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4

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A Bill

SENATE BILL 190

5 By: Senator D. Johnson
6 By: Representatives Williams, Vines
7

For An Act To Be Entitled

9 AN ACT TO MAKE TECHNICAL CORRECTIONS TO TITLE 23 OF
10 THE ARKANSAS CODE CONCERNING PUBLIC UTILITIES AND
11 REGULATED INDUSTRIES; AND FOR OTHER PURPOSES.
12
13

Subtitle

15 TO MAKE TECHNICAL CORRECTIONS TO TITLE 23
16 OF THE ARKANSAS CODE CONCERNING PUBLIC
17 UTILITIES AND REGULATED INDUSTRIES.
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

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23 *Arkansas Code § 23-1-101(5)(B) has been repealed by the United States*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

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

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

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

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



1
2 *SECTION 2. Arkansas Code § 23-17-409(b)(1), concerning a prohibition on*
3 *the provision of certain telecommunications services, is amended to read as*
4 *follows to correct an internal reference:*

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

9
10 *SECTION 3. Because the term "major electric transmission facility" is*
11 *undefined and to further clarify the wording of the section, Arkansas Code §*
12 *23-18-510 is amended to read as follows:*

13 *23-18-510. Certificate of environmental compatibility and public need –*
14 *Requirement – Exceptions.*

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

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

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

1 ~~respect to such a~~ for the facility ~~by~~ from the commission.

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

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

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

16 (d) ~~Any~~ An entity granted a certificate of environmental compatibility
 17 and public need pursuant to subsection (b) of this section shall have the
 18 right of eminent domain as provided by Arkansas law for the limited purpose
 19 of constructing the certificated ~~major electric transmission facility~~
 20 electric transmission line and associated facilities, as described in § 23-
 21 18-503(6)(B), to the extent that the facility is located within a national
 22 interest electric transmission corridor.

23
 24 SECTION 4. Arkansas Code § 23-18-511(8)(A), concerning requirements
 25 for an exhibit to be included in an application for a certificate of
 26 environmental compatibility and public need filed with the Arkansas Public
 27 Service Commission, is amended to read as follows to correct an internal
 28 reference:

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

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

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

1 environment;

2 (b) Established park and recreational areas; and

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

6 (ii) Any other relevant environmental effects.

7

8 *SECTION 5. Because the reference to a major utility facility is*
9 *incomplete, Arkansas Code § 23-18-519(b)(9), concerning the energy efficiency*
10 *of a major utility facility, is amended to read as follows:*

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

14

15 *SECTION 6. Arkansas Code § 23-63-1304(a), concerning the definition of*
16 *"company action level event" under the Risk-Based Capital Act, is amended to*
17 *read as follows to clarify the wording:*

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

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

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

25 (B) If a life or accident and health insurer, the life or
26 accident and health insurer has total adjusted capital that is ~~more~~ greater
27 than or equal to its company action level RBC but less than the product of
28 its authorized control level RBC and two and five-tenths (2.5) and has a
29 negative trend; or

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

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

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

9
10 SECTION 7. Arkansas Code § 23-63-1503(a), concerning the definition of
11 "company action level event" as applicable to risk-based capital requirements
12 for health maintenance organizations, is amended to read as follows to
13 clarify the wording:

14 (a) ~~"Company action level event" means any of the following events:~~

15 ~~(1) The filing of an RBC report by a health organization that~~
16 ~~indicates that the health organization's total adjusted capital is greater~~
17 ~~than or equal to its regulatory action level RBC but less than its company~~
18 ~~action level RBC;~~

19 ~~(2) For the year ending December 31, 2011, and each following~~
20 ~~year, if a health organization has total adjusted capital that:~~

21 ~~(A) Is greater than or equal to its company action level~~
22 ~~RBC but less than the product of its authorized control level RBC and three~~
23 ~~(3); and~~

24 ~~(B) The triggering of the trend test determined in~~
25 ~~accordance with the trend test calculation included in the health~~
26 ~~organization's RBC instructions;~~

27 As used in this subchapter, "company action level event" means any of
28 the following events:

29 (1) The filing of an RBC report by a health organization that
30 indicates:

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

34 (B) For the year ending December 31, 2011, and each
35 following year, the health organization's total adjusted capital is greater
36 than or equal to its company action level RBC but less than the product of

1 its authorized control level RBC and three (3) and triggers the trend test
2 determined according to the trend test calculation included in the health
3 organization's RBC instructions;

4 ~~(3)~~(2) The notification by the Insurance Commissioner to the
5 health organization of an adjusted RBC report that indicates an event in
6 subdivision (a)(1) of this section, provided the health organization does not
7 challenge the adjusted RBC report under § 23-63-1507; or

8 ~~(4)~~(3) If under § 23-63-1507 a health organization challenges an
9 adjusted RBC report that indicates the event in subdivision (a)(1) of this
10 section, the notification by the commissioner to the health organization that
11 the commissioner, after a hearing, has rejected the health organization's
12 challenge.

13
14 SECTION 8. Arkansas Code § 23-65-317(a)(1), concerning the revocation
15 of a surplus lines broker's license under the Surplus Lines Insurance Law, is
16 amended to read as follows to correct obsolete language:

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

19
20 SECTION 9. Arkansas Code § 23-112-403(a)(2)(K), concerning unlawful
21 practices under the Arkansas Motor Vehicle Commission Act, is amended to read
22 as follows to correct the subdividing:

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

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

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

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

36 ~~(b)~~(2) Is identical to a part or

1 accessory in the current parts catalogue except for the number assigned to
2 the part or accessory; or

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

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

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

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

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

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

30 ~~(b)(2)~~ If the termination, cancellation,
31 discontinuance, or nonrenewal is due to a manufacturer's change in
32 distributors or manufacturer, the manufacturer may avoid paying fair market
33 value to the new motor vehicle dealer if the distributor, manufacturer, new
34 distributor, or new manufacturer offers the new motor vehicle dealer a
35 franchise agreement with terms substantially similar to terms offered to
36 other same line make new motor vehicle dealers.

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

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

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

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

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

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

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

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

30
31 SECTION 10. DO NOT CODIFY. The enactment and adoption of this act
32 shall not repeal, expressly or impliedly, the acts passed at the regular
33 session of the Eighty-Ninth General Assembly. All such acts shall have the
34 full force and effect and, so far as those acts intentionally vary from or
35 conflict with any provision contained in this act, those acts shall have the
36 effect of subsequent acts and as amending or repealing the appropriate parts

1 of the Arkansas Code of 1987.

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/s/D. Johnson

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