

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Senator Beebe**

A Bill

SENATE BILL

For An Act To Be Entitled

8 "AN ACT TO MAKE VARIOUS CORRECTIONS TO THE ARKANSAS CODE
9 OF 1987 ANNOTATED; AND FOR OTHER PURPOSES."

10

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

12

13 SECTION 1. Arkansas Code § 4-91-104(c) is repealed to delete the
14 reference to the Revised Code of Washington which is not applicable to
15 Arkansas law.

16

17 SECTION 2. To delete "credit" from the term "consumer credit reporting
18 agency" to make the name uniform and in accord with Arkansas Code § 4-91-102,
19 Arkansas Code § 4-91-108(1)(B) is amended to read as follows:

20 "4-91-108(1)(B) A statement that the buyer may review his or her
21 consumer reporting agency file at no charge if a request is made to the
22 consumer reporting agency within thirty (30) days after receiving notice that
23 credit has been denied; and"

24

25 SECTION 3. To include "capacity or" previously omitted from Arkansas
26 Code § 5-37-208 in the legislative edition and to replace "if" with "and",
27 Arkansas Code § 5-37-208 is amended to read as follows:

28 "5-37-208. Criminal impersonation.

29 (a) A person commits criminal impersonation if he does an act in his
30 pretended or assumed capacity or character with the purpose to injure or
31 defraud another person and he:

32 (1) Assumes a false identity; or

33 (2) Pretends to be a representative of some person or organization; or

34 (3) Pretends to be an officer or employee of the government; or

35 (4) Pretends to have a handicap or disability.

1 (b) Criminal impersonation is a Class A misdemeanor."
2

3 SECTION 4. Arkansas Code § 7-1-103(26) is repealed since it was
4 impliedly repealed by Acts 1989, No. 426, § 1 and superseded by Arkansas Code
5 §§ 3-3-210, 3-9-215, and 3-9-401. The Arkansas Code Revision Commission shall
6 renumber subsequent subdivisions accordingly.
7

8 SECTION 5. To add language directing that moneys paid to the Secretary
9 of State under Arkansas Code § 7-9-405(d) shall also be deposited in the State
10 Treasury, Arkansas Code § 7-9-405(d) is amended to read as follows:

11 "7-9-405(d) (1) No person shall make an anonymous contribution totaling
12 fifty dollars (\$50.00) or more.

13 (2) Any such anonymous contribution actually received by any ballot
14 question committee or legislative question committee shall be promptly paid by
15 the recipient to the Secretary of State of Arkansas for deposit in the State
16 Treasury as general revenues."
17

18 SECTION 6. Arkansas Code § 8-6-417 is repealed since the Advisory Board
19 on the Control of Litter and Junk was abolished by Acts 1989, No. 536, § 8.
20

21 SECTION 7. Arkansas Code § 8-6-707(b) (2) (A) is amended to read as
22 follows to change the preposition "with" to "within" for clarity:

23 "8-6-707(b) (2) (A) The county judge of each county within the service area
24 shall be a member of the service area board."
25

26 SECTION 8. Arkansas Code § 8-7-216(b) is amended to read as follows to
27 clarify an ambiguous reference to "the effective date of this act" by
28 inserting the date of enactment of Acts 1979, No. 406:

29 "8-7-216(b) Facilities required to have a permit under this subchapter
30 or which are operating under the terms of permits issued under the Arkansas
31 Water and Air Pollution Control Act, § 8-4-101 et seq., § 8-4-201 et seq., and
32 § 8-4-301 et seq., or the Arkansas Solid Waste Management Act, § 8-6-201 et
33 seq., as of March 14, 1979, may continue in operation until such time as a
34 permit is issued under this subchapter by the department, provided the owner
35 or operator of such facility has made application on forms provided by the

1 department for such permit by September 14, 1979."

2

3 SECTION 9. To delete references to a trust fund which has been
4 repealed, Arkansas Code § 8-7-509(a) is amended to read as follows:

5 "8-7-509(a) The Hazardous Substance Remedial Action Trust Fund is
6 created."

7

8 SECTION 10. Arkansas Code § 11-9-704(c)(5) is repealed since it repeats
9 verbatim subdivision (c)(2).

10

11 SECTION 11. Arkansas Code § 14-20-115(b) is amended to read as follows
12 to enact language inadvertently omitted from Acts 1988 (3rd Ex. Sess.), No.
13 33, § 1:

14 "14-20-115(b) Any quorum court of a county having a population of sixty-
15 five thousand (65,000) inhabitants or more according to the most recent
16 federal decennial census desiring to establish such a fund shall have the
17 authority to provide for the payment of a reasonable fee, to be taxed as costs
18 in each matter, civil or criminal, filed in any circuit, chancery, or probate
19 court within the county, in addition to any fees or costs presently taxed in
20 circuit, chancery, or probate courts, but not to exceed fifty percent (50%) of
21 those fees presently taxed as costs."

22

23 SECTION 12. Arkansas Code § 14-22-106 is amended to read as follows to
24 correct "repairs for machinery" to "repairs of machinery" in subdivision (6),
25 delete language placed in subdivision (10) and to incorporate it into
26 subdivision (11) with a related proviso:

27 "14-22-106 The following listed commodities may be purchased without
28 soliciting bids:

29 (1) Perishable foodstuffs for immediate use;

30 (2) Unprocessed feed for livestock and poultry;

31 (3) Advanced emergency medical services provided by a nonprofit
32 corporation and proprietary medicines when specifically requested by a
33 professional employee;

34 (4) Books, manuals, periodicals, films, and copyrighted educational
35 aids for use in libraries and for other informational material for

1 institutional purposes;

2 (5) Scientific equipment and parts therefor;

3 (6) Replacement parts and labor for repairs of machinery and equipment;

4 (7) Commodities available only from the federal government;

5 (8) Any commodities needed in instances in which an unforeseen and
6 unavoidable emergency has arisen in which human life, health, or public
7 property is in jeopardy. However, no such emergency purchase shall be
8 approved unless a statement in writing shall be attached to the purchase order
9 describing the emergency necessitating the purchase of such commodity without
10 competitive bidding;

11 (9) Utility services, the rates for which are subject to regulation by
12 a state agency or a federal regulatory agency;

13 (10) Sand, gravel, soil, lumber, or used pipe;

14 (11) Used or secondhand motor vehicles, machinery, or equipment, except
15 used or secondhand motor vehicles which have been under lease to a county when
16 such vehicles had fewer than eighteen thousand (18,000) miles of use may not
17 be purchased by the county when it has been used eighteen thousand (18,000)
18 miles or more except upon competitive bids as provided for in this chapter;

19 (12) Machinery, equipment, facilities, or other personal property
20 purchased or acquired for, or in connection with, the securing and developing
21 of industry under or pursuant to the provisions of Arkansas Constitution,
22 Amendment 49, Arkansas Code §§ 14-164-201 -- 14-164-224, or any other
23 provision of law pertaining to the securing and developing of industry;

24 (13) Registered livestock to be used for breeding purposes;

25 (14) Motor fuels;

26 (15) Motor vehicles, equipment, machinery, material, or supplies
27 offered for sale at public auction or through a process requiring sealed
28 bids."

29

30 SECTION 13. Arkansas Code § 14-42-202(e) is repealed since declared
31 unconstitutional in Owen v. Dalton, 296 Ark. 351, 757 S.W.2d 921 (1988).

32

33 SECTION 14. Arkansas Code § 14-43-504(c) is expressly repealed since it
34 was previously impliedly repealed and inadvertently included in the Code.

35

1 SECTION 15. Arkansas Code § 15-12-101(c) is amended to read as follows
2 to specify the designated number of voting members as nine (9) in accord with
3 the provisions of Arkansas Code § 15-12-101(a):

4 "15-12-101(c) All action by the Arkansas Natural and Cultural Resources
5 Council shall be taken by the vote of a majority of the nine (9) voting
6 members of the council. The nonvoting members of the council may participate
7 in all debate and discussion before the council, but shall abstain from voting
8 on any matter before the council."

9

10 SECTION 16. Arkansas Code § 15-22-204(b) is amended to read as follows
11 to delete "or both" after the dollar amount:

12 "15-22-204(b) The commission shall enforce its regulations and orders by
13 any or all of the following:

14 (1) Revocation of any permit or suspension from any program administered
15 by the commission;

16 (2) Suit for injunction or for damages, or both; and

17 (3) Civil penalties not to exceed ten thousand dollars (\$10,000)."

18

19 SECTION 17. To clarify Arkansas Code § 15-22-217(a) by clarifying the
20 terms "therein" (in the stream), "therefrom" (from the stream), and "each of
21 them" (each of the needs affected by the shortage of water); by inserting
22 "and" before "after notice and hearing"; and by transferring the subject
23 "commission" to be conjunctive to its verb "may", Arkansas Code § 15-22-217(a)
24 is amended to read as follows:

25 "15-22-217(a) Whenever a shortage of water in any stream, or part
26 thereof, exists to the extent that there is not sufficient water in the stream
27 to meet the requirements of all water needs, on its own initiative or on the
28 petition of any person affected by the shortage of water, and after notice and
29 hearing, the commission may allocate the available water from the stream among
30 the uses of water affected by the shortage of water in a manner that each of
31 the needs affected by the shortage of water may obtain an equitable portion of
32 the available water."

33

34 SECTION 18. Arkansas Code §§ 15-22-602(3), 15-22-604(4), 15-22-604(6),
35 15-22-604(11), and 15-22-610(b)(2) are amended to read as follows,

1 respectively, to delete the amendments made to these subdivisions by Acts
2 1985, No. 280, since declared unconstitutional in *Reeves v. Young*, 295 Ark.
3 506, 749 S.W.2d 327 (1988).

4 "15-22-602(3) "Develop" means to construct, acquire, by purchase or, as
5 set forth in this subchapter, by eminent domain, install, or equip any lands,
6 buildings, improvements, machinery, equipment, or other properties of whatever
7 nature, real, personal, or mixed;"

8 "15-22-604(4) To construct, lease as lessee, and in any manner acquire,
9 own, hold, maintain, operate, sell, dispose of, lease as lessor, exchange, and
10 mortgage all or any part of any project;"

11 "15-22-604(6) To assist persons in the preparation of their premises for
12 the use of water furnished by the commission and to construct upon such
13 premises project properties of any kind and character and, in connection
14 therewith, to receive, acquire, endorse, pledge, hypothecate, and dispose of
15 notes, bonds, and other evidences of indebtedness;"

16 "15-22-604(11) To accept gifts or grants of moneys, services,
17 franchises, rights, privileges, licenses, rights-of-way, easements, or other
18 property, real, personal, or mixed;"

19 "15-22-610(b)(2) Bear interest at the rate or rates accepted by the
20 commission at the public sale of the bonds. Interest shall be payable at such
21 times as the commission shall determine, but no bond issued under this
22 subchapter shall bear interest at a rate in excess of ten percent (10%) per
23 annum;"

24

25 SECTION 19. Arkansas Code § 15-22-806(d)(1) is amended to read as
26 follows to delete references to obsolete dates and fiscal years:

27 "15-22-806(d)(1) Beginning each January 1 the commission shall take
28 applications from the state and local governments for grants and loans to be
29 awarded for water resources development projects for the next fiscal year."

30

31 SECTION 20. Arkansas Code § 15-23-602(f)(2) is amended to read as
32 follows to change the reference to the number of counties in the region from
33 "eleven (11)" to "ten-" to agree with the provisions of subsection (a):

34 "15-23-602(f)(2) The chairman shall cause a notice of all meetings to be
35 sent to each newspaper in the ten-county region."

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SECTION 21. Arkansas Code § 15-43-240 is repealed since declared unconstitutional in Dennis v. State, 26 Ark. App. 294, 764 S.W.2d 466 (1989).

SECTION 22. Arkansas Code § 17-15-305(b) is amended to read as follows to clarify the language by setting out the licensing provisions as subdivision (b)(2) and designating the first sentence as (b)(1) which is further amended by deleting "from another state" after "nonresident auctioneer" as superfluous and inserting "the state of his or her residence" after "by"; deleting "such other state"; deleting "the other" and inserting "that" before "state, through reciprocity":

"17-15-305(b)(1) Nothing in this section and Arkansas Code §§ 17-15-304 and 17-15-306 shall prevent the conducting of any auction in this state by any nonresident auctioneer if such auctioneer is duly licensed by the state of his or her residence and that state, through reciprocity, permits a resident of this state who is an auctioneer duly licensed to conduct auctions in this state to conduct auctions in such other state without being required to obtain a license in such other state.

(2) The license fee applicable to a nonresident auctioneer from another state which does not permit an auctioneer who is a resident of this state and who is duly licensed in this state to conduct auctions in the other state without being required to obtain a license in such other state shall be of the same amount that such other state charges auctioneers who are residents of this state and who are duly licensed in this state to obtain a license to conduct an auction in such other state."

SECTION 23. Arkansas Code § 17-33-301(e) is amended to read as follows to delete the redundant language "fire alarm system or other electronic security system" after "fire alarm system or other electronic security system" contained in Acts 1989, No. 926, § 4:

"17-33-301(e) It shall be unlawful and punishable as provided in § 17-33-104 for any state, county, or municipal government, or political subdivision of either, to install, service, maintain, operate, sell, or lease as lessor any burglar alarm system, fire alarm system, or other electronic security system on private property if a private contractor licensed to do

1 business within the county or municipality offers such systems or services to
2 the public within such county or municipality. The provisions of this section
3 shall not prohibit a county or municipal government from installing,
4 servicing, maintaining, or operating a burglar alarm system or fire alarm
5 system on any property owned or leased by such county or municipal
6 government."

7

8 SECTION 24. Arkansas Code § 17-47-105 is amended to read as follows to
9 replace the word "form" with "application" after "the" in the second sentence
10 of (a) in accord with subsection (b) of the section:

11 "17-47-105(a) An applicant for registration as a homebuilder shall
12 submit an application under oath upon a form to be prescribed by the Secretary
13 of State. The application shall include, but shall not be limited to, the
14 following information pertaining to the applicant:

15 (1) Social security number for natural persons or employer
16 identification number for other persons;

17 (2) The name and address under which the applicant conducts business if
18 the applicant is an individual proprietorship, the name and address of each
19 partner or venturer if the applicant is a partnership or joint venture, or the
20 name and address of the corporate officers and statutory agent for service if
21 the applicant is a corporation;

22 (3) A certificate issued by an insurance company licensed to do business
23 in the State of Arkansas that the applicant has procured and has in effect
24 public liability and property damage insurance covering the applicant's
25 homebuilding operations in the sum of not less than twenty thousand dollars
26 (\$20,000) for injury or damage to property and fifty thousand dollars
27 (\$50,000) for injury or damage, including death to any one (1) person, and one
28 hundred thousand dollars (\$100,000) for injury or damage, including death to
29 more than one (1) person, and, if applicable, workers' compensation insurance
30 coverage.

31 (b) The information contained in the application shall be a matter of
32 public record and open to public inspection."

33

34 SECTION 25. To delete the obsolete language "Possess a valid National
35 Board certificate to include Parts I and II and the physiological therapeutics

1 section and, on and after January 1, 1990," Arkansas Code § 17-81-305(a) (5) is
2 amended to read as follows:

3 "17-81-305(a) (5) Possess a valid National Board certificate to include
4 Parts I, II, and III, and the physiological therapeutics section;"

5

6 SECTION 26. Arkansas Code § 17-100-105 is amended to read as follows to
7 correct various grammatical and other errors and to clarify the section:

8 "17-100-105. The following acts shall constitute violations of this
9 chapter:

10 (1) Representing oneself to be a dietitian or licensed dietitian, or
11 using the words 'dietitian' or 'provisional licensed dietitian' alone or in
12 combination, or using the initials, 'L.D.' or 'P.L.D.' or any other letters,
13 words, abbreviations, or insignia indicating that he or she is a dietitian,
14 unless he or she is duly licensed as such under this chapter;

15 (2) Practicing or attempting to practice dietetics without having first
16 been licensed or otherwise permitted under this chapter;

17 (3) Obtaining or attempting to obtain a license or renewal of a license
18 by bribery or fraudulent representation;

19 (4) Knowingly making a false statement on any form promulgated under
20 this chapter or the rules and regulations promulgated under this chapter."

21

22 SECTION 27. Arkansas Code § 18-14-402(b) is amended to read as follows
23 to include a reference: "The provisions of § 17-35-401 et seq. pertaining
24 to", before "the Real Estate Recovery Fund":

25 "18-14-402(b) The provisions of § 17-35-401 et seq. pertaining to the
26 Real Estate Recovery Fund shall not apply to any claims arising from or
27 damages caused by a violation or violations of this chapter or of the Real
28 Estate License Law, § 17-35-101 et seq., or regulations by any licensee while
29 engaged in any time-share activities."

30

31 SECTION 28. Arkansas Code § 18-16-405(b) (2) is amended to read as
32 follows to delete "landlord" and insert "operator" in accord with 18-16-
33 401(5):

34 "18-16-405(b) (2) Entry of the leased space by the operator for the
35 purpose of complying with this subchapter shall not constitute conversion nor

1 impose any responsibility for the care, custody, and control of any of the
2 personal property stored."

3

4 SECTION 29. Arkansas Code § 18-28-212(a) is amended to read as follows
5 to delete "once" after "one (1) time" as superfluous language:

6 "18-28-212(a) Within one hundred twenty (120) days from the filing of
7 the report required by § 18-28-211, the Auditor of State shall cause notice to
8 be published at least one (1) time each week for two (2) successive weeks in a
9 newspaper of general circulation in the county in this state in which is
10 located the last known address of any person to be named in the notice. If no
11 address is listed or if the address is outside this state, the notice shall be
12 published in the county in which the holder of the abandoned property has his
13 principal place of business within this state. After publication of the names
14 of the rightful owners, these names will become available for inspection by
15 the general public."

16

17 SECTION 30. Arkansas Code § 18-44-133(a) is amended to read as follows
18 to insert a comma between the words "architectural" and "engineering":

19 "18-44-133(a)(1) Every architect, engineer, surveyor, appraiser,
20 abstractor, or title insurance agent who shall do or perform any
21 architectural, engineering, surveying, appraisal, or abstracting work on, or
22 who shall issue any title insurance policy on any land, building, erection, or
23 improvement upon land, under or by virtue of any written agreement for
24 performance of the work with the owner or his agent thereof shall have a lien
25 upon the land, building, erection, or improvement to the extent of the agreed
26 contract price or a reasonable price for those services.

27 (2) However, the lien does not attach to the land, building, erection,
28 or improvement unless and until the lien is duly filed of record with the
29 circuit clerk and recorder in the county in which the land, building,
30 erection, or improvement is located."

31

32 SECTION 31. Arkansas Code § 19-5-309 is transferred as follows to the
33 Miscellaneous Funds chapter of Title 19 as § 19-5-1036:

34

35 "19-5-1036. There is established on the books of the State Treasurer, State

1 Auditor, and Chief Fiscal Officer of the State a fund to be known as the
2 'Arkansas State Building Services Maintenance Fund', which shall be used for
3 the maintenance, operation, and improvement of lands, buildings, and
4 facilities that may be acquired by the Arkansas State Building Services. The
5 Arkansas State Building Services Maintenance Fund shall consist of all moneys
6 received in connection with the leasing, management, and operation of building
7 facilities and lands belonging to or managed by State Building Services. The
8 moneys received by State Building Services are declared to be nonrevenue
9 receipts."

10

11 SECTION 32. To delete the language beginning "and moneys" and ending
12 with "subchapter" which refers to the former 1973 No. 750 § 7 H repealed by
13 Acts 1981, No. 938, § 21, Arkansas Code § 19-5-1005(b) is amended to read as
14 follows:

15 "19-5-1005(b) This fund shall consist of the balance on June 30, 1973,
16 that remains in the General Improvement Fund Account."

17

18 SECTION 33. To correct the sentence structure and word problems,
19 Arkansas Code § 19-5-1006(e) is amended to read as follows:

20 "19-5-1006(e) Such moneys or funds may also be used for making refunds
21 of federal moneys or funds advanced or determined to be ineligible
22 disbursements."

23

24 SECTION 34. Arkansas Code § 21-5-105 is transferred to Arkansas Code §
25 21-1-103 to eliminate an unnecessary duplication and replace and supersede the
26 present language located there.

27

28 SECTION 35. Arkansas Code § 22-6-601(c) (2) (C) is amended to read as
29 follows to insert "partner" after "secret".

30 "22-6-601(c) (2) (C) The appraiser shall take an oath that he will not,
31 directly or indirectly, be engaged in the purchase of the land or give
32 information to any agent, friend, secret partner, or other partner so as to
33 secure advantages of such information to himself or any person, association,
34 or company to the prejudice or exclusion of any other person."

35

1 SECTION 36. To insert language omitted by Acts 1987, No. 982, § 1, and
2 renumber the subdivisions, Arkansas Code § 22-6-601(i) is amended to read as
3 follows:

4 "22-6-601(i) (1) Upon receipt from the successful bidder of the full
5 amount of his bid, the state agency shall execute and deliver its deed
6 conveying the lands to him and shall certify a copy of the deed to the
7 Governor.

8 (2) The deed shall recite in detail the compliance with the respective
9 provisions of this section, which recitals shall be prima facie evidence of
10 the facts so set forth.

11 (3) The deed need not be acknowledged to entitle it to be recorded.

12 (4) The effect of the deed, the provisions of this section having been
13 substantially complied with in the sale, shall be to vest the purchaser with
14 the title of the lands, at law and in equity, in fee simple absolute."
15

16 SECTION 37. The enactment and adoption of this Act shall not repeal,
17 expressly or impliedly, the acts passed at the regular session of the 78th
18 General Assembly. All such acts shall have full effect and, so far as those
19 acts intentionally vary from or conflict with any provision contained in this
20 Act, those acts shall have the effect of subsequent acts and as amending or
21 repealing the appropriate parts of the Arkansas Code of 1987.

22

23 SECTION 38. All laws and parts of laws in conflict with this Act are
24 hereby repealed.