

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

A Bill

SENATE BILL 925

5 By: Senator Files
6 By: Representative Rushing
7

For An Act To Be Entitled

9 AN ACT TO CREATE THE BUSINESS RAPID RESPONSE TO STATE
10 DISASTERS FACILITATION ACT; TO EXEMPT OUT-OF-STATE
11 BUSINESSES AND THEIR EMPLOYEES FROM CERTAIN TAXES AND
12 REGULATORY REQUIREMENTS DURING A DISASTER RESPONSE
13 PERIOD; TO DECLARE AN EMERGENCY; AND FOR OTHER
14 PURPOSES.
15

Subtitle

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17
18 TO EXEMPT OUT-OF-STATE BUSINESSES AND
19 THEIR EMPLOYEES FROM CERTAIN TAXES AND
20 REGULATORY REQUIREMENTS DURING A DISASTER
21 RESPONSE PERIOD; AND TO DECLARE AN
22 EMERGENCY.
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24
25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

27 SECTION 1. Arkansas Code Title 12 is amended to add an additional
28 chapter to read as follows:

Chapter 88

Business Rapid Response to State Disasters Facilitation Act

12-88-101. Title.

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33 This chapter shall be known and may be cited as the "Business Rapid
34 Response to State Disasters Facilitation Act".
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12-88-102. Legislative findings.

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1 The General Assembly finds that:

2 (1) During times of storm, flood, fire, earthquake, hurricane,
3 and other disasters or emergencies, many businesses bring resources and
4 personnel from other states into Arkansas on a temporary basis to expedite
5 the often enormous and overwhelming task of cleaning up, restoring, and
6 repairing damaged buildings, equipment, and property and building replacement
7 facilities in the state;

8 (2) These disaster-response activities may require out-of-state
9 businesses, including out-of-state affiliates of businesses based in the
10 state, to bring in resources, property, and personnel that previously have
11 had no connection to the state to perform activities in the state, including
12 without limitation repairing, renovating, installing, and building facilities
13 and rendering services and other business activities for which personnel may
14 be located in the state for extended periods of time;

15 (3) During the temporary period of time out-of-state businesses
16 are operating in the state solely for the purpose of helping the state
17 recover from a disaster or emergency, these out-of-state businesses and the
18 individual employees of the out-of-state businesses should not be burdened by
19 regulatory requirements and taxes that would normally apply to the activities
20 that the out-of-state businesses and their employees are conducting in the
21 state;

22 (4) The state's nexus and residency thresholds are intended for
23 businesses and individuals in the state as part of the conduct of regular
24 business operations and those who intend to reside in the state, and these
25 thresholds should not be directed at out-of-state businesses and individuals
26 coming into the state on a temporary basis to provide help and assistance in
27 response to a declared state disaster or emergency; and

28 (5) To ensure that out-of-state businesses may focus on
29 providing a quick response to the needs of the state and its citizens during
30 a declared state disaster or emergency, it is appropriate for the General
31 Assembly to determine that certain activities performed for a reasonable time
32 before, during, and after a state disaster or emergency is declared to repair
33 the often devastating damage to critical infrastructure in the state should
34 not establish presence, residency, or doing business in the state or any
35 other criteria for purposes of state and local taxes, licensing, and
36 regulatory requirements.

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12-88-103. Definitions.

As used in this chapter:

(1) "Critical infrastructure" means property and equipment, including without limitation buildings, offices, lines, poles, pipes, and structures, owned or used by the following:

(A) A communications network;

(B) An electric generation, transmission, or distribution system;

(C) A gas distribution system;

(D) A water pipeline; or

(E) A support facility that is related to an entity listed in subdivisions (1)(A)–(D) of this section and services multiple customers or persons;

(2) "Declared state disaster or emergency" means a disaster or emergency event:

(A) For which a Governor's executive order or proclamation has been issued;

(B) For which a Presidential declaration of a major disaster or emergency has been issued; and

(C) Within the state:

(i) For which a good faith response effort is required; and

(ii) That the Director of the Arkansas Department of Emergency Management designates as a disaster or emergency upon request of and notification by a registered business;

(3) "Disaster-related or emergency-related work" means repairing, renovating, installing, building, and rendering services or other business activities that relate to critical infrastructure that has been damaged, impaired, or destroyed by a declared state disaster or emergency;

(4) "Disaster response period" means a period that begins ten (10) days before the first day of the earlier of the Governor's executive order or proclamation, the President's declaration of a major disaster or emergency, or designation by the director and extends until the later of sixty (60) calendar days after the declared state disaster or emergency or the date authorized by the director;

1 (5)(A) "Out-of-state business" means a business entity:

2 (i) That, except for providing disaster-related or
3 emergency-related work:

4 (a) Has no presence in this state;

5 (b) Conducts no business in this state; and

6 (c) Has no registration, tax filing, or nexus
7 in this state during the tax year immediately preceding the declared state
8 disaster or emergency; and

9 (ii) The services of which are requested by a
10 registered business, a state government, or a local government for purposes
11 of performing disaster-related or emergency-related work in the state.

12 (B) "Out-of-state business" includes without limitation:

13 (i) A business entity that is affiliated with a
14 registered business in the state solely through common ownership; and

15 (ii) The employees of the business entity;

16 (6) "Out-of-state employee" means an individual who does not
17 work in the state except for providing disaster-related or emergency-related
18 work during a disaster response period; and

19 (7) "Registered business" means a business entity that is
20 registered to do business in Arkansas before the relevant declared state
21 disaster or emergency occurs.

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23 12-88-104. Exemptions from certain taxes and regulatory requirements.

24 (a)(1) An out-of-state business that conducts operations within the
25 state for the purpose of performing work or services related to a declared
26 state disaster or emergency during a disaster response period is exempt from:

27 (A) Registering, filing, and remitting state or local
28 taxes; and

29 (B) Complying with state licensing, certification, and
30 registration requirements.

31 (2) The exemptions provided in subdivision (a)(1) of this
32 section apply to state and local business and occupational licensing and
33 registration requirements and state and local taxes or fees, including
34 without limitation:

35 (A) Unemployment insurance contributions;

36 (B) State and local occupational licensing fees and

1 privilege taxes;

2 (C) State and local income taxes;

3 (D) State and local sales and use taxes on property
4 temporarily brought into the state for use during the disaster response
5 period and subsequently removed from the state; and

6 (E) State licensing, certification, and registration
7 requirements.

8 (3)(A) For purposes of a state or local tax on or measured by,
9 in whole or in part, net or gross income or receipts, all activity of the
10 out-of-state business that is conducted in this state under this chapter is
11 exempt from filing requirements for the state or local tax, including without
12 limitation any filing required for a unitary or combined group of which the
13 out-of-state business may be a part.

14 (B) For the purpose of apportioning income, revenue, or
15 receipts, the performance by an out-of-state business of disaster-related or
16 emergency-related work under this chapter shall not be sourced to or
17 otherwise impact or increase the amount of income, revenue, or receipts
18 apportioned to this state.

19 (b) During a disaster response period, an out-of-state employee is
20 not:

21 (1) Required to file or pay Arkansas income taxes;

22 (2) Subject to Arkansas income tax withholdings; or

23 (3) Required to file or pay any other state or local tax or fee,
24 including related state or local employer withholding and remittance
25 obligations but not including transaction taxes or fees described in § 12-88-
26 105.

27 (c) However, out-of-state businesses and out-of-state employees are
28 subject to any applicable ad valorem taxes.

29
30 12-88-105. Application of transaction taxes and fees.

31 An out-of-state business and an out-of-state employee shall pay state
32 and local transaction taxes and fees, including without limitation:

33 (1) Motor fuel taxes;

34 (2) Distillate special fuel taxes;

35 (3) Sales and use taxes on materials and services consumed or
36 used in the state;

1 (4) Hotel taxes;

2 (5) Car rental taxes and fees; and

3 (6) Any other tax or fee that applies to goods or services that
4 the out-of-state business or out-of-state employee purchases for use or
5 consumption in this state during the disaster response period, unless the tax
6 or fee is otherwise exempt during the disaster response period.

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8 12-88-106. Business or employee activity after disaster response
9 period.

10 The exemptions provided under this chapter do not apply to an out-of-
11 state business or out-of-state employee that remains in the state after a
12 disaster response period with respect to activities conducted in this state
13 after the disaster response period.

14
15 12-88-107. Notification required.

16 (a)(1) An out-of-state business that enters the state shall provide to
17 the Arkansas Department of Emergency Management a statement that the out-of-
18 state business is in the state for the purpose of responding to a disaster or
19 emergency.

20 (2) The statement required under subdivision (a)(1) of this
21 section shall include the out-of-state business's:

22 (A) Name;

23 (B) State of domicile;

24 (C) Principal business address;

25 (D) Federal tax identification number;

26 (E) Date of entry into the state; and

27 (F) Contact information.

28 (b)(1) Upon request by the department, a registered business shall
29 provide the information required in subsection (a) of this section for an
30 affiliate that is an out-of-state business.

31 (2) In addition to the information required under subsection (a)
32 of this section, the notification provided under subdivision (b)(1) of this
33 section shall include the contact information for the registered business.

34
35 12-88-108. Supplemental.

36 This chapter is supplemental to the Arkansas Emergency Services Act of

1 1973, § 12-75-101 et seq., and any other law applicable to businesses and
2 individuals acting as emergency responders.

3
4 12-88-109. Administration – Rules.

5 The Arkansas Department of Emergency Management shall:

6 (1)(A) Promulgate rules necessary to administer and implement
7 this chapter.

8 (B) The Arkansas Department of Emergency Management shall
9 consult with the Department of Finance and Administration in promulgating
10 rules relating to the application of and exemption from state and local taxes
11 to out-of-state businesses and out-of-state employees under this chapter;

12 (2) Develop and issue forms and procedures to facilitate the
13 implementation of this chapter; and

14 (3) Maintain a public record of any designations of disasters or
15 emergencies in the state.

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17 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
18 General Assembly of the State of Arkansas that disasters and emergencies
19 cause significant damage to Arkansas’s economy and the residents of the
20 state; that it is in the best interests of the state to enable people and
21 businesses to repair the damage caused by disasters and emergencies as
22 efficiently as possible; that it is in the best interests of the state to
23 encourage people and businesses outside of Arkansas to aid the state in
24 repairing damage caused by disasters and emergencies by removing certain tax
25 and regulatory requirements; and that this act is immediately necessary for
26 the efficient recovery of the state and its residents from disasters and
27 emergencies. Therefore, an emergency is declared to exist, and this act being
28 immediately necessary for the preservation of the public peace, health, and
29 safety shall become effective on:

30 (1) The date of its approval by the Governor;

31 (2) If the bill is neither approved nor vetoed by the Governor,
32 the expiration of the period of time during which the Governor may veto the
33 bill; or

34 (3) If the bill is vetoed by the Governor and the veto is
35 overridden, the date the last house overrides the veto.