

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

State of Arkansas  
92nd General Assembly  
Regular Session, 2019

# A Bill

SENATE BILL 370

By: Senator Rapert  
By: Representative Gazaway

## 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(9)(G)(i), concerning the definition of "public utility", is amended to read as follows to correct a reference:

(G)(i)(a)(1) Within a county not subject to subdivision (9)(G)(i)(b) of this section, a Class B or lower water company or Class B or lower sewer company that would otherwise be exempt from the definition of "public utility" under subdivision (9)(A)(ii)(b) of this section or subdivision (9)(A)(vi)(b) of this section shall be included within the term "public utility" if the Class B or lower water company or Class B or lower sewer company petitions the Arkansas Public Service Commission to have the company included.

~~(2) The provisions of this section do not~~ Subdivision (9)(G)(i)(a)(1) of this section does not apply to a water or sewer company formed under the nonprofit corporation laws of this state or any improvement district or water distribution district law of this state.



(b)(1) All Class B or lower water companies or Class B or lower sewer companies that would otherwise be exempt from the definition of “public utility” under subdivision (9)(A)(ii)(b) of this section or subdivision (9)(A)(vi)(b) of this section shall be included within the term “public utility” if a majority of the customers of the company petition the Arkansas Public Service Commission to have the company included. The Arkansas Public Service Commission shall determine the sufficiency of the petition at a public hearing. The water or sewer company or any customer of the company may appear and present evidence on the sufficiency of the petition.

~~(2) The provisions of this section do not~~ Subdivision (9)(G)(i)(b)(1) of this section does not apply to a water or sewer company formed under the nonprofit corporation laws of this state or any improvement district or water distribution district law of this state.

SECTION 2. Arkansas Code § 23-16-101 is amended to read as follows to renumber the defined terms subsequent to the repeal of a defined term, to remove superfluous language, and to correct a reference:

23-16-101. Definitions.

As used in this subchapter, ~~unless the context otherwise requires:~~

~~(1)(A) [Repealed.]~~

~~(2)~~ “Other carriers” means all persons, firms, and corporations, other than rail carriers as defined in this section, which were subject to regulation by the ~~department prior to~~ former Arkansas Transportation Commission before the enactment of Acts 1945, No. 40, together with all persons, firms, and corporations ~~which~~ that perform similar services in Arkansas.

~~(B)~~ “Other carriers” ~~shall also include~~ includes common carriers by aircraft as defined under the Arkansas Air Commerce Act, § 23-14-101 et seq.; and

~~(3)~~~~(2)~~ “Rail carrier” means all persons, firms, and corporations engaged in the business of common carrier of freight and passengers by rail in Arkansas and which are subject to regulation by the ~~department~~ Arkansas Department of Transportation.

SECTION 3. Arkansas Code § 23-40-115(a), concerning limitations on the

types of investments trustees can make using assets of a trust fund under the Arkansas Prepaid Funeral Benefits Law, is amended to read as follows to correct improper subdividing that resulted in a subdivision designated as (a)(1) when there was no subdivision designated as (a)(2), to correct an improperly subdivided list within a list, and to remove a reference to an abolished entity:

(a)~~(1)~~ The trustees shall invest the trust fund only in the following:

~~(A)(1)~~ Demand deposits, savings accounts, certificates of deposit, and all other accounts ~~which that~~ are insured by the Federal Deposit Insurance Corporation ~~or the Federal Savings and Loan Insurance Corporation [abolished]~~;

~~(B)(2)~~ Bonds and obligations ~~which that~~ are insured by, fully guaranteed as to principal and interest by, and due from the United States Government or any of its agencies, including the Federal National Mortgage Association and the Government National Mortgage Association, and any repurchase obligations ~~which that~~ are secured by any of the foregoing;

~~(C)(i)(a)(3)~~ The following bonds or obligations:

~~(A)(i)~~ Corporate, state, municipal, or political subdivision bonds or obligations that at the time of purchase are rated A or better by Moody's Investors Service, Inc. or A or better by Standard & Poor's rate services.

~~(b)(ii)~~ The Insurance Commissioner by rule may permit the continued investment in a bond purchased in compliance with subdivision ~~(a)(1)(C)(i)(a)~~ (a)(3)(A)(i) of this section that is subsequently downgraded for the time and in the amounts established by the commissioner; ~~or and~~

~~(ii)(a)(B)(i)~~ Bonds of any school district in this state.

~~(b)(ii)~~ ~~Provided, however,~~ However, no more than thirty percent (30%) of the total trust assets may be invested in such school district bonds; and

~~(D)(1)(4)(A)~~ Mutual funds or common trust funds whose portfolio is made up of investments that are described in subdivisions ~~(a)(1)(A)-(C)~~ (a)(1)-(3) of this section.

~~(2)(B)~~ Investments described in subdivisions ~~(a)(1)(B)-(D)~~ (a)(2) and (3) and subdivision (a)(4)(A) of this section shall be purchased and held by the trustee ~~which that~~ has trust powers under a

trust agreement filed with and approved by the commissioner.

SECTION 4. Arkansas Code § 23-42-308(a)(2)(F), concerning the power of the Securities Commissioner to deny, suspend, revoke, or withdraw the registration of a broker-dealer or agent under the Arkansas Securities Act, is amended to read as follows to correct an improperly subdivided list within a list:

(F)(i) Is the subject of any of the following orders entered within the past five (5) years:

~~(a) an~~ An order entered ~~within the past five (5) years~~ by:

~~(a)(1)~~ The securities administrator of any other state;

~~(b)(2)~~ Any national securities, commodities, or banking agency or jurisdiction;

~~(c)(3)~~ Any national securities or commodities exchange;

~~(d)(4)~~ Any securities or commodities self-regulatory organization;

~~(e)(5)~~ Any registered securities association or clearing agency denying, revoking, suspending, or expelling him or her from registration as a broker-dealer, agent, investment adviser, or representative, or the substantial equivalent of those terms; or

~~(f) Is the subject of a United States postal fraud order; or~~

~~(g)(6)~~ The insurance administrator of any state; or

(b) A United States postal fraud order.

(ii) However, the commissioner shall not:

(a) Institute a revocation or suspension proceeding under this subdivision (a)(2)(F) more than five (5) years from the date of the order relied on; ~~and~~ or

(b) Enter an order under this subdivision (a)(2)(F) on the basis of an order under another state act, unless that order was based on facts ~~which~~ that would currently constitute a ground for an order under this section;

SECTION 5. Arkansas Code § 23-48-301 is amended to read as follows to reorganize the section for clarity:

23-48-301. Application for incorporation.

(a) Any one (1) or more natural persons, eighteen (18) years ~~old~~ of age or older, a majority of whom shall be bona fide residents of this state, who may desire to associate themselves by articles of incorporation for the purpose of establishing any state bank, may apply to the Bank Commissioner to be incorporated.

(b)(1) An application for authority to organize a state bank shall be submitted to the commissioner in the form that the commissioner may prescribe and shall include the following information ~~set forth in this subsection and subsection (c) of this section, and contain additional information which the commissioner may require. Five (5) copies of the proposed articles of incorporation and proposed bylaws shall be filed with the application. The application and articles of incorporation shall be signed by each of the incorporators, and shall be accompanied by a filing fee of not more than fifteen thousand dollars (\$15,000) as set by State Bank Department regulations, which shall not be refundable.;~~

~~(1)(A)~~ (A) The name, citizenship, residence, and occupation of each incorporator, and of each of the initial directors, and the name and address of each stock subscriber, and the amount of stock paid for by each;

~~(2)(B)~~ (B) The name and address of an individual within the state to whom notice to all incorporators may be sent;

~~(3)(C)~~ (C) The total initial capital and the number of shares of each class of the capital stock to be authorized;

~~(4)(D)~~ (D) The corporate name;

~~(5)(E)~~ (E) The proposed location of the main banking office;

~~(6)(F)~~ (F) If known, the name and residence of the proposed president or chief executive officer, operations officer, and, if applicable, the name and address of the proposed trust officer;

~~(7)(G)~~ (G) The names of the natural persons who propose to own or control more than five percent (5%) of the capital stock;

~~(8)(H)~~ (H) The past and present connection with any depository institution, financial institution, or national trust company, other than as a customer on terms generally available to the public, of each proposed

director and each subscriber to more than five percent (5%) of the capital stock;

~~(9)~~(I) Evidence of the character, financial responsibility, and ability of the incorporators and proposed directors;

~~(10)~~(J) A brief statement of the purposes for which the state bank is incorporated, and whether it shall operate a trust department;

~~(11)~~(K) The term for which the state bank is to exist, which shall be perpetual unless otherwise limited;

~~(12)~~(L) A statement signed and verified by the incorporators that the capital stock has been fully subscribed and the purchase price therefor has been paid into an escrow account approved by the commissioner and that the requirements of § 23-48-310 have been met;

~~(13)~~(M) Proof that application for federal deposit insurance has been made; ~~and~~

~~(14)~~(N) Recitation of the need for and advisability of the approval to organize;

(O) Any information required under subdivision (b)(2) of this section not otherwise listed in this subdivision (b)(1); and

(P) Any additional information that the commissioner may require.

~~(e)~~(2) The proposed articles of incorporation shall contain the following information:

~~(1)~~(A) The name of the proposed institution;

~~(2)~~(B) The town or city in which the proposed institution is to be located;

~~(3)~~(C) The amount of capital stock authorized, the number of shares of each class, the relative preferences, powers, and rights of each class, and the amount of paid-in surplus;

~~(4)~~(D) The names and places of residence of the stockholders and the number of shares held by each;

~~(5)~~(E) A statement whether voting for directors shall or shall not be cumulative and the extent, if any, of the preemptive rights of stockholders;

~~(6)~~(F) The term of the proposed institution's existence, which shall be perpetual unless otherwise limited;

~~(7)~~(G) The names of the initial board of directors

composed of no fewer than three (3) natural persons who shall serve until the next annual meeting or until their successors are regularly elected and qualified;

~~(8)~~(H) Other information that the State Bank Department may require; and

~~(9)~~(I) Other proper provisions that the incorporators may choose to insert for the regulation of the internal affairs and business of the state bank.

(3)(A) Five (5) copies of the proposed articles of incorporation and proposed bylaws shall be filed with the application under subdivision (b)(1) of this section.

(B) The application and articles of incorporation shall be signed by each of the incorporators and shall be accompanied by a nonrefundable filing fee of not more than fifteen thousand dollars (\$15,000) as set by State Bank Department regulations.

~~(d)~~(c) All persons purporting to act as or on behalf of a state bank knowing there was no incorporation under this chapter are jointly and severally liable for all liabilities created while so acting.

SECTION 6. Arkansas Code § 23-61-805 is amended to read as follows to correct an internal reference and to update the subsection and subdivision designations subsequent to the repeal of former subsection (b):

23-61-805. Funding – Publication of costs.

(a)(1) The General Assembly shall establish a reasonable initial assessment or user fee and reasonable increases or decreases in the amount of future assessments or user fees and penalties and interest charges for nonpayment of an assessment or user fee charged to participating health insurers for the efficient operation of the Arkansas Health Insurance Marketplace.

(2) Annually by October 1, the Arkansas Health Insurance Marketplace shall report to the Legislative Council in the manner and format that the Legislative Council requires the recommendations of the Arkansas Health Insurance Marketplace for the initial assessment or user fee and increases or decreases in the amount of future assessments or user fees and penalties and interest charges for nonpayment of an assessment or user fee charged to participating health insurers.

(3) Annually by December 1, the Legislative Council shall review the recommendations of the Arkansas Health Insurance Marketplace under subdivision ~~(a)(1)~~(a)(2) of this section and report to the President Pro Tempore of the Senate and the Speaker of the House of Representatives the recommendations of the Legislative Council for the initial assessment or user fee and future increases or decreases in the amount of assessments or user fees and penalties and interest charges for nonpayment of an assessment or user fee charged to participating health insurers.

~~(b)~~—[Repealed.]

~~(e)(1)~~(b)(1) All assessments and fees shall be due and payable upon receipt and shall be delinquent if not paid within thirty (30) days of the receipt of notice of the assessment by the health insurer.

(2)(A) Failure to timely pay the assessment shall automatically subject the health insurer to a penalty not to exceed ten percent (10%) of the assessment plus interest as established under subsection (a) of this section.

(B) The penalty and interest is due and payable within the next thirty-day period.

(3) The Board of Directors of the Arkansas Health Insurance Marketplace and the Insurance Commissioner may enforce the collection of the assessment and penalty and interest in accordance with this subchapter and the Arkansas Insurance Code.

(4) The board may waive the penalty and interest authorized by this subsection if the board determines that compelling circumstances exist that justify a waiver.

~~(d)(1)~~(c)(1) The Arkansas Health Insurance Marketplace shall publish the average costs of licensing, regulatory fees, and any other payments required by the Arkansas Health Insurance Marketplace and the administrative costs of the Arkansas Health Insurance Marketplace on an internet website to educate consumers on such costs.

(2) Information published under subdivision ~~(d)(1)~~(c)(1) of this section shall include information on moneys lost to waste, fraud, and abuse.

~~(e)(1)~~(d)(1) Annually, the Arkansas Health Insurance Marketplace shall report the following information to the Legislative Council:

(A) The total amount of assessment fees or user fees collected;

(B) The administrative costs and expenditure of the Arkansas Health Insurance Marketplace, including without limitation salaries of employees, supply costs, building rental costs, and technology costs;

(C) The amount of any other funds received by the Arkansas Health Insurance Marketplace; and

(D) Other budgetary or financial matters relating to the Arkansas Health Insurance Marketplace.

(2) The Arkansas Health Insurance Marketplace shall disclose and provide additional budgetary or financial information upon the request of the Legislative Council or the Joint Budget Committee.

SECTION 7. Arkansas Code § 23-61-1102(f)(2), concerning the length of terms of members of the State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services, is amended to read as follows to correct a grammatical error:

(2) After the completion of the terms of the initial members of the board under subdivision (f)(1) of this section, a member of the board shall serve for a term of five (5) years, and shall serve on the board until a successor is appointed and qualified.

SECTION 8. Arkansas Code § 23-61-1108(b), concerning penalties for violating licensing and inspection requirements and rules involving the transportation of dead human bodies, is amended to read as follows to clarify the prohibited conduct:

(b)(1) A violation of the licensing and inspection requirements established by the board under this section is a Class A misdemeanor.

(2) A violation of rules promulgated by the board under this section is a Class A misdemeanor.

SECTION 9. Arkansas Code § 23-79-311(c), concerning the definition of "motor vehicle", is amended to read as follows to correct a reference:

(c) For purposes of this section, "motor vehicle" is defined as provided in ~~§ 27-14-207~~ § 27-14-104.

SECTION 10. Arkansas Code Title 23, Chapter 79, Subchapter 17, is amended to add an additional section derived from general and permanent

uncodified language in Acts 2017, No. 1089, § 1, to read as follows:

23-79-1704. Legislative findings.

The General Assembly finds that:

(1) The State and Public School Life and Health Insurance Board has a fiduciary obligation to explore cost-effective treatments for its members;

(2) There are emerging technologies that could serve as cost-effective alternatives to surgical procedures; and

(3) Clinical organizations are increasingly providing public guidance on quality treatment practices.

SECTION 11. Arkansas Code § 23-89-212(c), concerning the definition of "motor vehicle", is amended to read as follows to correct a reference:

(c) For purposes of this section, "motor vehicle" is defined as provided in ~~§ 27-14-207~~ § 27-14-104.

SECTION 12. Arkansas Code § 23-94-204(i)(2), concerning the requirements for a written charter of an audit committee of a risk retention group under the Risk Retention and Purchasing Groups Act, is amended to read as follows to substitute a defined term for a shortened version of that term that is not defined:

(2) The audit committee shall have a written charter that defines the purpose of the audit committee, as follows:

(A) Assist the board of directors in oversight of:

(i) The integrity of the financial statements of the risk retention group;

(ii) Compliance with legal and regulatory requirements; and

(iii) The qualifications, independence, and performance of the independent auditor and actuary of the risk retention group;

(B) Discuss the annual audited financial statements and quarterly financial statements with the ~~group's~~ management of the risk retention group;

(C) Discuss with the independent auditor of the risk retention group:

(i) The annual audited financial statements of the risk retention group; and

(ii) If advisable, the quarterly financial statements;

(D) Discuss policies with respect to risk assessment and risk management;

(E) Have meetings with the ~~group's~~ management of the risk retention group and the independent auditor separately and periodically, either directly or through a designated representative of the audit committee;

(F) Review any audit problems or difficulties and the response by the ~~group's~~ management of the risk retention group with the independent auditor;

(G) Set clear hiring policies of the risk retention group as to the hiring of an employee or former employee of the independent auditor;

(H) Require the external auditor to rotate the lead or coordinating audit partner that has primary responsibility for the audit of the risk retention group and the audit partner that is responsible for reviewing the audit of the risk retention group so that neither individual performs the audit services for more than five (5) consecutive fiscal years; and

(I) Report regularly to the board of directors.

SECTION 13. Arkansas Code § 23-94-204(j)(1)(B)(iv), concerning the information required to be posted on the website of a risk retention group under the Risk Retention and Purchasing Groups Act, is amended to read as follows to substitute a defined term for a shortened version of that term that is not defined:

(iv) Director access to the ~~group's~~ management of the risk retention group and, as necessary and appropriate, to independent advisors;

SECTION 14. Arkansas Code § 23-99-1115(b)(1)(A), concerning the information required for a written or verbal notice of an adverse determination under the Prior Authorization Transparency Act, is amended to

read as follows to substitute a defined term for an undefined synonymous term:

(A) The name, title, and telephone number of the physician responsible for making the adverse determination and, in the event that the physician responsible for making the adverse ~~decision~~ determination is not available, a telephone number where a peer-to-peer contact with another physician regarding the adverse determination can be made;

SECTION 15. Arkansas Code § 23-112-403(a)(3), concerning the prohibition on a manufacturer owning, operating, or controlling a motor vehicle dealer, is amended to read as follows to correct an improperly subdivided list within a list:

(3)~~(A)~~ For a manufacturer, distributor, distributor branch or division, or factory branch or division, or an officer, agent, or other representative thereof+

~~(A) To~~ to own, operate, or control any motor vehicle dealer~~7.~~

~~(B) provided that this subdivision (a)(3)(A) shall not be construed to prohibit the following~~ Subdivision (a)(3)(A) of this section does not prohibit:

(i) The operation by a manufacturer of a motor vehicle dealer for a temporary period, not to exceed one (1) year, during the transition from one owner or operator to another;

(ii) The ownership or control of a motor vehicle dealer by a manufacturer during a period in which the motor vehicle dealer is being sold under a bona fide contract or purchase option to the operator of the dealership;

(iii) The ownership, operation, or control of a motor vehicle dealer by a manufacturer, if:

(a) The manufacturer has been engaged in the retail sale of new motor vehicles at the location for a continuous period of five (5) years prior to January 1, 1999; and

(b) The commission determines after a hearing on the matter at the request of any party that there is no prospective new motor vehicle dealer available to own and operate the franchise in a manner consistent with the public interest;

(iv) The ownership, operation, or control of a new motor vehicle dealer by a manufacturer, if the commission determines after a hearing on the matter at the request of any party, that there is no prospective new motor vehicle dealer available to own and operate the franchise in a manner consistent with the public interest; or

(v) The ownership, operation, or control of a motor vehicle dealer by a manufacturer, if the manufacturer is:

(a) A manufacturer of specialty vehicles, such as unassembled kits, and does not sell more than ten (10) assembled vehicles annually; or

(b) A custom motorcycle builder and does not sell more than five (5) assembled motorcycles annually;

SECTION 16. Arkansas Code § 23-114-102(16)(A), concerning the definition of "raffle" under the Charitable Bingo and Raffles Enabling Act, is amended to read as follows to correct a typographical error:

(16)(A) "Raffle" means the selling of tickets to win a prize awarded ~~though~~ through a random drawing.

SECTION 17. DO NOT CODIFY. CONSTRUCTION AND LEGISLATIVE INTENT.

It is the intent of the General Assembly that:

(1) The enactment and adoption of this act shall not expressly or impliedly repeal an act passed during the regular session of the Ninety-Second General Assembly;

(2) To the extent that a conflict exists between an act of the regular session of the Ninety-Second General Assembly and this act:

(A) The act of the regular session of the Ninety-Second General Assembly shall be treated as a subsequent act passed by the General Assembly for the purposes of:

(i) Giving the act of the regular session of the Ninety-Second General Assembly its full force and effect; and

(ii) Amending or repealing the appropriate parts of the Arkansas Code of 1987; and

(B) Section 1-2-107 shall not apply; and

(3) This act shall make only technical, not substantive, changes to the Arkansas Code of 1987.