

1 **State of Arkansas**  
2 **80th General Assembly**  
3 **Regular Session, 1995**

# **A Bill**

**ACT 746 OF 1995**  
**HOUSE BILL 1719**

4 **By: Representatives Johnson, D. Wood, Hendrix, McKissack, Malone and Kidd**

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## **For An Act To Be Entitled**

8 "AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS MOTOR  
9 CARRIER ACT, ARKANSAS CODE §§ 23-13-201 ET SEQ., TO ENSURE  
10 PROVISIONS OF THE ARKANSAS LAW COMPLY WITH FEDERAL LAWS  
11 PARTIALLY PRE-EMPTING THE STATE REGULATION OF CERTAIN  
12 MOTOR CARRIERS; TO DECLARE AN EMERGENCY; AND FOR OTHER  
13 PURPOSES."

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## **Subtitle**

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"TO ENSURE PROVISIONS OF THE ARKANSAS  
MOTOR CARRIER ACT COMPLY WITH FEDERAL  
LAWS PRE-EMPTING THE STATE REGULATION OF  
MOTOR CARRIERS."

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

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23 SECTION 1. Arkansas Code § 23-13-204 is amended to read as follows:

24 "23-13-204. Applicability of subchapter. The provisions of this  
25 subchapter, except as specifically limited in this subchapter, shall apply to  
26 the transportation of passengers or property by motor carriers over public  
27 highways of this state and the procurement of, and provisions of, facilities  
28 for such transportation. Provided, nothing contained in this subchapter shall  
29 be construed to authorize the regulation of intrastate fares for the  
30 transportation of passengers by bus by an interstate motor carrier of  
31 passengers over any routes authorized by the Interstate Commerce Commission.  
32 Provided, further, nothing contained in this subchapter shall be construed to  
33 abrogate the laws of this state or any authority of the Arkansas State Highway  
34 Commission with regard to the routing of hazardous materials."

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36 SECTION 2. Arkansas Code § 23-13-206(a) is amended to read as follows:

1           "(a) Nothing in this subchapter shall be construed to include:

2                   (1) Motor vehicles employed solely in transporting school  
3 children and teachers to or from school and motor vehicles used in carrying  
4 set-up houses, ordinary livestock, unprocessed fish including shellfish,  
5 unprocessed agricultural commodities, baled cotton, cottonseed, cottonseed  
6 meal, cottonseed hulls, cottonseed cake, rice hulls, rice bran, rice mill  
7 feed, rice mill screenings, soybean meal, commercial fertilizer but not  
8 including the component parts used in the manufacture thereof. However,  
9 carriers of such exempt commodities and passengers shall be subject to safety  
10 of operation and equipment standards provisions prescribed or hereafter  
11 prescribed by the Arkansas State Highway Commission. Additionally, for-hire  
12 carriers of such exempt commodities shall file with the commission evidence of  
13 security for the protection of the public in the same amount and to the same  
14 extent as nonexempt carriers as provided in § 23-13-227;

15                   (2) Taxicabs or other motor vehicles performing a bona fide  
16 taxicab service. Bona fide taxicab service as employed in this section means  
17 and refers only to service rendered by motor-driven vehicles having a seating  
18 capacity not in excess of six (6) passengers and used for the transportation  
19 of persons for hire, which vehicles are owned and operated by a person, firm,  
20 or corporation authorized by the governing authorities of municipalities to  
21 conduct a taxicab business over or upon the streets and public ways;

22                   (3) Any private carrier of property and motor vehicles employed  
23 in the hauling of gravel, rock, dirt, bituminous mix materials, rip-rap,  
24 quarried stone, crushed stone, and similar materials, and any movements and  
25 services performed by wreckers and wrecker services; provided, all of the  
26 above private carriers, motor vehicles and wrecker and wrecker services shall  
27 be subject to the provisions prescribed, including all regulations made and  
28 promulgated pursuant to this subchapter, with respect to safety of operation  
29 and equipment standards;

30                   (4) Trolley buses operated by electric power or other buses  
31 furnishing local passenger transportation similar to street railway service,  
32 unless and to the extent that the Arkansas State Highway Commission shall from  
33 time to time find that such application is necessary to carry out the policy  
34 of this subchapter as to safety of operation or standards of equipment apply  
35 to:

1                   (A) The transportation of passengers or property wholly  
2 within a municipality or between contiguous municipalities or within a  
3 commercial zone, as defined in § 23-13-203(15), adjacent to, and commercially  
4 a part of, any such municipalities, except when the transportation is under a  
5 common control, management, or arrangement for a continuous carriage, or  
6 shipment to or from a point outside such municipalities or zone, and provided  
7 that the motor carrier engaged in such transportation of passengers over  
8 regular or irregular routes is also lawfully engaged in the intrastate  
9 transportation of passengers over the entire length of the routes in  
10 accordance with the laws of this state. The rights, duties, and privileges of  
11 any motor carrier previously granted a certificate of convenience and  
12 necessity by the Arkansas State Highway Commission to operate in, through, to,  
13 or from municipalities or in, through, to, or from a commercial zone or  
14 territory contiguous to a municipality shall not be impaired or abridged by  
15 reason of the subsequent annexation of the municipality or territory by  
16 another municipality. And any such motor carrier shall remain subject to the  
17 exclusive jurisdiction and control of the Arkansas State Highway Commission;  
18 or

19                   (B) The occasional or reciprocal transportation of  
20 passengers or property for compensation by any person not engaged in  
21 transportation by motor vehicle as a regular occupation or business, except  
22 when such transportation is sold, offered for sale, provided, procured, or  
23 furnished or arranged for; by any person who holds himself or itself out as  
24 one who sells or offers for sale transportation wholly or partially subject to  
25 this subchapter, or negotiates for, or holds himself or itself out by  
26 solicitation, advertisements, or otherwise, as one who sells, provides,  
27 furnishes, contracts, or arranges for such transportation; or by any person or  
28 his or its agent, servant, or employee who regularly engages in the exempt  
29 transportation of passengers for hire;

30                   (5) Motor vehicles controlled and operated by an agricultural  
31 cooperative association as defined in §§ 2-2-101 - 2-2-124, 2-2-201, 2-2-202,  
32 and 2-2-401 - 2-2-428 or any similar act of another state or by the U. S.  
33 Agricultural Marketing Act, as amended, or by a federation of such cooperative  
34 associations, if the federation possesses no greater powers or purposes than  
35 cooperative associations so defined;

1           (6) (A) Motor carriers of property, except household goods  
2 carriers, provided, the motor carriers of property shall be subject to all  
3 safety of operation and equipment standards provisions prescribed by the  
4 Arkansas State Highway Commission. Provided, further, all motor carriers of  
5 property shall be subject to the provisions of § 23-13-265, § 23-13-252 and  
6 all rules and regulations made and promulgated by the Commission with respect  
7 to financial fitness and insurance requirements.

8           (B) For the purposes of this subchapter, the term  
9 household goods carrier shall mean any motor carrier transporting: personal  
10 effects and property used or to be used in a dwelling when it is a part of the  
11 equipment or supply of the dwelling; furniture, fixtures, equipment and the  
12 property of stores, offices, museums, institutions, hospitals, or other  
13 establishments when they are a part of the stock, equipment, or supply of the  
14 stores, offices, museums, institutions, hospitals, or other establishments;  
15 and articles including objects of art, displays and exhibits, voting machines  
16 and tabulating machines, including the auxiliary machines or component parts  
17 as are necessary to the performance of a complete tabulating process,  
18 including, but not limited to, punches, sorters, computers, verifiers,  
19 collators, reproducers, interpreters, multipliers, wiring units, and control  
20 panels and spare parts therefor, which because of the unusual nature or value  
21 require specialized handling and equipment usually employed in moving  
22 household goods. The household goods carriers shall continue to be regulated  
23 by the Commission in accordance with this subchapter and all rules and  
24 regulations made and promulgated by the Commission, provided, a household  
25 goods carrier, upon application with the Commission, shall not be required to  
26 prove that the proposed services or operations are required by the present or  
27 future public convenience and necessity *nor shall the rates of such household*  
28 *goods carriers be subject to regulation by the Commission;*

29           (7) The transportation of passengers by private or public motor  
30 carrier either under contract or by cooperative agreement with the state of  
31 Arkansas when the transportation is provided exclusively in connection with,  
32 or a result of, federally or state funded assistance programs serving the  
33 public need. Provided the motor carriers shall be subject to the provisions  
34 prescribed, including all regulations made and promulgated pursuant to this  
35 subchapter, with respect to safety of operation and equipment standards;

1           (8) The transportation of passengers in a private vehicle with a  
2 maximum seating capacity of fifteen (15) passengers, including the driver,  
3 provided, the transportation is for the purposes of vanpooling or carpooling;

4           (9) Except as otherwise provided in this subchapter, the  
5 transportation of passengers by motor vehicle shall continue to be regulated  
6 by the Commission. Provided, a carrier of passengers, which carrier proposes  
7 strictly charter services or charter operations for the transportation of  
8 passengers, upon application with the Commission, shall not be required to  
9 prove that the proposed charter services or charter operations are required by  
10 the present or future public convenience and necessity."

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12           SECTION 3. Title 23, Chapter 13, Subchapter 2 of the Arkansas Code of  
13 1987 Annotated is amended to add a new Section 23-13-265 to read as follows:

14           "23-13-265. Exempt motor carrier to possess annual receipt.

15           (a) It is declared unlawful for any motor carrier of property who is  
16 exempt from certain provisions of this subchapter pursuant to § 23-13-  
17 206(a) (6) (A) to use any of the public highways of this state for the  
18 transportation of property for hire in intrastate commerce without possessing  
19 a copy of an annual receipt from the Arkansas State Highway Commission  
20 permitting those operations. Copies of the annual receipt shall be made and  
21 maintained in the cab of the power unit of each motor vehicle operated over  
22 the highways of this state while transporting property for hire, intrastate.  
23 Every application for a permit for the transportation of property by a carrier  
24 shall be in writing on a form to be specified by the Commission. The  
25 application shall contain and be accompanied by the following:

26           (1) The name and trade name (if any), and address or location of  
27 the principal office or place of business of the applicant;

28           (2) A statement giving full information concerning the ownership,  
29 reasonable value, and physical condition of vehicles and other property to be  
30 used by the applicant in the intrastate operations;

31           (3) A full and complete financial statement giving detailed  
32 information concerning the financial condition of the applicant;

33           (4) Proof of public liability insurance in the amounts set out in  
34 all rules and regulations made and promulgated by the Commission;

35           (5) In the event the motor carrier did not hold a valid

1 certificate or permit authorizing intrastate transportation by motor vehicle  
2 in this state on December 31, 1994, remittance of a processing fee in the  
3 amount of twenty-five dollars (\$25.00);

4           (6) Remittance of an insurance filing fee in the amount of five  
5 dollars (\$5.00) for each motor vehicle (truck or truck-tractor) to be operated  
6 in the state of Arkansas in intrastate operations;

7           (7) Remittance of a copy of the motor carrier\_s latest United  
8 States Department of Transportation (DOT) safety rating or, in the event the  
9 carrier has not been given a safety rating, a signed notarized statement  
10 indicating the company\_s intention to comply with all DOT safety regulations.

11 At any time as may be practical, a physical inspection of the equipment may  
12 be made by the Arkansas Highway Police;

13           (8) At the option of the applicant, the motor carrier may request  
14 that any and all laws, regulations or other provisions relating to uniform  
15 cargo liability rules, uniform bills of lading and receipts for property being  
16 transported, uniform cargo credit rules, or antitrust immunity for joint line  
17 rates or routes, classification and mileage guides, apply to the carrier; and

18           (9) Any other information that may be required by the Commission.

19           (b) Every motor carrier of property complying to the satisfaction of  
20 the Commission with the provisions of subsection (a) shall be issued a receipt  
21 for the current year indicating the name of the motor carrier\_s company, the  
22 principal place of business of the carrier, and the number of motor vehicles  
23 to be operated in Arkansas. Copies of the receipt shall be made by the motor  
24 carrier and shall be maintained in the power unit of each motor vehicle  
25 operated over the highways of Arkansas while transporting property for hire,  
26 intrastate. The receipt shall be presented by the driver of the motor vehicle  
27 for inspection by any authorized government personnel. Failure to carry the  
28 receipt and maintain adequate proof of public liability insurance shall  
29 subject the motor carrier to the civil and criminal penalties and fines as are  
30 authorized by this subchapter.

31           (c) Every motor carrier of property which held a valid certificate or  
32 permit authorizing intrastate transportation by motor vehicle in the state on  
33 December 31, 1994, shall continue to be authorized to transport property for  
34 hire in the state and shall be issued an annual receipt after complying with  
35 the provisions of subdivisions (a) (4), (a) (6), (a) (8), and (a) (9) of this

1 section, provided, neither the previously held certificate, the previously  
2 held permit, nor any annual receipt issued pursuant to this section shall have  
3 any asset value. Every motor carrier of property initially complying with all  
4 the provisions of subsection (a) to the satisfaction of the Commission and is  
5 issued an annual receipt shall thereafter be issued an annual receipt upon  
6 complying with subdivisions (a)(4), (a)(6), (a)(8), and (a)(9) of this  
7 section.

8 (d) The annual fee required by subdivision (a)(6) of this section shall  
9 not be required for each motor vehicle if the motor carrier of property  
10 otherwise remits the proper annual registration fees to the Commission  
11 pursuant to § 23-13-235 or the motor carrier of property otherwise remits the  
12 proper annual registration fees for the benefit of the state of Arkansas to  
13 the motor carrier\_s base state.

14 (e) Notwithstanding any other provision of this section to the  
15 contrary, the Commission shall have the authority to periodically review the  
16 motor carrier\_s fitness and shall have the authority to suspend or revoke the  
17 annual receipt or other credential granting the right of the motor carrier to  
18 operate intrastate if the motor carrier is determined by the Commission to be  
19 unfit, unsafe, or fails to maintain adequate public liability insurance.

20 (f) The Arkansas State Highway Commission shall have the authority to  
21 make and promulgate rules and regulations for the implementation of this  
22 section.

23 (g) All fees received by the Commission pursuant to subsection (a)  
24 shall be deposited with the Treasurer of State and classified as general  
25 revenues for distribution and usage as provided by the laws of this state;  
26 provided one and one-half percent (1.5%) of all the funds so deposited shall  
27 be classified as special revenues and transferred by the Treasurer on the last  
28 business day of each month in which they are deposited to the State Highway  
29 and Transportation Department Fund to be utilized by the Arkansas State  
30 Highway and Transportation Department for the purpose of administering this  
31 subchapter."

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33 SECTION 4. All provisions of this act of general and permanent nature  
34 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
35 Revision Commission shall incorporate the same in the Code.

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SECTION 5. If any provisions of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are declared to be severable.

SECTION 6. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 7. Emergency. It is hereby found and determined by the Eightieth General Assembly of the State of Arkansas that the U. S. Congress through its passage of P.L. 103-305 has largely pre-empted state regulation of intrastate transportation of property with regard to prices, routes, and services; that Congress through its passage of P.L. 103-311 has pre-empted state regulation of intrastate fares for the transportation of passengers by bus by the interstate motor carriers of passengers over a route authorized by the Interstate Commerce Commission; that this federal pre-emption eliminated the asset value of any certificates of authority or permits held by certain types of motor carriers on December 31, 1994; that certain regulatory functions such as insurance requirements, financial fitness, and safety of operations were not pre-empted; and that since the passage of these federal laws, there has been much confusion and misunderstanding among the motor carriers as to those matters pre-empted from regulation by the state of Arkansas and to those matters not pre-empted. Therefore, in order to eliminate the confusion and misunderstanding of the intrastate regulation as soon as possible, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.

*/s/Rep. Johnson, et al*

APPROVED: 3-23-95



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