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2 89th General Assembly

A Bill

3 Regular Session, 2013

SENATE BILL 190

4

5 By: Senator D. Johnson

6 By: Representatives Williams, Vines

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8

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

14

Subtitle

15

TO MAKE TECHNICAL CORRECTIONS TO TITLE 23

16

OF THE ARKANSAS CODE CONCERNING PUBLIC

17

UTILITIES AND REGULATED INDUSTRIES.

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19

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

21

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

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

30

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32 *Arkansas Code § 23-1-101(5)(B) has been repealed by the United States*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

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



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

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

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

10
 11 *SECTION 3. Arkansas Code § 23-17-409(b)(1), concerning a prohibition*
 12 *on the provision of certain telecommunications services, is amended to read*
 13 *as follows to correct an internal reference:*

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

18
 19 *SECTION 4. Because the term "major electric transmission facility" is*
 20 *undefined and to further clarify the wording of the section, Arkansas Code §*
 21 *23-18-510 is amended to read as follows:*

22 *23-18-510. Certificate of environmental compatibility and public need –*
 23 *Requirement – Exceptions.*

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

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

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

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

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

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

25 (d) ~~Any~~ An entity granted a certificate of environmental compatibility
26 and public need pursuant to subsection (b) of this section shall have the
27 right of eminent domain as provided by Arkansas law for the limited purpose
28 of constructing the certificated ~~major electric transmission facility~~
29 electric transmission line and associated facilities, as described in § 23-
30 18-503(6)(B), to the extent that the facility is located within a national
31 interest electric transmission corridor.

32
33 SECTION 5. Arkansas Code § 23-18-511(8)(A), concerning requirements
34 for an exhibit to be included in an application for a certificate of
35 environmental compatibility and public need filed with the Arkansas Public
36 Service Commission, is amended to read as follows to correct an internal

1 reference:

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

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

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

11 (b) Established park and recreational areas; and

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

15 (ii) Any other relevant environmental effects.

16

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

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

23

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

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

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

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

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

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

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

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

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

18

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

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

24

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 ~~(e)(3)~~ Reasonable attorney's fees and
 34 costs; ~~or.~~

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

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

5

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

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

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

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

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

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

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

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

35

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

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

7
8 */s/D. Johnson*

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11 **APPROVED: 04/11/2013**
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