

Stricken language would be deleted from and underlined language would be added to present law.
Act 459 of the Regular Session

State of Arkansas
94th General Assembly
Regular Session, 2023

As Engrossed: H3/15/23

A Bill

SENATE BILL 207

By: Senator B. Johnson

By: Representative Richmond

For An Act To Be Entitled

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

Subtitle

TO MODIFY THE ARKANSAS CORPORATE FRANCHISE TAX ACT OF 1979; AND TO CREATE THE SECRETARY OF STATE BUSINESS AND COMMERCIAL SERVICES ELECTRONIC FILING SYSTEM SPECIAL FUND.

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

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

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

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

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

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



to add an additional section to read as follows:

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

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

(b) The fund shall consist of:

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

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

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

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

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

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

SECTION 5. Arkansas Code § 26-54-104 is amended to read as follows:

26-54-104. Annual franchise tax.

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

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

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

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

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

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

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

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

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

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

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

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

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

dollars (\$150); and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (A) The name and address of the corporation;
- (B) The name of the corporation's president, vice president, secretary, treasurer, and controller;
- (C) The total authorized capital stock with par value;
- (D) The total issued and outstanding capital stock with par value; and
- (E) The state of incorporation.

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

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

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

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

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

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

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

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

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

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

26-54-112. Reinstatement of corporations.

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

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

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

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

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

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

(B) A ~~forfeited~~ charter.

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

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

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

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

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

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

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

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

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

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

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

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

(c) As used in this section:

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

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

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

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

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

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

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

(2) A statement, prescribed by the Secretary of State, signed by the officer or director, that states the officer or director was added to the corporation without their permission, with the following declaration: "I declare, under the penalties of perjury, that the foregoing statements are true to the best of my knowledge and belief."

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

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

The Secretary of State is authorized to perform any of the duties that are required of him or her under this chapter.

/s/B. Johnson

APPROVED: 4/4/23