

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

State of Arkansas *As Engrossed: S2/19/13 S3/4/13 S3/12/13*
89th General Assembly **A Bill**
Regular Session, 2013

SENATE BILL 190

By: Senator D. Johnson
By: Representatives Williams, Vines

For An Act To Be Entitled

AN ACT TO MAKE TECHNICAL CORRECTIONS TO TITLE 23 OF
THE ARKANSAS CODE CONCERNING PUBLIC UTILITIES AND
REGULATED INDUSTRIES; AND FOR OTHER PURPOSES.

Subtitle

TO MAKE TECHNICAL CORRECTIONS TO TITLE 23
OF THE ARKANSAS CODE CONCERNING PUBLIC
UTILITIES AND REGULATED INDUSTRIES.

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

SECTION 1. Arkansas Code § 23-1-101(4), concerning the definition of "corporation", is amended to read as follows:

(4) "Corporation" includes, ~~but is not limited to,~~ without limitation a private corporation, an association, a joint-stock association, a business trust, ~~and~~ an electric cooperative corporation, and a limited liability company providing service for charge or compensation in any area or from any facility for which the commission has granted a certificate of convenience and necessity;

SECTION 2. Because the section of the United States Code referenced in Arkansas Code § 23-1-101(5)(B) has been repealed by the United States Congress, Arkansas Code § 23-1-101(5), concerning the definition of "exempt wholesale generator", is amended to read as follows:

(5) "Exempt wholesale generator" means a person, including an affiliate of a public utility, that:



(A) ~~Is~~ engaged directly or indirectly through one (1) or more affiliates ~~and~~ exclusively in the business of owning or operating all or part of a facility for generating electric energy and selling electric energy at wholesale; ~~and who~~

~~(A)~~(B) Does not own or operate a facility for the transmission of electricity other than interconnecting transmission facilities used to effect a sale of electric energy at wholesale; ~~and~~

~~(B)~~ Has ~~applied to the Federal Energy Regulatory Commission for a determination under 15 U.S.C. § 79z-5a;~~

SECTION 3. Arkansas Code § 23-17-409(b)(1), concerning a prohibition on the provision of certain telecommunications services, is amended to read as follows to correct an internal reference:

(b)(1) Except as provided in subdivision (b)(2) of this section, a government entity may not provide, directly or indirectly, basic local exchange, voice, data, broadband, video, or wireless telecommunication service.

SECTION 4. Because the term "major electric transmission facility" is undefined and to further clarify the wording of the section, Arkansas Code § 23-18-510 is amended to read as follows:

23-18-510. Certificate of environmental compatibility and public need – Requirement – Exceptions.

~~(a)(1) No person shall commence to construct a major utility facility in the state, except those~~ Except for persons exempted as provided in subsection (c) of this section and §§ 23-18-504(a) and 23-18-508, a person shall not begin construction of a major utility facility in the state, without first ~~having obtained~~ obtaining a certificate of environmental compatibility and public need, ~~hereafter called a "certificate", issued with respect to~~ for the major utility facility by from the Arkansas Public Service Commission.

(2) The replacement or expansion of an existing transmission facility with a similar facility in substantially the same location or the rebuilding, upgrading, modernizing, or reconstruction for the purposes of increasing capacity shall not constitute construction of a major utility facility if no increase in width of right-of-way is required.

(b) ~~No~~ An entity, including ~~but not limited to,~~ without limitation a person, public utility, utility, regional transmission organization, municipality, merchant transmission provider, merchant generator, or other entity, whether regulated or not by the commission, shall ~~commence to construct a major electric transmission facility, as defined in § 23-18-503~~ not begin construction of an electric transmission line and associated facilities, as described in § 23-18-503(6)(B), within a national interest electric transmission corridor without first ~~having obtained~~ obtaining a certificate of environmental compatibility and public need ~~issued with respect to such a~~ for the facility by ~~from~~ the commission.

(c) ~~Nothing in this subchapter shall be construed to~~ This subchapter does not require a certificate ~~under this subchapter~~ of environmental compatibility and public need or an amendment ~~thereof~~ of such a certificate for:

(1) Reconstruction, alteration, or relocation of ~~any a~~ a major utility facility ~~which~~ that must be reconstructed, altered, or relocated because of the requirements of ~~any a~~ a federal, state, or county governmental body or agency for purposes of highway transportation, public safety, or air and water quality; or

(2) ~~Any major electric transmission facility~~ An electric transmission line and associated facilities including substations of a design voltage of one hundred kilovolts (100 kV) or more to be constructed or operated by a municipal electric utility system that is located within the territorial limits of ~~such~~ the municipal electric utility system.

(d) ~~Any~~ An entity granted a certificate of environmental compatibility and public need pursuant to subsection (b) of this section shall have the right of eminent domain as provided by Arkansas law for the limited purpose of constructing the certificated ~~major electric transmission facility~~ electric transmission line and associated facilities, as described in § 23-18-503(6)(B), to the extent that the facility is located within a national interest electric transmission corridor.

SECTION 5. Arkansas Code § 23-18-511(8)(A), concerning requirements for an exhibit to be included in an application for a certificate of environmental compatibility and public need filed with the Arkansas Public Service Commission, is amended to read as follows to correct an internal

reference:

(8)(A) An exhibit containing an environmental impact statement that fully develops the ~~four (4)~~ six (6) factors listed in subdivision (8)(B) of this section, treating in reasonable detail such considerations, if applicable, as:

(i) The proposed major utility facility's direct and indirect effect on the following in the area in which the major utility facility is to be located:

(a) The ecology of the land, air, and water environment;

(b) Established park and recreational areas; and

(c) Any sites of natural, historic, and scenic values and resources of the area in which the major utility facility is to be located; and

(ii) Any other relevant environmental effects.

SECTION 6. Because the reference to a major utility facility is incomplete, Arkansas Code § 23-18-519(b)(9), concerning the energy efficiency of a major utility facility, is amended to read as follows:

(9) That the energy efficiency of the major utility facility, as described in § 23-18-503(6)(A), has been given significant weight in the decision-making process;

SECTION 7. Arkansas Code § 23-63-1304(a), concerning the definition of "company action level event" under the Risk-Based Capital Act, is amended to read as follows to clarify the wording:

(a) As used in this subchapter, "company action level event" means any of the following events:

(1) The filing of an RBC report by an insurer that ~~shows~~ indicates:

(A) The insurer's total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC;

(B) If a life or accident and health insurer, the life or accident and health insurer has total adjusted capital that is ~~more~~ greater than or equal to its company action level RBC but less than the product of

its authorized control level RBC and two and five-tenths (2.5) and has a negative trend; or

(C) For the year ending December 31, 2011, and each year following, if a property and casualty insurer, the property and casualty insurer has total adjusted capital that is ~~more~~ greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and three (3) and triggers the trend test determined according to the trend test calculation included in the Property and Casualty RBC Instructions;

(2) The notification by the Insurance Commissioner to the insurer of an adjusted RBC report that indicates an event in subdivision (a)(1) of this section, if the insurer does not challenge the adjusted RBC report under § 23-63-1308; or

(3) If under § 23-63-1308 an insurer challenges an adjusted RBC report that indicates the event in subdivision (a)(1) of this section, the notification by the commissioner to the insurer that the commissioner, after a hearing, has rejected the insurer's challenge.

SECTION 8. Arkansas Code § 23-65-317(a)(1), concerning the revocation of a surplus lines broker's license under the Surplus Lines Insurance Law, is amended to read as follows to correct obsolete language:

(1) If the broker fails to file his or her ~~annual~~ quarterly statement or fails to remit the tax as required by law;

SECTION 9. Arkansas Code § 23-112-403(a)(2)(K), concerning unlawful practices under the Arkansas Motor Vehicle Commission Act, is amended to read as follows to correct the subdividing:

(K)(i) Notwithstanding the terms of any franchise agreement, to fail to pay to a dealer or any lienholder in accordance with their respective interests after the termination of franchise:

~~(i)(a)~~ (a) The dealer cost plus any charges by the manufacturer, distributor, or a representative for distribution, delivery, and taxes, less all allowances paid to the dealer by the manufacturer, distributor, or representative for new, unsold, undamaged, and complete motor vehicles of current model year and one (1) year prior model year in the dealer's inventory;

~~(ii)~~(b) The dealer cost of each new, unused, undamaged, and unsold part or accessory if the part or accessory:

~~(a)~~(1) Was purchased from the manufacturer by the dealer and is in the original package;

~~(b)~~(2) Is identical to a part or accessory in the current parts catalogue except for the number assigned to the part or accessory; or

~~(e)~~(3) Was purchased in the ordinary course of business by the dealer from another authorized dealer so long as the authorized dealer purchased the part or accessory directly from the manufacturer or distributor or from an outgoing authorized dealer as part of the dealer's initial inventory;

~~(iii)~~(c) The fair market value of each undamaged sign owned by the dealer which bears a trademark or trade name used or claimed by the manufacturer, distributor, or representative, if the sign was purchased from or purchased at the request of the manufacturer, distributor, or representative;

~~(iv)~~(d) The fair market value of all special tools and automotive service equipment owned by the dealer that were recommended in writing and designated as special tools and equipment and purchased from or purchased at the request of the manufacturer, distributor, or representative, if the tools and equipment are in usable and good condition except for reasonable wear and tear;

~~(v)~~(e) The cost of transporting, handling, packing, and loading of motor vehicles, parts, signs, tools, and equipment subject to repurchase;

~~(vi)~~(f) The balance of all claims for warranty and recall service and all other money owed by the manufacturer to the dealer;

~~(vii)~~(a)(g)(1) Except as provided under subdivisions (a)(2)(K)~~(vii)(b)~~ and ~~(e)~~(i)(g)(2) and (3) of this section, the fair market value of the franchise that is at least equivalent to the fair market value of the franchise one (1) day before the manufacturer announces the action that results in the termination or discontinuance of a line make.

~~(b)~~(2) If the termination, cancellation, discontinuance, or nonrenewal is due to a manufacturer's change in

distributors or manufacturer, the manufacturer may avoid paying fair market value to the new motor vehicle dealer if the distributor, manufacturer, new distributor, or new manufacturer offers the new motor vehicle dealer a franchise agreement with terms substantially similar to terms offered to other same line make new motor vehicle dealers.

~~(e)(3)~~ Subdivisions (a)(2)(K)~~(vii)(a)~~ and ~~(b)(i)(g)(1) and (2)~~ of this section do not apply to motor vehicle dealers, manufacturers, or distributors of motor homes;

~~(viii)(a)(h)(1)~~ Compensation for the actual pecuniary loss caused by the franchise termination, cancellation, or nonrenewal unless for due cause.

~~(b)(2)~~ In determining the actual pecuniary loss, the value of any continued service or parts business available to the dealer for the line make covered by the franchise shall be considered. If the dealer and the manufacturer, importer, or distributor cannot agree on the amount of compensation to be paid under this subchapter, either party may file an action in a court of competent jurisdiction; or

~~(ix)(i)~~ Any sums due as provided by subdivision (a)(2)(K)(i)(a) of this section within sixty (60) days after termination of a franchise and any sums due as provided by subdivisions (a)(2)(K)~~(ii)-(vii)(i)(b)-(g)~~ of this section within ninety (90) days after termination of a franchise. As a condition of payment, the dealer shall comply with reasonable requirements with respect to the return of inventory as are set out in the terms of the franchise agreement. A manufacturer, distributor, or representative who fails to pay those sums within the prescribed time or at such time as the dealer and lienholder, if any, proffer good title before the prescribed time for payment, is liable to the dealer for:

~~(a)(1)~~ The greatest of dealer cost, fair market value, or current price of the inventory;

~~(b)(2)~~ Interest on the amount due calculated at the rate applicable to a judgment of a court; and

~~(c)(3)~~ Reasonable attorney's fees and costs; ~~or.~~

~~(x)(ii)~~ Obligations under this subdivision (a)(2)(K) do not apply if the termination is a result of the conviction of the

franchisee in a court of competent jurisdiction of an offense that is punishable by a term of imprisonment in excess of one (1) year and the offense is substantially related to the business conducted pursuant to the franchise;

SECTION 10. Arkansas Code § 23-112-403(a)(2)(U), concerning unlawful practices under the Arkansas Motor Vehicle Commission Act, is amended to read as follows to correct the subdividing:

(U)(i) To do any of the following:

(a) To fail Fail to offer to all of its franchisees of the same line make any consumer rebates, dealer incentives, price or interest rate reduction, or finance terms that the franchisor offers or advertises;

~~(ii)(b) To offer Offer~~ rebates, cash incentives, or other promotional items for the sale of a vehicle by its franchisees unless the same rebate, cash incentive, or promotion is offered to all of its franchisees of the same line make, and any rebate, cash incentive, or promotion that is based on the sale of an individual vehicle is not increased for meeting a performance standard;

~~(iii)(c) To unreasonably Unreasonably~~ discriminate among its franchisees in any program that provides assistance to its franchisees, including Internet listings, sales leads, warranty policy adjustments, marketing programs, or dealer recognition programs;

~~(iv)(d) To fail Fail~~ to offer rebates, cash incentives, or other promotional incentive programs on a fair and equitable or proportionally equivalent basis to its franchisees of the same line make; or

~~(v)(e) To require Require~~ a motor vehicle dealer to improve the dealer's facilities, including signs, or to replace factory required and approved facility improvements completed within the last five (5) years in order to qualify for a new vehicle sales incentive program.

~~(vi)(ii)~~ Subdivisions (a)(2)(U)~~(i)-(v)(i)(a)-(e)~~ of this section do not apply to motor vehicle dealers, manufacturers, or distributors of motor homes.

SECTION 11. DO NOT CODIFY. The enactment and adoption of this act

shall not repeal, expressly or impliedly, the acts passed at the regular session of the Eighty-Ninth General Assembly. All such acts shall have the full force and effect and, so far as those acts intentionally vary from or conflict with any provision contained in this act, those acts shall have the effect of subsequent acts and as amending or repealing the appropriate parts of the Arkansas Code of 1987.

/s/D. Johnson