

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
94th General Assembly
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As Engrossed: H3/27/23
A Bill

HOUSE BILL 1239

By: Representatives Underwood, Ray, Hollowell, G. Hodges

By: Senator J. Dotson

For An Act To Be Entitled

AN ACT TO AMEND LAWS CONCERNING THE CORPORATE
FRANCHISE TAX; TO REPEAL THE ARKANSAS CORPORATE
FRANCHISE TAX ACT OF 1979; TO MAKE CONFORMING
CHANGES; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND LAWS CONCERNING THE CORPORATE
FRANCHISE TAX; TO REPEAL THE ARKANSAS
CORPORATE FRANCHISE TAX ACT OF 1979; AND
TO MAKE CONFORMING CHANGES.

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

SECTION 1. Arkansas Code Title 4, Chapter 25, Subchapter 1, is amended to add an additional section to read as follows:

4-25-111. Annual report for corporations – List of corporations.

(a)(1) As used in this section, “corporation” means any corporation, domestic or foreign, active or inactive, that is organized in or qualified under the laws of the State of Arkansas and includes without limitation any person or group of persons, 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 that is not allowed to them as individuals and that is exercising, or attempting to exercise, corporate-type acts, whether or not existing by virtue of a particular statute.

(2) “Corporation” does not include:



(A) Nonprofit corporations;

(B) Corporations that are organizations exempt from the federal income tax; or

(C) Organizations formed under or governed by the Uniform Partnership Act (1996), § 4-46-101 et seq., or the Uniform Limited Partnership Act (2001), § 4-47-101 et seq.

(b)(1) The Secretary of State shall furnish annual report forms to each corporation subject to this section by mailing the annual report forms to the corporation's current agent for service or other person identified by the corporation.

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

(c) A corporation that fails to receive the annual report forms by March 20 of the reporting year shall make written request for the annual report forms to the Secretary of State on or before March 31.

(d) Each corporation subject to the requirements of this section shall file an annual 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 and other information required by the Secretary of State.

(e) A newly formed corporation is not required to file an annual report until the calendar year immediately following the calendar year of incorporation.

(f) When the par value of the shares of a corporation is required to be stated in an annual report and the shares of the corporation are without par value, the number of shares shall be stated.

(g)(1) Every annual 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 required under subdivision (g)(1) of this section shall be signed by the president, vice president, secretary, treasurer, or controller of the corporation or other authorized person.

(h)(1) All information contained in an annual report shall be confidential and not available for public inspection, except for the

following:

(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 an annual 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.

(i)(1)(A) The Bank Commissioner, Insurance Commissioner, and any other officer or agency of the state authorized to issue corporate permits or authorities to do business in this state shall prepare and maintain a correct list of all corporations organizing or qualifying through their respective offices or agencies.

(B) Each official or agency shall file with the Secretary of State a monthly report showing:

(i) The name and address of each new corporation organized or qualified;

(ii) The authorized and outstanding capital stock;

(iii) The name changes, mergers, charter forfeitures, or withdrawals;

(iv) The name and address of each corporation that has provided official notification regarding the dissolution of the corporation; and

(v) All other information concerning the corporation required by the Secretary of State.

(2) Upon request of the Secretary of State, each official or agency shall prepare and certify to the Secretary of State a complete list of the names and addresses of all corporations that have organized or qualified through their respective office or agency and that are subject to the

provisions of this section.

(3) Officials or agencies of the state, county, or municipalities authorized to issue permits shall notify each corporation receiving a permit of the requirements to register the corporation with the Secretary of State before conducting business in Arkansas.

(4)(A) A corporation filing instruments providing for the organization of any common law or statutory trust or similar organization with any county clerk, or other clerk of the various counties of this state, shall file them in duplicate.

(B) The clerk receiving the documents for filing or recordation shall file mark them and forward the file-marked duplicate to the Secretary of State.

SECTION 2. Arkansas Code § 4-27-1622 is amended to read as follows:

4-27-1622. Annual ~~franchise tax~~ report for Secretary of State.

(a) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the Secretary of State for filing an annual ~~franchise tax~~ report that sets forth:

- (1) the name of the corporation;
- (2) the jurisdiction under which the corporation is incorporated;
- (3) the information required by § 4-20-105(a);
- (4) the address of its principal office, wherever it is located;
- (5) the names of its principal officers;
- (6) the total number of authorized shares, itemized by class and series, if any, within each class;
- (7) the total number of issued and outstanding shares, itemized by class and series, if any, within each class; and
- (8) such other information as the Secretary of State may specify in a form promulgated under § 4-27-121(a).

(b) The requirements as to the applicability, use, and filing of the annual ~~franchise tax~~ report shall be as set forth in ~~the Arkansas Corporate Franchise Tax Act of 1979, § 26-54-101 et seq~~ § 4-25-111.

SECTION 3. Arkansas Code § 4-36-401(a)(1), concerning the annual reports due under the Arkansas Benefit Corporation Act, is amended to read as

follows:

(a)(1) A benefit corporation shall prepare an annual benefit report and an annual ~~franchise tax~~ report under ~~§ 26-54-104~~ § 4-25-111.

SECTION 4. Arkansas Code § 4-36-401(b), concerning the annual reports due under the Arkansas Benefit Corporation Act, is amended to read as follows:

(b) A benefit corporation shall send a benefit report to each shareholder annually:

(1) Before ~~the stated due date of an annual franchise tax under § 26-54-104~~ May 1; or

(2) When the benefit corporation delivers an annual financial report to its shareholders.

SECTION 5. Arkansas Code § 4-37-205(a), concerning the certificate of good standing for a protected series under the Uniform Protected Series Act, is amended to read as follows:

(a) On request of any person, the Secretary of State shall issue a certificate of good standing for a protected series of a series limited liability company or a certificate of registration for a foreign protected series if:

(1) in the case of a protected series:

(A) no statement of dissolution, termination, or relocation pertaining to the protected series has been filed; and

(B) the company has delivered to the Secretary of State for filing the most recent annual report required by ~~§ 26-54-105~~ § 4-25-111 and the report includes the name of the protected series, unless:

(i) when the company delivered the report for filing, the protected series designation pertaining to the protected series had not yet taken effect; or

(ii) after the company delivered the report for filing, the company delivered to the Secretary of State for filing a statement of designation change changing the name of the protected series; or

(2) in the case of a foreign protected series, it is registered to do business in this state.

SECTION 6. Arkansas Code § 4-37-206(a), concerning the information required in the annual report of a limited liability company, is amended to read as follows:

(a) In the annual report required by ~~§ 26-54-105~~ § 4-25-111, a series limited liability company shall include the name of each protected series of the company:

- (1) for which the company has previously delivered to the Secretary of State for filing a protected series designation; and
- (2) which has not dissolved and completed winding up.

SECTION 7. Arkansas Code § 4-38-212(f), concerning a limited liability company's annual report for the Secretary of State, is amended to read as follows:

(f) A limited liability company has satisfied the annual report requirements under this section if the requirements under ~~the Arkansas Corporate Franchise Tax Act of 1979, § 26-54-101 et seq.,~~ § 4-25-111 have been met.

SECTION 8. Arkansas Code § 19-5-1227(b), concerning the Educational Adequacy Fund, is amended to read as follows:

(b) After the Treasurer of State has made deductions from the revenues under § 19-5-203(b)(2)(A), the Educational Adequacy Fund shall consist of:

(1) All net revenues collected due to enactments of the Eighty-Fourth General Assembly meeting in Second Extraordinary Session, unless a different distribution of those additional net revenues is otherwise provided in the act creating those additional net revenues;

(2) ~~The revenues credited to the Educational Adequacy Fund under § 26-54-113(b)(2);~~

~~(3)~~ The revenues generated by § 26-52-302(d), § 26-52-316, § 26-52-317(c)(1)(C), § 26-52-319(a)(2)(C), § 26-53-107(d), § 26-53-145(c)(1)(C), § 26-53-148(a)(2)(C), § 26-56-224(c)(3), and § 26-57-1002(d)(1)(A)(ii); and

~~(4)~~(3) Other revenues as provided by law.

SECTION 9. Arkansas Code § 19-6-201(3), concerning the enumeration of general revenues, is repealed.

~~(3) Corporation franchise taxes, as enacted by Acts 1979,~~

~~No. 889, known as the "Arkansas Corporate Franchise Tax Act of 1979", and all laws amendatory thereto, § 26-54-101 et seq.;~~

SECTION 10. Arkansas Code Title 26, Chapter 54, is repealed.

~~Chapter 54 — Arkansas Corporate Franchise Tax Act of 1979~~

~~26-54-101. Title.~~

~~This chapter shall be known and may be cited as the "Arkansas Corporate Franchise Tax Act of 1979".~~

~~26-54-102. Definition.~~

~~(a) As used in this chapter, "corporation" means any corporation, 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.~~

~~(b) However, "corporation" does not include:~~

~~(1) Nonprofit corporations;~~

~~(2) Corporations which are organizations exempt from the federal income tax; or~~

~~(3) Organizations formed under or governed by the Uniform Partnership Act (1996), § 4-46-101 et seq., or the Uniform Limited Partnership Act (2001), § 4-47-101 et seq.~~

~~26-54-103. Effect upon prior rights, etc.~~

~~This chapter does not affect rights or duties that matured, liabilities or penalties that were incurred, or proceedings begun before January 1, 1980.~~

~~26-54-104. Annual franchise tax.~~

~~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.~~

~~26-54-105. Franchise tax reports.~~

~~(a)(1) The Secretary of State shall furnish report forms to each corporation subject to this chapter by mailing them 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 by March 20 of the reporting year shall make written request for them 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 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.~~

~~(d)(1) Every corporation that dissolves shall be required to pay at the time of dissolution the franchise tax for the prior calendar year and pay at the time of dissolution the minimum franchise tax for the year in which dissolved or withdrawn.~~

~~(2) Any newly formed corporation shall not be required to file a franchise tax report until the calendar year immediately following the calendar year of incorporation.~~

~~(e)(1) When the par value of the shares of a corporation is required to be stated in any franchise tax report and the shares of the corporation~~

~~are without par value, the number of shares shall be stated.~~

~~(2) For the purpose of computing the franchise tax prescribed by this chapter, shares of no par value shall be considered to be of the par value of twenty five dollars (\$25.00) per share.~~

~~(f) Each corporation which pays its tax computed by the full assessment of capital stock or property shall not be required to report the value of its real and personal property within or without this state.~~

~~(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 other authorized person.~~

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

~~(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.~~

~~26-54-107. Computation of tax—Penalty—Relief.~~

~~(a) Using the information reported on the franchise tax report under § 26-54-105 and any other information received by him or her bearing upon the subject, the Secretary of State shall compute the amount of tax of each~~

~~corporation at the rate or rates provided by this chapter.~~

~~(b)(1)(A) If the taxpayer fails to comply with the filing and remittance requirements under § 26-54-105(e), the Secretary of State shall assess the corporation a penalty of twenty five dollars (\$25.00) plus interest on the tax and penalty from the date due until paid at the rate of ten percent (10%) per year.~~

~~(B) However, the franchise tax, penalty, and interest for any tax year shall not exceed two (2) times the corporation's tax owed.~~

~~(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 of its corporate charter under § 26-54-111 for the failure to pay corporate franchise tax.~~

~~(c) The Secretary of State or his or her designee may agree to settle or compromise a dispute concerning interest or penalties associated with corporate franchise taxes if the taxpayer:~~

~~(1) Disputes the proposed amount; or~~

~~(2) Is insolvent or bankrupt.~~

~~(d)(1) The Secretary of State may waive any accrued interest or assessed penalties imposed on a taxpayer due to a failure to remit corporate franchise taxes under § 26-54-105(e), if:~~

~~(A) The taxpayer is reasonably mistaken about the application of this chapter or the computation of the franchise tax to the corporation; or~~

~~(B) A taxpayer cannot pay the accrued interest or assessed penalties because of the taxpayer's insolvency or bankruptcy.~~

~~(2) The Secretary of State may waive any fees that a taxpayer owes if the taxpayer desires to dissolve the corporation.~~

~~(3) If a taxpayer demonstrates that a corporation was not doing business in the state for the period for which penalties and interest are owed under this section, the Secretary of State shall waive the amount due under this section if the taxpayer demonstrates that the taxpayer intends to dissolve the corporation.~~

~~(e) If the parties cannot resolve the dispute, the parties may pursue any other remedy available to them, including without limitation remedies available under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.~~

~~(f) The Secretary of State shall develop guidelines to assist a taxpayer in resolving a corporate franchise tax dispute.~~

~~26-54-108. Taxes and penalties as lien.~~

~~The taxes and penalties required to be paid by this chapter shall be a first lien on all property of the corporation, whether or not the property is employed by the corporation in the prosecution of its business or is in the hands of an assignee, receiver, or trustee.~~

~~26-54-109. Lists of corporations to be prepared.~~

~~(a)(1) The Bank Commissioner, Insurance Commissioner, and any other officer or agency of the state authorized to issue corporate permits or authorities to do business in this state shall prepare and maintain a correct list of all corporations organizing or qualifying through their respective offices or agencies.~~

~~(2) Each official or agency shall file with the Secretary of State a monthly report showing:~~

~~(A) The name and address of each new corporation organized or qualified;~~

~~(B) The authorized and outstanding capital stock;~~

~~(C) The name changes, mergers, charter forfeitures, or withdrawals;~~

~~(D) The name and address of each corporation that has provided official notification regarding the dissolution of the corporation; and~~

~~(E) All other information concerning the corporation required by the Secretary of State.~~

~~(b) Upon request of the Secretary of State, each official or agency shall prepare and certify to the Secretary of State a complete list of the names and addresses of all corporations that have organized or qualified through their respective office or agency and that are subject to the provisions of this chapter.~~

~~(c) Officials or agencies of the state, county, or municipalities authorized to issue permits shall notify each corporation receiving a permit of the requirements to register the corporation with the Secretary of State before conducting business in Arkansas.~~

~~(d)(1) A corporation filing instruments providing for the organization of any common law or statutory trust or similar organization with any county clerk, or other clerk of the various counties of this state, shall file them in duplicate.~~

~~(2) The clerk receiving the documents for filing or recordation shall file mark them and forward the file marked duplicate to the Secretary of State.~~

~~(e)(1) The Secretary of the Department of Finance and Administration shall provide the Secretary of State a list of corporations doing business in this state and filing tax reports with the Department of Finance and Administration.~~

~~(2) However, the Secretary of the Department of Finance and Administration shall not include any information deemed confidential by any other law.~~

~~26-54-110. Dissolution or withdrawal by corporations.~~

~~Applications for dissolution or withdrawal by a corporation, association, or organization cannot be accepted by the authority that initially authorized or granted an authority to the corporation to do business in Arkansas until receipt of a statement verified by the Secretary of State that the franchise tax due has been paid.~~

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

~~(a) On or before January 31 of each year, the Secretary of State shall proclaim as forfeited 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, 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.~~

~~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 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.~~

~~(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 (7) years from the date the charter or permit authority to do business in the state was declared forfeited by proclamation of the Governor or the Secretary of State.~~

~~(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.~~

~~26-54-113. Disposition of funds.~~

~~(a) — All taxes and penalties collected under the provisions of this chapter each month shall be deposited into the State Treasury to the credit of the Revenue Holding Fund Account of the State Apportionment Fund.~~

~~(b)(1) — On or before the fifth day of the following month, the Treasurer of State shall allocate and transfer the taxes and penalties collected to the General Revenue Fund Account of the State Apportionment Fund until a total of eight million dollars (\$8,000,000) has been transferred during a fiscal year.~~

~~(2) — After the transfers required by subdivision (b)(1) of this section have been made, the taxes and penalties collected under this chapter~~

~~during the remainder of the fiscal year shall be special revenues, and the Treasurer of State shall transfer the taxes and penalties collected to the Educational Adequacy Fund after making the deductions required by § 19-5-203(b)(2).~~

~~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 past-due franchise taxes to the Secretary of State.~~

~~(b) A person 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.~~

~~(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 who was associated with the corporation or limited liability company during the time that its charter was revoked for nonpayment of franchise taxes; and~~

~~(3) “Substantially connected” means a present officer or director or a past officer or director of a corporation.~~

/s/Underwood