

State of Arkansas  
82nd General Assembly  
Regular Session, 1999

# A Bill

SENATE BILL 872

By: Senator Gordon

## For An Act To Be Entitled

"AN ACT TO PROVIDE A FINANCIAL INCENTIVE FOR THE  
PRODUCTION OF DIGITAL FORM PRODUCT AND MOTION PICTURES  
IN THE STATE OF ARKANSAS; TO PROVIDE FOR THE  
REGISTRATION OF DIGITAL PRODUCT PRODUCTION COMPANIES  
AND MOTION PICTURE PRODUCTION COMPANIES DOING BUSINESS  
IN THE STATE; TO PROVIDE FOR THE CONTINUED FINANCING  
OF THE MOTION PICTURE OFFICE OF THE ARKANSAS ECONOMIC  
DEVELOPMENT COMMISSION; AND FOR OTHER PURPOSES."

## Subtitle

"AN ACT CONCERNING DIGITAL PRODUCTS AND  
MOTION PICTURES."

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

### SECTION 1. Short title.

This act may be referred to and cited as the "Digital Product Incentive  
Act of 1999."

### SECTION 2. Legislative determination.

It is hereby found and determined that:

(1) The General Assembly finds and declares that the economic well-  
being of Arkansas and its communities depends on the belief of its citizens  
that their state and community are places where families can live in safety  
and security, where quality health care is readily available, where the  
educational system meets the needs of learners of all ages, where government  
services are provided in an efficient and effective manner, where

1 opportunities for business and commercial growth are encouraged and supported,  
2 and where the state's natural heritage and quality of life are protected and  
3 enjoyed.

4 (2) The General Assembly further finds and determines that the economic  
5 and societal changes that have occurred in the last half of the twentieth  
6 century have been driven primarily by major advances in the fields of  
7 technology and communications. These advances have caused unanticipated and  
8 dramatic shifts in the educational and skill requirements for the nation's  
9 workforce and wide disparities in the availability of economic opportunities  
10 within and between states.

11 (3) Arkansas is the first state in the Union to have it's  
12 telecommunication system to be 100% digital in its ability to transmit digital  
13 form information and entertainment product and various forms of motion picture  
14 product.

15 (4) Due to the qualities of the state in terms of natural settings,  
16 availability of labor, materials, climate and hospitality of its people the  
17 state is uniquely qualified to attract digital form product providers to live,  
18 work and play within its borders;

19 (5) It is the intent of the General Assembly to provide the communities  
20 of this state with a mechanism to meet the economic and societal challenges  
21 that have and will continue to arise as new technologies are developed.

22 (6) It is also the intent of the General Assembly that the mechanism  
23 will prepare Arkansas communities, educational institutions, legal  
24 institutions and governing agencies to deal with economic and societal  
25 challenges by encouraging:

26 (A) A vision for the twenty-first century in which Arkansas will  
27 have communication ready citizenry able to create wealth for and within their  
28 communities by becoming net exporters of Information and Entertainment product  
29 in digital format;

30 (B) Collaborative partnering, under the auspice of a  
31 collaborative community planning process able to alter trends which have kept  
32 Arkansas' communities from developing the essential skills and behavior  
33 necessary to compete in the twenty-first century economy;

34 (C) Organizational and budgeting collaboration for the  
35 development of sustainable and strategic investment strategies under the  
36 guidelines of networked communities (c);

1           (D) Links between community needs and statewide network  
2 applications;

3           (E) Economic development expansion strategies that are based on  
4 communications connectivity; and integration of existing resources as a  
5 portion of planned, long-term change.

6           (7) The digital product industry brings with it a much needed infusion  
7 of capital into areas of the state which may be economically depressed;

8           (8) The multiplier effect of the infusion of capital resulting from the  
9 production of digital form product serves to stimulate economic activity;

10           (9) Due to the distance of Arkansas from the many of the digital  
11 industry centers, it is necessary to provide financial incentives to the  
12 digital product industry in order that Arkansas might compete with other  
13 states for production locations; and

14           (10) Since a significant portion of the cost of a digital product  
15 production has not been eligible for a tax incentive due to the fact that  
16 portions of the production are carried out in other states, this act may also  
17 serve as an inducement for the digital product industry to locate operations  
18 within the State of Arkansas and specifically within Digital Overlay Districts  
19 within communities in order to take advantage of the tax incentive afforded by  
20 this act.

21  
22           SECTION 3. Definitions.

23           As used in this act:

24           (1) "Digital Product" means any information and/or entertainment  
25 product newly created in digital format which may be able to be licensed,  
26 copyrighted or in any way be considered to meet the current and/or future  
27 standards and/or qualifications for receiving copyright or patent protection  
28 under International Laws and Treaties.

29           (2) "Digital Overlay District" (c) means a specific area of a community  
30 qualified by the Arkansas Economic Development Commission (AEDC) under  
31 specific guidelines articulated in the regulations to this act.

32           (3) "Digital Product Production Company" means an individual or a  
33 company engaged in the creation, storage and retrieval, or distribution of  
34 digital form product intended for distribution and replay in those formats  
35 listed in this act in any and all venues to include but not limited to:  
36 theatrical release, videotape, videodisc and digital disc release, local and

1 national television network, local and national computer network, cable and  
2 direct satellite broadcast and other venues not specifically listed herein.

3 (4) "Distribution" means the sales, marketing, and disbursement through  
4 copper wire, cable, fiber or satellite, of any digital form product listed in  
5 this act.

6 (5) "Financial Institution" means any bank or savings and loan in the  
7 state which carries FDIC insurance.

8 (6) "Investment" means an at risk monetary expenditure in any company  
9 or companies engaged in the creation of digital product in static or motion  
10 format and/or an at risk monetary expenditure for purchase of equipment  
11 utilized in the production of digital product or motion picture product, for  
12 the express intent of receiving a return on that investment. Said investment  
13 must take place within an authorized Digital Overlay District.

14 (7) "Motion Picture" means any visual representation, image and/or  
15 graphic conception that may be viewed at a later time by the replay of said  
16 image in a non static form to include but not limited to digital, analog  
17 and/or celluloid format.

18 (8) "Motion Picture Office" means the division of the Arkansas Economic  
19 Development Commission charged with the responsibility of promoting and  
20 assisting the motion picture industry in Arkansas.

21 (9) "Motion Picture Production Company" means a company engaged in the  
22 business of producing motion pictures intended for distribution and replay in  
23 those formats listed in this act in any and all venues to include but not  
24 limited to: theatrical release, videotape, videodisc and digital disc release,  
25 local and national television network, local and national computer network,  
26 cable and direct satellite broadcast and other venues not specifically listed  
27 herein.

28 (10) "Production" means those activities associated with the creation  
29 of digital product and/or motion picture to include pre production,  
30 production, post production activities and storage and retrieval of the  
31 product.

32 (11) "Resident" means natural persons and includes, for the  
33 purpose of determining eligibility for the tax incentive provided by this act,  
34 any person domiciled in the State of Arkansas and any other person who  
35 maintains a permanent place of abode within the state and spends in the  
36 aggregate more than six (6) months of the taxable year within the state.

1       (12) "Revenue Division" means the Revenue Division of the Arkansas  
2       Department of Finance and Administration.

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7       SECTION 4. Requirement for registration.

8       Each digital product production company or motion picture production  
9       company within a Digital Overlay District which plans to produce any product  
10       within the borders of the State of Arkansas shall register with the Motion  
11       Picture Office of the AEDC prior to the commencement of production.

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13       SECTION 5. Tax incentive.

14       Any digital product production company or motion picture production  
15       company within a Digital Overlay District which expends in excess of the  
16       amounts specified in the regulations for this act, shall, upon making  
17       application therefor and meeting the other requirements prescribed herein be  
18       entitled to a tax incentive benefit of five percent (5%) of the funds so  
19       expended in Arkansas in connection with the production of digital product or  
20       the production of a motion picture.

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22       SECTION 6. Application for tax incentive.

23       (a) Any digital product production company or motion picture production  
24       company within a Digital Overlay District that intends to produce all, or  
25       parts of, digital form product or a motion picture in Arkansas and desires to  
26       take advantage of the tax incentive program provided for in this act shall  
27       provide an estimate of weekly expenditures to be made in Arkansas in  
28       connection with the production of such motion picture. The estimate of  
29       expenditures shall be filed with the Motion Picture Office prior to the  
30       commencement of production in Arkansas.

31       (b) At the time the digital product production company or motion  
32       picture production company provides the estimate of expenditures to the Motion  
33       Picture Office, it shall also designate a member, or representative, of the  
34       digital product production company or motion picture production company to  
35       work with the Motion Picture Office and the Revenue Division on the reporting  
36       of expenditures and other information necessary to take advantage of the tax

1 incentive afforded by this act.

2 (c) Within four (4) weeks after production begins, production company  
3 shall begin filing monthly expenditure reports. Failure to file monthly  
4 expenditure reports may result in a delay in the disbursement of the tax  
5 incentive benefit as provided in Section 7 of this act. The monthly  
6 expenditure report shall be filed in accordance with, but not limited to, the  
7 following provisions:

8 (1) In order to be eligible for the tax incentive provided for by  
9 this act, payments shall be made from a checking account from any Arkansas  
10 financial institution; and

11 (2) Expenditure reports shall include, but are not limited to,  
12 check identification number, date of payment, name of payee, amount paid, name  
13 of financial institution and other such information as may be deemed necessary  
14 by the Revenue Division to ensure compliance with this act; and

15 (3) Payments for salaries or wages are limited to Arkansas  
16 residents who filed an Arkansas income tax return in the previous tax year;  
17 and

18 (4) Payments for penalties or fines, payments to non-profit  
19 organizations and payments to federal entities that do not pay state taxes are  
20 to be excluded.

21 (d) The period, during which expenditures may qualify for the tax  
22 incentive provided by this act, begins on the date of the earliest expenditure  
23 reported.

24 (e) In the case of digital product production companies located in  
25 Arkansas, upon completion of an accounting year, the production company shall  
26 file an application for the tax incentive afforded by this act. The  
27 application shall include a final expenditure report giving a total amount of  
28 expenditures which were made in the state in connection with the production of  
29 digital form product and which comply with the provisions of this act. The  
30 digital product production company shall provide documentation for  
31 expenditures in accordance with regulations promulgated by the Revenue  
32 Division.

33 (f) In the case of motion picture production company, upon completion  
34 of production in Arkansas, the production company shall file an application  
35 for the tax incentive afforded by this act. The application shall include a  
36 final expenditure report giving a total amount of expenditures which were made

1 in the state in connection with the production of a motion picture and which  
2 comply with the provisions of this act. The motion picture production company  
3 shall provide documentation for expenditures in accordance with regulations  
4 promulgated by the Revenue Division.

5 (g) Applications for the tax incentive provided by this act shall be  
6 accepted only from those production companies which report expenditures in the  
7 state in excess of the amounts specified in the regulations for this act.

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9 SECTION 7. Disbursement of tax incentive.

10 The Revenue Division shall, upon receipt of an application for a tax  
11 incentive, calculate the total expenditures of the production company for  
12 which there are documented receipts for funds expended in the state, calculate  
13 the tax incentive benefit to which the applicant is entitled, and shall  
14 certify the same to the Chief Fiscal Officer of the state. The Revenue  
15 Division shall certify to the Chief Fiscal Officer the amount to be remitted  
16 to the motion picture production company within sixty (60) days of the final  
17 expenditure report.

18 The Chief Fiscal Officer shall remit the five percent (5%) tax incentive  
19 benefit to the production company, or at the option of the production company,  
20 said amount may be remitted directly to the National Film Preservation  
21 Foundation, or to the Motion Picture Retirement Fund, or to the state of  
22 Arkansas' Digital Product/Motion Picture Office Fund within ten (10) working  
23 days of the receipt of the certification of the amount thereof from the  
24 Revenue Division. Such benefit shall be paid from any available funds  
25 appropriated for miscellaneous tax refunds by the General Assembly.

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27 SECTION 8. Digital product/motion picture office fund.

28 (a) From and after the effective date of this act, there shall be  
29 established a Digital Product/Motion Picture Office Fund for the sole purpose  
30 of providing additional funds for duties and functions of the Motion Picture  
31 Office of the Arkansas Economic Development Commission.

32 (b) Said fund shall be created and perpetuated by the Revenue Division  
33 transferring funds and appropriations to the Digital Product/Motion Picture  
34 Office Fund from the miscellaneous tax refund appropriation and the  
35 miscellaneous revolving fund, which fund is reimbursed from the state  
36 apportionment fund in the amounts equal to one-half of one percent (.5%) of

1 the total amount of documented expenditures by motion picture production  
2 companies as provided for in Section 6(e) and (f) of this act.

3 (c) The Motion Picture Office shall not expend monies from the Digital  
4 Product/Motion Picture Office Fund in excess of two times the amount  
5 authorized by the General Assembly's biennial appropriation for the Motion  
6 Picture Office. Provided, however, in the event that the assets accruing to  
7 the motion picture fund exceed the amount appropriated from General Revenues  
8 for the Motion Picture Office, such excess shall be expended from the proceeds  
9 of the one-half of one (.5%) percent transfer in lieu of General Revenues.  
10 The Chief Fiscal Officer of the state is hereby authorized to transfer  
11 appropriation from the General Revenues Appropriation available to the Motion  
12 Picture Office to the Digital Product/Motion Picture Office Fund, in the  
13 amount of such excess.

14 (d) The Digital Product/Motion Picture Office Fund shall be  
15 administered in accordance with rules and regulations promulgated by the  
16 Revenue Division, following consultation with the Motion Picture Office of the  
17 Arkansas Economic Development Commission.

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19 SECTION 9. Penalties.

20 (a) Any production company failing to comply with Section 4 of this act  
21 may be enjoined from engaging in the business of producing digital product or  
22 motion pictures in the State of Arkansas by any court of competent  
23 jurisdiction until the requirements of Section 4 are met.

24 (b) Any person, business digital product production company or motion  
25 picture production company exploiting or attempting to exploit the tax  
26 incentive afforded by this act shall be subject to penalty in accordance with  
27 applicable state or federal law.

28 (c) Any digital product production company or motion picture production  
29 company attempting to abuse the intent of this act may be denied any tax  
30 incentive to which it would otherwise be entitled and may be prohibited from  
31 applying for any future tax incentive afforded by this act.

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33 SECTION 10. Disclaimer.

34 The State of Arkansas reserves the right to refuse the use of Arkansas'  
35 name in the credits of any digital product or motion picture produced in the  
36 state.



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2 SECTION 11. Audit.

3 The Revenue Division may require that reported expenditures and the  
4 application for a tax incentive from the digital product production company or  
5 motion picture production company be subjected to an audit by Revenue Division  
6 Auditors to verify expenditures.

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8 SECTION 12. Sunset.

9 The opportunity for a tax incentive provided by Section 5 of this act  
10 shall expire on June 30, 2009.

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12 SECTION 13. Rules and regulations.

13 The Revenue Division shall promulgate appropriate rules and regulations  
14 to carry out the intent and purposes of this act and to prevent abuse.

15  
16 SECTION 14. All provisions of this act of a general and permanent  
17 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
18 Code Revision Commission shall incorporate the same in the Code.

19  
20 SECTION 15. If any provision of this act or the application thereof to  
21 any person or circumstance is held invalid, such invalidity shall not affect  
22 other provisions or applications of the act which can be given effect without  
23 the invalid provision or application, and to this end the provisions of this  
24 act are declared to be severable.

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26 SECTION 16. All laws and parts of laws in conflict with this act are  
27 hereby repealed.

28  
29 SECTION 17. EMERGENCY CLAUSE. It is hereby found and determined by the  
30 Eighty-second General Assembly that the economic and societal changes that  
31 have occurred in the last half of the twentieth century have been driven  
32 primarily by advances in the fields of technology and communications; that  
33 these advances have caused dramatic shifts in the educational and skill  
34 requirements for the nations workforce and wide disparities in the  
35 availability of economic opportunities within and between states; and  
36 therefore this act is necessary because of the communications revolution and

1 rapid change in technology and resulting economic opportunities. Furthermore,  
2 it is found and determined by the General Assembly that the incentive afforded  
3 by this act to the digital product production industry and motion picture  
4 industry can serve to stimulate the economy of the area in which digital  
5 product production or motion picture production occurs, and that the incentive  
6 has a multiplier effect, in terms of economic development, in the locality of  
7 the production and specifically in the area defined as a Digital Overlay  
8 District and statewide; and that tax revenues generated by the activities of  
9 digital product production or motion picture production more than offset the  
10 revenue lost through the incentive provided by this act. Therefore, an  
11 emergency is declared to exist and this act being immediately necessary for  
12 the preservation of the public peace, health and safety shall become effective  
13 on July 1, 1999.