

As Engrossed: 3/27/95 4/6/95

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

A Bill

ACT 1287 OF 1995
HOUSE BILL 2114

4 **By: Representatives Newman and Sheppard**

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For An Act To Be Entitled

8 "AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS CODE
9 RELATING TO THE PRODUCTION OF BRINE; AND FOR OTHER
10 PURPOSES."

11

Subtitle

12 "RELATING TO THE PRODUCTION OF BRINE."

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

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17 *SECTION 1. Arkansas Code 15-76-315 is amended to read as follows:*

18 *"15-76-315. Valuation of brine.*

19 *(a) The value of brine during any given year with respect to any unit*
20 *established hereunder and for all purposes hereof shall be deemed to be the*
21 *average price at which the operator of the unit has purchased or sold brine in*
22 *Arkansas adjusted to reflect concentrations of ions, temperature, other*
23 *relevant physical and chemical specifications, and delivery point. However,*
24 *for purposes of this subchapter, the value shall not apply to any unit created*
25 *hereunder until there shall have been actual bona fide sales or purchases of*
26 *brine by the operator in sufficient volumes and under such circumstances as*
27 *would establish a bona fide market value for brine from that unit. In any*
28 *action by any owner against the operator of the unit for an appropriate*
29 *accounting for royalty, the burden of proof that the value as determined*
30 *hereunder constitutes a fair and reasonable market value of brine produced*
31 *from the unit shall be upon the operator of the unit. However, no valuation*
32 *of brine or any other alternate method of computing royalty or in lieu of*
33 *royalty shall ever result in compensation which is less than thirty-two*
34 *dollars (\$32) per acre per year, as increased or decreased annually based on*
35 *changes in the Producer Price Index for Intermediate Materials, Supplies and*
36 *Components published by the U. S. Department of Labor, Bureau of Labor*

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1 Statistics or its successor. The adjustment will be made effective as of June
2 1 of each year and will remain effective for payments made from June 1 of that
3 year until May 31 of the following year. The adjustment made each year will
4 be based on the change in the index from December of the previous year
5 relative to the base index (March 1995). The formula to make the adjustment
6 is as follows:

7 New in-lieu Royalty Payment = Base in-lieu Royalty Payment multiplied
8 times A divided by B

9 Where:

10 1. Base in-lieu royalty payment = \$32/acre

11 2. A = Index for the month of December prior to the year the adjustment
12 is made. The index is the Producer Price Index for Intermediate
13 Materials, Supplies and Components as published by the U. S.
14 Department of Labor, Bureau of Labor Statistics in 'Producer Price
15 Indexes' Table 2 for selected commodity groupings.

16 3. B = The March, 1995, Producer Price Index for Intermediate Materials,
17 Supplies and Components as published by the U. S. Department of
18 Labor, Bureau of Labor Statistics in 'Producer Price Indexes'
19 Table 2 for selected commodity groupings.

20 The base price in lieu of royalty payment of \$32 per acre will remain
21 effective from April 1, 1995, until May 31, 1996. The first adjustment to the
22 base payment will be made effective as of June 1, 1996, and will remain
23 effective for the following year until May 31, 1997. Successive adjustments
24 will be made effective as of June 1 each year thereafter and shall remain in
25 effect until May 31 of the following year.

26 (b) In the event that, during a given year, an operator makes no sales
27 or purchases of brine qualifying for use under subsection (a) of this section,
28 the value of brine for that year for brine produced by the operator from a
29 particular unit for all purposes hereof shall be determined by the commission
30 by multiplying the number of acres in that particular unit by eight (8) times
31 the weighted average of lease compensation per acre or other in lieu of
32 royalty payment agreed to between the producer thereof and the owners of brine
33 interests in that unit, divided by the total production of brine in barrels
34 for the given year. If there are no sales or purchases of brine for two (2) or
35 more consecutive years, the value of brine for each consecutive year after the

1 first year in which there are no such sales shall be the value initially
2 determined above increased or decreased annually using the Producer Price
3 Index for Intermediate Materials, Supplies and components published by the U.
4 S. Department of Labor, Bureau of Labor Statistics in "Producer Price Indexes"
5 Table 2 for selected commodity groupings. The adjustment will be made prior
6 to June 1 and the new price per acre will be effective on June 1 of each year
7 using the value of the index for the previous December based on the change in
8 the index from March, 1995, to the previous December. The formula to make the
9 adjustment is as set forth in Section 1(a) of this act.

10 For purposes of calculating the value of the royalty interest under §
11 15-76-314(e), the value of brine as initially determined and as increased or
12 decreased under this subsection shall not be less than the value of brine as
13 initially determined under this subsection by utilizing an average annual
14 lease compensation or payment in lieu of royalty equivalent to thirty-two
15 dollars (\$32.00) per acre.

16 (c) In addition to any other amounts due and owing by the producer or
17 producers of any unit to the owners therein, the producer or producers shall
18 account separately and on a fair and equitable basis to each owner in the unit
19 for all substances which are found by the commission to be profitably
20 extracted from brine by a producer and which were not extracted by a producer
21 on January 1, 1979. Whether or not any such substance is extracted profitably
22 shall be determined by the commission on the basis of the value at the time of
23 extraction, without interest, after deducting all costs of producing and
24 recovering the same. The accounting by the producer shall be on a quarterly
25 basis and shall begin on whichever comes first:

- 26 (1) The date of filing of a petition for an accounting; or
27 (2) The time of the profitable extraction of other substances."
28

29 SECTION 2. All provisions of this act of a general and permanent nature
30 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
31 Revision Commission shall incorporate the same in the Code.
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33 SECTION 3. If any provision of this act or the application thereof to
34 any person or circumstance is held invalid, such invalidity shall not affect
35 other provisions or applications of the act which can be given effect without

1 the invalid provision or application, and to this end the provisions of this
2 act are declared to be severable.

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4 SECTION 4. All laws and parts of laws in conflict with this act are
5 hereby repealed.

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7 SECTION 5. EMERGENCY. It is hereby found and determined by the General
8 Assembly that the current laws relating to the production of brine are in
9 urgent need of updating and clarification; that this act is designed to update
10 and clarify those laws and should be given effect at the earliest practical
11 date. Therefore an emergency is hereby declared to exist and this act being
12 necessary for the preservation of the public peace, health and safety shall be
13 in full force and effect on and after April 1, 1995.

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/s/Rep. Newman, et al

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BECAME LAW WITHOUT GOVERNOR'S SIGNATURE: 4-14-95

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