect as the filing of a certificate of surrender of authority under section five hundred six of this article. The secretary of state shall continue as agent of the foreign business trust upon whom process against it may be served in the manner set forth in section two hundred four of this chapter, in any action or proceeding based upon any liability or obligation incurred by the foreign business trust within this state prior to the filing of such certificate, order or decree.

S 509. Doing business without certificate of authority. a. A foreign business trust doing business in this state without having received a certificate of authority to do business in this state shall not maintain any action, suit or special proceeding in any court of this state unless and until such foreign business trust shall have received a certificate of authority in this state and shall have filed proof of publication pursuant to section five hundred four of this article.

b. The failure of a foreign business trust doing business in this state to comply with the provisions of this chapter shall not impair the validity of any contract or act of the foreign business trust or prevent the foreign business trust from defending any action or special proceeding in any court of this state.

c. By doing business in this state without authority, a foreign business trust appoints the secretary of state as its agent for service of process with respect to causes of action arising out of doing business in this state. In any such case, process against such foreign business trust may be served upon the secretary of state in the manner set forth in section two hundred four of this chapter.

S 510. Violations. The attorney general shall, in his or her own discretion or upon the motion of proper parties, bring an action to restrain a foreign business trust without a certificate of authority from doing any business in this state in violation of this chapter, or from doing any business in this state which is prohibited under the laws of this state. The attorney general may bring an action or special proceeding to annul the authority of a foreign business trust which is

doing any business in this state which is prohibited under the laws of this state. The attorney general shall deliver a certified copy of the order of annulment to the department of state. Upon the filing thereof by the department of state, the certificate of authority of the foreign business trust to do business in this state shall be annulled, and the provisions of section five hundred nine of this article shall thereafter be applicable. The secretary of state shall continue as agent of the foreign business trust upon whom process against it may be served in any action, suit or special proceeding based upon any liability or obligation incurred by the foreign business trust within the state prior to the filing of the certified copy of the order of annulment by the department of state.

ARTICLE 6

SAVINGS CLAUSES; EFFECTIVE DATE

Section 601. Severability.
602. Common law business trusts.
603. General associations law not applicable.
604. Reserved power of state to amend or repeal chapter.
605. Construction and application of chapter and governing instrument.
606. Effective date.

S 601. Severability. The provisions of this chapter shall apply to business trusts created on or after the effective date of this chapter. If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

S 602. Common law business trusts. This chapter shall have no effect on the validity, powers, rights or liabilities of common law business trusts created before or after the effective date of this chapter or the trustees or beneficiaries thereof. Common law business trusts created before or after the effective date of this chapter may elect to be governed by the provisions of this chapter upon the filing of a certificate of business trust in accordance with section two hundred twelve of this chapter; provided, however, that a common law business trust created before the effective date of this chapter shall not be governed by the provisions of this chapter to the extent of any inconsistent provisions contained in its governing instrument not thereafter modified by amendment.

S 603. General associations law not applicable. The provisions of the general associations law shall not apply to any unincorporated association that is a business trust governed by the provisions of this chapter.

S 604. Reserved power of state to amend or repeal chapter. All provisions of this chapter may be altered from time to time or repealed and all rights of business trusts, trustees, beneficial owners and other persons are subject to this reservation.

S 605. Construction and application of chapter and governing instrument. a. The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

b. It is the policy of this chapter to give maximum effect to the principle of freedom of contract and the enforceability of governing instruments.

S 606. Effective date. This chapter shall take effect on the ninetieth day after it shall have become a law.

S 2. Subdivision 2 of section 2 of the general associations law, as amended by chapter 13 of the laws of 1938, is amended to read as follows:

2. The term "business trust" means any association operating a business under a written instrument or declaration of trust, the beneficial interest under which is divided into shares represented by certificates, BUT SHALL NOT INCLUDE A BUSINESS TRUST WHICH FILES A CERTIFICATE OF BUSINESS TRUST OR AN APPLICATION FOR AUTHORITY PURSUANT TO THE BUSINESS TRUST LAW.

S 3. This act shall take effect on the ninetieth day after it shall have become a law.