

By: Lucio III

H.B. No. 2358

A BILL TO BE ENTITLED

AN ACT

relating to the exemption from certain registration and licensing requirements and taxes for certain businesses and employees who enter this state in response to a disaster or emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle C, Title 5, Business & Commerce Code, is amended by adding Chapter 112 to read as follows:

CHAPTER 112. FACILITATING BUSINESS RAPID RESPONSE TO STATE

DECLARED DISASTERS ACT

Sec. 112.001. SHORT TITLE. This chapter may be cited as the Facilitating Business Rapid Response to State Declared Disasters Act.

Sec. 112.002. LEGISLATIVE FINDINGS. The legislature finds that:

(1) during times of storm, flood, fire, earthquake, hurricane, or other disaster or emergency, many Texas businesses bring in resources and personnel from other states on a temporary basis to expedite the often enormous and overwhelming tasks of cleaning up, restoring, and repairing damaged buildings, equipment, and property, and deploying and building new replacement facilities in the state;

(2) accomplishing those tasks may necessitate out-of-state businesses, including out-of-state affiliates of Texas businesses, bringing into Texas resources, property, and

1 personnel that previously had no connection to Texas to perform
2 business activities in Texas, including repairing, renovating,
3 installing, and building, for extended periods of time;

4 (3) during those periods of time, out-of-state
5 businesses and employees performing business activities in Texas on
6 a temporary basis solely for the purpose of helping the state
7 recover from a disaster or emergency should not be burdened by any
8 requirements that the out-of-state businesses or employees pay
9 taxes as a result of performing those activities;

10 (4) Texas' nexus and residency thresholds are intended
11 for businesses and individuals who intend to conduct regular
12 business operations in the state or to permanently reside in the
13 state and should not be applied to businesses and individuals who
14 come to the state on a temporary basis to provide help and
15 assistance in response to a disaster or emergency; and

16 (5) to ensure that out-of-state businesses may focus
17 on quickly responding to the needs of Texas and its citizens during
18 a disaster or emergency, it is appropriate for the legislature to
19 provide that those businesses and their employees are not subject
20 to certain state and local registration and licensing requirements
21 and taxes for performing business activities before, during, and
22 after the disaster or emergency to repair and restore devastating
23 damage to critical property and infrastructure in the state.

24 Sec. 112.003. DEFINITIONS. (a) In this chapter:

25 (1) "Critical infrastructure" means equipment and
26 property that is owned by or used for communications networks,
27 electric generation, transmission and distribution systems, gas

1 distribution systems, and water pipelines and related support
2 facilities, equipment, and property that serve multiple persons,
3 including buildings, offices, structures, lines, poles, and pipes.

4 (2) "Declared state disaster or emergency" means a
5 disaster or emergency event that occurs in this state and:

6 (A) in response to which the governor issues an
7 executive order or proclamation declaring a state of disaster or a
8 state of emergency;

9 (B) that the president of the United States
10 declares a major disaster or emergency; or

11 (C) that requires a good faith response effort
12 and that an authorized state official, other than the governor,
13 designates a disaster or emergency in order to invoke this chapter.

14 (3) "Disaster- or emergency-related work" means
15 repairing, renovating, installing, building, rendering services,
16 or performing other business activities relating to the repair or
17 replacement of critical infrastructure that has been damaged,
18 impaired, or destroyed by a declared state disaster or emergency.

19 (4) "Disaster response period" means the period that:

20 (A) begins on the 10th day before the date of the
21 earliest event establishing a declared state disaster or emergency
22 by the issuance of an executive order or proclamation by the
23 governor, a declaration of the president of the United States, or
24 the designation of an authorized state official; and

25 (B) ends on the 60th day after the ending date of
26 the disaster or emergency period established by the executive order
27 or proclamation, declaration, or designation or on a later date as

1 determined by the secretary of state.

2 (5) "In-state business entity" means a domestic entity
3 or foreign entity that is authorized to transact business in this
4 state immediately before a disaster response period.

5 (6) "Out-of-state business entity" means a foreign
6 entity that:

7 (A) except with respect to the performance of
8 disaster- or emergency-related work:

9 (i) has no physical presence in this state
10 and is not authorized to transact business in this state
11 immediately before a disaster response period; and

12 (ii) is not registered with the secretary
13 of state to transact business in this state, does not a file a tax
14 report with this state or a political subdivision of this state, and
15 does not have a nexus with this state for the purpose of taxation
16 during the tax year immediately preceding the disaster response
17 period; and

18 (B) enters this state at the request of an
19 in-state business entity, the state, or a political subdivision of
20 the state to perform disaster- or emergency-related work in this
21 state during the disaster response period.

22 (7) "Out-of-state employee" means an employee who
23 enters this state to perform disaster- or emergency-related work
24 during a disaster response period.

25 (b) For purposes of this chapter, a foreign entity may be
26 considered an "out-of-state business entity" even if the foreign
27 entity is affiliated with an in-state business entity through

1 common ownership.

2 Sec. 112.004. EXEMPTION OF OUT-OF-STATE BUSINESS ENTITY
3 FROM CERTAIN OBLIGATIONS DURING DISASTER RESPONSE PERIOD.

4 Notwithstanding any other law and except as provided by Section
5 112.006, an out-of-state business entity whose transaction of
6 business in this state is limited to the performance of disaster- or
7 emergency-related work during a disaster response period is not
8 required to:

9 (1) register with the secretary of state;

10 (2) file a tax report with or pay taxes or fees to this
11 state or a political subdivision of this state;

12 (3) pay an ad valorem tax or use tax on equipment that
13 is brought into the state by the entity, used only by the entity to
14 perform disaster- or emergency-related work during the disaster
15 response period, and removed from the state by the entity following
16 the disaster response period;

17 (4) comply with any state or local business licensing
18 or registration requirements; or

19 (5) comply with any state or local occupational
20 licensing requirements or related fees.

21 Sec. 112.005. EXEMPTION OF OUT-OF-STATE EMPLOYEE FROM
22 CERTAIN OBLIGATIONS DURING DISASTER RESPONSE PERIOD.

23 Notwithstanding any other law and except as provided by Section
24 112.006, an out-of-state employee whose only employment in this
25 state is for the performance of disaster- or emergency-related work
26 during a disaster response period is not required to:

27 (1) file a tax report with or pay taxes or fees to this

1 state or a political subdivision of this state; or

2 (2) comply with any state or local occupational
3 licensing requirements or related fees.

4 Sec. 112.006. TRANSACTION TAXES AND FEES. An out-of-state
5 business entity whose transaction of business in this state is
6 limited to the performance of disaster- or emergency-related work
7 during a disaster response period or an out-of-state employee whose
8 only employment in this state is for the performance of disaster- or
9 emergency-related work during a disaster response period is subject
10 to a transaction tax or fee, including a motor fuels tax, sales or
11 use tax, hotel occupancy tax, and the tax imposed on the rental of a
12 motor vehicle, that is imposed in this state, unless the entity or
13 employee is otherwise exempt from the tax or fee.

14 Sec. 112.007. NOTIFICATION PROCEDURES. (a) If requested
15 by the secretary of state, an out-of-state business entity shall
16 provide to the secretary of state a statement that the entity came
17 to this state for the purpose of performing disaster- or
18 emergency-related work during a disaster response period and that
19 includes:

- 20 (1) the entity's name;
21 (2) the entity's jurisdiction of formation;
22 (3) the address of the principal office of the entity;
23 (4) the entity's federal tax identification number;
24 (5) the date that the entity entered the state; and
25 (6) contact information for the entity.

26 (b) If requested by the secretary of state, an in-state
27 business entity shall provide to the secretary of state, along with

1 the in-state business entity's contact information, the
2 information listed in Subsection (a) for any affiliate of the
3 in-state business entity that entered the state as an out-of-state
4 business entity.

5 (c) The secretary of state shall keep records of and make
6 available to the public any statements or information provided to
7 the secretary of state under this section.

8 Sec. 112.008. OBLIGATIONS OF OUT-OF-STATE BUSINESS
9 ENTITIES AND EMPLOYEES AFTER DISASTER RESPONSE PERIOD. An
10 out-of-state business entity or out-of-state employee who remains
11 in this state after a disaster response period is not entitled to
12 any exemptions from obligations provided by this chapter.

13 Sec. 112.009. REGULATIONS. The secretary of state shall
14 adopt regulations, including developing any necessary forms or
15 processes, to implement this chapter.

16 SECTION 2. (a) Subchapter B, Chapter 151, Tax Code, is
17 amended by adding Section 151.0241 to read as follows:

18 Sec. 151.0241. PERSONS PERFORMING DISASTER- OR
19 EMERGENCY-RELATED WORK. (a) In this section, "disaster- or
20 emergency-related work," "disaster response period," and
21 "out-of-state business entity" have the meanings assigned by
22 Section 112.003, Business & Commerce Code.

23 (b) An out-of-state business entity is not engaged in
24 business in this state for purposes of Sections 151.107 and 151.403
25 or any other provision of this chapter applicable to a person
26 engaged in business in this state if the entity's physical presence
27 in this state is solely from the entity's performance of disaster-

1 or emergency-related work during a disaster response period.

2 (b) Subchapter H, Chapter 151, Tax Code, is amended by
3 adding Section 151.3502 to read as follows:

4 Sec. 151.3502. SERVICES AND TANGIBLE PERSONAL PROPERTY SOLD
5 IN PERFORMING DISASTER- OR EMERGENCY-RELATED WORK. (a) In this
6 section, "disaster- or emergency-related work," "disaster response
7 period," and "out-of-state business entity" have the meanings
8 assigned by Section 112.003, Business & Commerce Code.

9 (b) The sale, lease, or rental of a taxable item by an
10 out-of-state business entity in performing disaster- or
11 emergency-related work during a disaster response period is
12 exempted from the taxes imposed by this chapter.

13 (c) Sections 151.0241 and 151.3502, Tax Code, as added by
14 this section, do not affect tax liability accruing before the
15 effective date of this Act. That liability continues in effect as
16 if this Act had not been enacted, and the former law is continued in
17 effect for the collection of taxes due and for civil and criminal
18 enforcement of the liability for those taxes.

19 SECTION 3. (a) Section 171.0002, Tax Code, is amended by
20 adding Subsection (c-1) to read as follows:

21 (c-1) "Taxable entity" does not include an out-of-state
22 business entity whose sole nexus with this state for the purpose of
23 taxation is the entity's provision of disaster- or
24 emergency-related work during a disaster response period. In this
25 subsection, "disaster- or emergency-related work," "disaster
26 response period," and "out-of-state business entity" have the
27 meanings assigned by Section 112.003, Business & Commerce Code.

1 (b) This section applies only to a franchise tax report
2 originally due on or after the effective date of this section.

3 (c) This section takes effect January 1, 2016.

4 SECTION 4. Except as otherwise provided by this Act:

5 (1) if this Act receives a vote of two-thirds of all
6 the members elected to each house, as provided by Section 39,
7 Article III, Texas Constitution, this Act takes effect immediately;
8 and

9 (2) if this Act does not receive the vote necessary for
10 immediate effect, this Act takes effect September 1, 2015.