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4

As Engrossed: H3/15/23

A Bill

SENATE BILL 207

5 By: Senator B. Johnson
6 By: Representative Richmond
7

For An Act To Be Entitled

8
9 AN ACT TO MODIFY THE ARKANSAS CORPORATE FRANCHISE TAX
10 ACT OF 1979; TO CREATE THE SECRETARY OF STATE
11 BUSINESS AND COMMERCIAL SERVICES ELECTRONIC FILING
12 SYSTEM SPECIAL FUND; AND FOR OTHER PURPOSES.
13

Subtitle

14
15 TO MODIFY THE ARKANSAS CORPORATE
16 FRANCHISE TAX ACT OF 1979; AND TO CREATE
17 THE SECRETARY OF STATE BUSINESS AND
18 COMMERCIAL SERVICES ELECTRONIC FILING
19 SYSTEM SPECIAL FUND.
20
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22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code § 4-27-1622(a)(4), concerning the location of
26 a corporation's principal office for annual franchise tax reports under the
27 Arkansas Business Corporation Act of 1987, is amended to read as follows:

28 (4) the address of its principal office, as defined in § 4-27-
29 140, wherever it is located;
30

31 SECTION 2. Arkansas Code § 19-6-301, concerning the enumeration
32 of special revenues, is amended to add an additional subsection to read as
33 follows:

34 (274) Processing fees collected under § 26-54-104(b)(1).
35

36 SECTION 3. Arkansas Code Title 19, Chapter 6, Subchapter 8, is amended



1 to add an additional section to read as follows:

2 19-6-844. Secretary of State Business and Commercial Services
 3 Electronic Filing System Fund.

4 (a) There is created on the books of the Treasurer of State, the
 5 Auditor of State, and the Chief Fiscal Officer of the State a special revenue
 6 fund to be known as the "Secretary of State Business and Commercial Services
 7 Electronic Filing System Fund".

8 (b) The fund shall consist of:

9 (1) The processing fees collected under § 26-54-104(b)(1); and

10 (2) Any other revenues as may be authorized by law.

11 (c) The fund shall be used by the Secretary of State to pay for the
 12 maintenance and support of the business and commercial services electronic
 13 filing system of the Secretary of State.

14 (d) The fund may be used by the Secretary of State to issue refunds
 15 and reimbursements of processing fees collected for the annual franchise tax.

16
 17 SECTION 4. Arkansas Code § 26-54-102(a), concerning the definition of
 18 "corporation" used in the Arkansas Corporate Franchise Tax Act of 1979, is
 19 amended to read as follows:

20 (a) As used in this chapter, "corporation" means any corporation or
 21 limited liability company, domestic and foreign, active and inactive, which
 22 is organized in or qualified under the laws of the State of Arkansas and
 23 includes, but is not limited to, any person or group of persons, any
 24 association, joint-stock company, business trust, or other organizations with
 25 or without charter constituting a separate legal entity of relationship with
 26 the purpose of obtaining some corporate privilege or franchise which is not
 27 allowed to them as individuals and which is exercising, or attempting to
 28 exercise, corporate-type acts, whether or not existing by virtue of a
 29 particular statute.

30
 31 SECTION 5. Arkansas Code § 26-54-104 is amended to read as follows:
 32 26-54-104. Annual franchise tax.

33 (a) Unless exempted under § 26-54-105, every corporation shall file an
 34 annual franchise tax report and pay an annual franchise tax as follows:

35 (1)(A) Each life, fire, accident, surety, liability, steam
 36 boiler, tornado, health, or other kind of insurance company of whatever

1 nature, having an outstanding capital stock of less than five hundred
2 thousand dollars (\$500,000) shall pay three hundred dollars (\$300).

3 (B) Each company having an outstanding capital stock of
4 five hundred thousand dollars (\$500,000) or more shall pay four hundred
5 dollars (\$400);

6 (2)(A) Each legal reserve mutual insurance corporation having
7 assets of less than one hundred million dollars (\$100,000,000) shall pay
8 three hundred dollars (\$300).

9 (B) Each corporation having assets of one hundred million
10 dollars (\$100,000,000) or more shall pay four hundred dollars (\$400);

11 (3) Each mutual assessment insurance corporation shall pay three
12 hundred dollars (\$300);

13 (4)(A) Each mortgage loan corporation shall pay an amount
14 equivalent to three-tenths of one percent (0.3%) of that proportion of the
15 par value of its outstanding capital stock that its aggregate outstanding
16 loans made in Arkansas bears to the total aggregate outstanding loans made in
17 all states.

18 (B) No corporation shall pay an annual tax of less than
19 three hundred dollars (\$300);

20 (5) Each corporation, other than those in subdivisions (2)-(4)
21 of this section, without authorized capital stock shall pay three hundred
22 dollars (\$300);

23 (6)(A) Each corporation, other than those in subdivisions (1)-
24 (5) of this section, shall pay an amount equivalent to three-tenths of one
25 percent (0.3%) of that proportion of the par value of its outstanding capital
26 stock that the value of its real and personal property in Arkansas bears to
27 the total value of the real and personal property of the corporation.

28 (B) No corporation shall pay an annual tax of less than
29 one hundred fifty dollars (\$150);

30 (7) Each corporation actually and actively in the process of
31 liquidation and which does not rent or lease its property but which retains
32 its corporate charter or authority for the sole purpose of winding up its
33 affairs shall pay an annual tax as provided in subdivision (6) of this
34 section or an amount equivalent to three-tenths of one percent (0.3%) of the
35 value of its real and tangible personal property in Arkansas, whichever is
36 smaller, but in no instance shall the tax be less than one hundred fifty

1 dollars (\$150); and

2 (8) An organization formed pursuant to the Uniform Limited
3 Liability Company Act, § 4-38-101 et seq., shall pay the minimum franchise
4 tax.

5 (b)(1) In addition to the filing fees prescribed by law, the Secretary
6 of State shall collect a processing fee for each document required under this
7 chapter when delivered by electronic means.

8 (2) The processing fee collected by the Secretary of State under
9 subdivision (b)(1) of this section shall be:

10 (A) Four dollars (\$4.00) when the filing fee is fifty
11 dollars (\$50.00) or less;

12 (B) Five dollars (\$5.00) when the filing fee is between
13 fifty-one dollars (\$51.00) and one hundred sixty-seven dollars (\$167.00); and

14 (C) Three percent (3%) of the total amount of the filing
15 fee if the filing fee is more than one hundred sixty-seven dollars (\$167.00).

16

17 SECTION 6. Arkansas Code § 26-54-105(a)-(c), concerning the filing of
18 a franchise tax report under the Arkansas Corporate Franchise Act of 1979, is
19 amended to read as follows:

20 (a)(1) The Secretary of State shall furnish ~~report forms~~ notice to
21 each corporation subject to this chapter by mailing or emailing ~~them~~ the
22 notice to the corporation's current agent for service or other person
23 identified by the corporation.

24 (2) When filing the franchise tax report, a corporation may
25 state who is to receive a franchise tax form the following year if that
26 person is different from the agent for service on file for the corporation at
27 that time.

28 (b) A corporation that fails to receive ~~the report forms~~ the notice
29 under subdivision (a)(1) of this section by March 20 of the reporting year
30 shall make written request for ~~them~~ the notice to the Secretary of State on
31 or before March 31.

32 (c)(1) Each corporation subject to the requirements of this chapter
33 shall file a franchise tax report with the Secretary of State that shows the
34 condition and status of the corporation as of the close of business on the
35 last day of the corporation's preceding ~~fiscal year~~ calendar year and other
36 information required by the Secretary of State.

1 (2)(A) The franchise tax as computed on the report shall be
2 remitted with the franchise tax report.

3 (B) The franchise tax as computed on the report shall be
4 remitted with the franchise tax report on or before May 1 of the reporting
5 year for franchise tax due.

6
7 SECTION 7. Arkansas Code § 26-54-105(g) and (h), concerning the
8 requirements of a franchise tax report under the Arkansas Corporate Franchise
9 Act of 1979, is amended to read as follows:

10 (g)(1) Every franchise tax report shall contain the following
11 statement:

12 "I declare, under the penalties of perjury, that the foregoing statements are
13 true to the best of my knowledge and belief."

14 (2) The statement shall be signed by the president, vice
15 president, secretary, treasurer, or controller of the corporation or any
16 other authorized ~~person~~ individual as determined by the Secretary of State.

17 (h)(1) ~~All information contained in a franchise tax report shall be~~
18 ~~confidential and not available for public inspection, except for the~~
19 ~~following~~ Only the following information contained in a franchise tax report
20 shall be available for public inspection:

21 (A) The name and address of the corporation;

22 (B) The name of the corporation's president, vice
23 president, secretary, treasurer, and controller;

24 (C) The total authorized capital stock with par value;

25 (D) The total issued and outstanding capital stock with
26 par value; and

27 (E) The state of incorporation.

28 (2) In the case of a franchise tax report filed by an
29 organization formed under the Uniform Limited Liability Company Act, § 4-38-
30 101 et seq., the names of members, except those designated in the
31 organizations' franchise tax report as a manager, president, vice president,
32 secretary, treasurer, or controller of the organization, shall be
33 confidential and not available for public inspection unless the organization
34 has no registered agent for service of process.

35
36 SECTION 8. Arkansas Code § 26-54-107(b)(2), concerning the penalty for

1 failure to file and remit a franchise tax report under the Arkansas Corporate
2 Franchise Tax Act of 1979, is amended to read as follows:

3 (2) On or before November 1 of each year, the Secretary of State
4 shall mail notice to the corporation at its last known address stating that
5 the corporation is subject to ~~forfeiture~~ revocation of its corporate charter
6 under § 26-54-111 for the failure to pay corporate franchise tax.

7
8 SECTION 9. Arkansas Code § 26-54-111 is amended to read as follows:

9 26-54-111. Charter ~~forfeiture~~ revocation for failure to pay tax –
10 Procedure.

11 (a) On or before January 31 of each year, the Secretary of State shall
12 proclaim as ~~forfeited~~ revoked the corporate charters or authorities of all
13 corporations, both domestic and foreign, that according to the Secretary of
14 State's records are delinquent in the payment of the annual franchise tax for
15 a prior year.

16 (b)(1) A copy of the proclamation under subsection (a) of this
17 section, or applicable portion thereof, shall be furnished to each other
18 official or agency of the state that is authorized to issue corporation
19 charters or authorities.

20 (2) Upon their receipt of the proclamation, the several
21 officials shall at once correct their respective records in accordance with
22 the proclamation.

23
24 SECTION 10. Arkansas Code § 26-54-112 is amended to read as follows:

25 26-54-112. Reinstatement of corporations.

26 (a)(1)(A)(i) A corporation whose charter or permit authority to do
27 business in the state has been declared ~~forfeited~~ revoked by proclamation of
28 the Governor or the Secretary of State may be reinstated to all its rights,
29 powers, and property.

30 (ii) Reinstatement shall be retroactive to the time
31 that the corporation's authority to do business in the state was declared
32 ~~forfeited~~ revoked.

33 (B) The reinstatement shall be made after the filing of
34 all delinquent franchise tax reports satisfactory to the Secretary of State
35 and the payment of all taxes and penalties due for each year of delinquency.

36 (2) However, reinstatement is not allowed after ~~seven-(7)-~~ five

1 (5) years from the date the charter or permit authority to do business in the
2 state if the corporation was is declared;

3 (A) forfeited Revoked by proclamation of the Governor or
4 the Secretary of State; and

5 (B) A forfeited charter.

6 (b) If the Secretary of State issued the original corporate charter,
7 permit, or authority, the Secretary of State shall reinstate the corporation
8 upon payment by the corporation of all amounts due, as provided in subsection
9 (a) of this section.

10 (c)(1) If the original corporate charter, permit, or authority was
11 issued by an official other than the Secretary of State, the official shall
12 reinstate the corporation upon the corporation's filing with the official the
13 receipt of the Secretary of State showing payment of all amounts due, as
14 provided in subsection (a) of this section.

15 (2) Thereafter, the corporation shall stand in all respects as
16 though its name had never been declared ~~forfeited~~ revoked.

17
18 SECTION 11. Arkansas Code § 26-54-114 is amended to read as follows:
19 26-54-114. Nonpayment of franchise taxes – Definitions.

20 (a) A corporation or limited liability company ~~is not allowed to file~~
21 ~~any forms or documentation related to that corporation or limited liability~~
22 ~~company if the corporation or limited liability company owes owing~~ past-due
23 franchise taxes to the Secretary of State may not:

24 (1) File forms or documents related to that corporation or
25 limited liability company;

26 (2) Create a new legal entity in this state; or

27 (3) Obtain authority to do business in this state.

28 (b) A person or individual ~~is not allowed to file any initial forms or~~
29 ~~documentation with the Secretary of State to create any legal entity in the~~
30 ~~State of Arkansas or to obtain authority to do business in the State of~~
31 ~~Arkansas if that person is~~ substantially connected to any corporation or
32 limited liability company that owes past-due franchise taxes to the Secretary
33 of State may not:

34 (1) File forms or documents related to that corporation or
35 limited liability company;

36 (2) Create a new legal entity in this state; or

1 (3) Obtain authority to do business in this state.

2 (c) As used in this section:

3 (1) "Past-due franchise taxes" means only those taxes owed three
4 (3) years prior to the year in which the current filing is presented;

5 (2) "Past officer or director" means a person or individual who
6 was associated with the corporation or limited liability company ~~during the~~
7 at any time that its charter was revoked during its charter that the
8 corporation or limited liability company was responsible for nonpayment of
9 franchise taxes; and

10 (3) "Substantially connected" means a present officer, ~~or~~
11 director, member, or manager or a past officer, ~~or~~ director, member, or
12 manager of a corporation.

13 (d) An individual who is an incorporator or organizer of a corporation
14 or limited liability company shall not be considered to be substantially
15 connected to a corporation or limited liability company that owes past-due
16 franchise taxes to the Secretary of State.

17 (e) Each corporation, subject to this chapter, shall file with its
18 original articles of incorporation or certificate of organization the name of
19 at least one (1) individual who is substantially connected to the corporation
20 and is responsible for payment of franchise taxes.

21 (f) Any current or past officer or director that has been added to a
22 corporation without their permission shall be removed as an officer or
23 director of the corporation by the Secretary of State and not held
24 responsible for past-due franchise taxes, if the officer or director submits:

25 (1) A copy of a report filed with a local, state, or federal law
26 enforcement entity that states the officer or director has been fraudulently
27 added to the corporation; and

28 (2) A statement, prescribed by the Secretary of State, signed by
29 the officer or director, that states the officer or director was added to the
30 corporation without their permission, with the following declaration:

31 "I declare, under the penalties of perjury, that the foregoing statements are
32 true to the best of my knowledge and belief."

33
34 SECTION 12. Arkansas Code Title 26, Chapter 54, Subchapter 1, is
35 amended to add an additional section to read as follows:

36 26-54-116. Powers of Secretary of State.

