

**Hall of the House of Representatives**  
84th General Assembly - Regular Session, 2003  
**Amendment Form**

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**Subtitle of House Bill No. 1114**

"AN ACT TO REPEAL CHAPTER 19 OF TITLE 23 AND TO REFORM ELECTRIC UTILITY  
REGULATION."

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**Amendment No. 2 to House Bill No. 1114.**

Amend House Bill No. 1114 as engrossed, H1/28/03:

Page 1, delete line 35 and substitute the following:

“SECTION 1. Arkansas Code § 4-9-109(a) is amended to read as follows:

(a) Except as otherwise provided in subsections (c) and (d), this chapter applies to:

- (1) a transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;
- (2) an agricultural lien;
- (3) a sale of accounts, chattel paper, payment intangibles, ~~qualified intangible property~~, or promissory notes;
- (4) a consignment;
- (5) a security interest arising under § 4-2-401, § 4-2-505, § 4-2-711(3), or § 4-2A-508(5), as provided in § 4-9-110; and
- (6) a security interest arising under § 4-4-210 or § 4-5-118.

SECTION 2. Arkansas Code § 4-9-301 is amended to read as follows:

4-9-301. Law governing perfection and priority of security interests.

Except as otherwise provided in §§ 4-9-303 - 4-9-306, ~~and except for the perfection, the effect of perfection or nonperfection, and the priority of a security interest in qualified intangible property, which shall be governed by the law of this state~~, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in paragraph (4), while negotiable documents, goods, instruments, money, or tangible chattel paper is



located in a jurisdiction, the local law of that jurisdiction governs:

(A) perfection of a security interest in the goods by filing a fixture filing;

(B) perfection of a security interest in timber to be cut; and

(C) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

SECTION 3. Arkansas Code § 4-9-102 (a)(69) is repealed.

~~(69) "Qualified intangible property" means a fully vested property right consisting of the irrevocable right of an electric utility or an assignee to charge, collect, receive, and be paid from collections of qualified intangible charges in the amount necessary to recover fully the qualified costs which are determined to be recoverable by the Arkansas Public Service Commission pursuant to the Electric Consumer Choice Act of 1999, § 23-19-101 et seq., all right, title, and interest of the electric utility or assignee in and to the qualified rate order pursuant to which such qualified intangible charges are authorized, including, without limitation, the right to obtain periodic adjustment of such qualified intangible charges pursuant to § 23-19-605(d), and all revenues, collections, claims, payments, money or proceeds of, or arising from, qualified intangible charges pursuant to such qualified rate order, whether or not the revenues and proceeds arising with respect thereto have accrued. Qualified intangible property shall constitute a contract right; it is not an account or general intangible.~~

SECTION 4. Section 4 of Act 324 of 2001, which would repeal Arkansas Code 23-18-103 effective October 1, 2003, is repealed so that Arkansas Code § 23-18-103 will remain in effect.

~~SECTION 4. Effective October 1, 2003, Arkansas Code 23-18-103 is repealed.~~

SECTION 5. Section 6 of Act 324 of 2001, which would repeal Arkansas Code 23-18-104, effective October 1, 2003, is repealed so that Arkansas Code § 23-18-104 will remain in effect.

~~SECTION 6. Effective October 1, 2003, Arkansas Code 23-18-104 is repealed.~~

SECTION 6. Arkansas Code § 23-2-304(a), listing power of the Public"

AND

Appropriately renumber the subsequent sections of the bill.

AND

Page 3, line 8, delete "(e)" and substitute "(e)(1)"

AND

Page 3, line 12, delete "(1)" and substitute "(A)"

AND

Page 3, line 15, delete “(2)” and substitute “(B)”

AND

Page 3, delete line 17 and substitute the following:

“unregulated electric service or any other unregulated activity.

(2) Provided, however, that the provisions of this subsection (e) shall not apply to any transactions involving an electric cooperative formed under the Electric Cooperative Corporation Act where the membership of such cooperative approves the transaction and in the case of subdivision (e)(1)(B), the commission has not disallowed the transaction within sixty (60) days after the filing of a notice with the commission in writing of the proposed transaction by the cooperative.”

AND

Page 4, delete lines 21 through 25 and substitute the following:

“(c) An electric utility shall have a right to recover from its customers any nuclear decommissioning costs, as determined by the commission, associated with the utility’s generating assets, and the commission shall retain jurisdiction sufficient to authorize the recovery of those costs.”

AND

Page 5, delete lines 10 through 36 and substitute the following:

“23-18-106.

(a) The Arkansas Public Service Commission shall have the authority to adopt rules and regulations under which electric utilities shall seek commission review and approval of the processes, actions, and plans by which the utilities:

(1) Engage in comprehensive resource planning;

(2) Acquire electric energy, capacity, and generation assets; or

(3) Utilize alternative methods to meet their obligations to serve Arkansas retail electric customers.

(b) With regard to electric cooperatives formed under the Electric Cooperative Corporation Act, to the extent that an electric distribution cooperative purchases electricity from an electric generation and transmission cooperative pursuant to a wholesale power contract, the authority granted to the Arkansas Public Service Commission by subdivisions (a)(1) and (2) of this section shall not extend to such electric distribution cooperative to the extent of such purchases, but shall only extend to such electric generation and transmission cooperative.

(c) Subsection (a) does not apply to any transaction involving the acquisition of generation assets, which is closed and finalized prior to the adoption of the rules and regulations authorized in subsection (a), or within one (1) year after the effective date of this act of 2003, whichever comes later, and which is the subject of an order or ruling of any federal or state regulatory agency issued on or before January 1, 2003.

(d) Reasonable and prudent costs incurred in compliance with subsection (a) and in compliance with the provisions of §§ 23-3-201 through 23-3-206 and 23-18-501 through 23-18-529 shall be eligible for recovery in the rates of any electric utility making such an acquisition, subject to final approval by the commission. When the utility establishes that the costs were incurred in compliance with subsection (a), a rebuttable

presumption is established that the costs were reasonable and prudent and incurred in the public interest. Nothing in this subsection shall be deemed to supercede the provisions of § 23-4-103.”

AND

Page 6, delete lines 1 through 5

AND

Page 6, delete lines 8 through 12 and substitute the following:

“The commission may, but it is not required to, adopt ratemaking policies appropriate to allow utilities to recover from their customers the reasonable and prudent costs and a reasonable return associated with the acquisition or construction by electric utilities of incremental resources. Nothing in this subsection shall be deemed to supercede the provisions of § 23-4-103.”

The Amendment was read  
By: Representative Napper  
LDH/JMB - 012820031526  
JMB083

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Chief Clerk