

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

*As Engrossed: S3/12/15*

# 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.

## Subtitle

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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.

1  
2 12-88-103. Definitions.

3 As used in this chapter:

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

7 (A) A communications network;

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

10 (C) A gas distribution system;

11 (D) A water pipeline; or

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

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

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

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

21 (C) Within the state:

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

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

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

31 (4) "Disaster response period" means a period that begins ten  
32 (10) days before the first day of the earlier of the Governor's executive  
33 order or proclamation, the President's declaration of a major disaster or  
34 emergency, or designation by the director and extends until the later of  
35 sixty (60) calendar days after the declared state disaster or emergency or  
36 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.

22  
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.

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15           12-88-107. Notification required.

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

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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.

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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.

16  
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.

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