

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.
Act 164 of the Regular Session

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009

A Bill

SENATE BILL 69

4
5 By: Senator Madison
6
7

For An Act To Be Entitled

8
9 AN ACT TO MAKE VARIOUS CORRECTIONS TO TITLE 23 OF
10 THE ARKANSAS CODE OF 1987 ANNOTATED; AND FOR
11 OTHER PURPOSES.
12

Subtitle

13
14 AN ACT TO MAKE VARIOUS CORRECTIONS TO
15 TITLE 23 OF THE ARKANSAS CODE OF 1987
16 ANNOTATED.
17
18

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

21 SECTION 1. Arkansas Code § 23-3-201 is amended to read as follows to
22 rewrite the section for clarity:

23 23-3-201. Requirement for new construction or extension.

24 ~~(a)(1) No new construction or operation of any equipment or facilities~~
25 ~~for supplying a public service or extension thereof shall be undertaken~~
26 ~~without first obtaining from the Arkansas Public Service Commission a~~
27 ~~certificate that public convenience and necessity require or will require the~~
28 ~~construction or operation.~~

29 ~~(2) If no increase in the width of an existing right-of-way is~~
30 ~~required, the replacement or expansion of existing equipment or facilities~~
31 ~~with similar equipment or facilities in substantially the same location or~~
32 ~~the rebuilding, upgrading, modernizing, or reconstructing of equipment or~~
33 ~~facilities that increase capacity shall not constitute new construction and~~
34 ~~shall not require a certificate of public convenience and necessity under~~
35 ~~subdivision (a)(1) of this section.~~



1 ~~(b) If the construction or operation has been commenced under a~~
 2 ~~limited or conditional certificate or authority as provided in §§ 23-3-203—~~
 3 ~~23-3-205, this section shall not be construed to require the certificate, nor~~
 4 ~~shall the certificate be required for an extension within any municipality or~~
 5 ~~district within which service has been lawfully supplied, or for any~~
 6 ~~extension within, or to territory then being served, or necessary in the~~
 7 ~~ordinary course.~~

8 (a) New construction or operation of any equipment or facilities for
 9 supplying a public service or the extension of a public service shall not be
 10 undertaken without first obtaining from the Arkansas Public Service
 11 Commission a certificate that public convenience and necessity require or
 12 will require the construction or operation.

13 (b) This section does not require a certificate of public convenience
 14 and necessity for:

15 (1) The replacement or expansion of existing equipment or
 16 facilities with similar equipment or facilities in substantially the same
 17 location or the rebuilding, upgrading, modernizing, or reconstructing of
 18 equipment or facilities that increase capacity if no increase in the width of
 19 an existing right-of-way is required;

20 (2) The construction or operation of equipment or facilities for
 21 supplying a public service that has begun under a limited or conditional
 22 certificate or authority as provided in §§ 23-3-203 – 23-3-205; or

23 (3) The extension of a public service:

24 (A) Within a municipality or district where a public
 25 service has been lawfully supplied;

26 (B) Within or to territory then being served; or

27 (C) That is necessary in the ordinary course.

28
 29 SECTION 2. Arkansas Code § 23-12-206(a) is amended to read as follows
 30 to correct a term and to correct word usage in the subsection:

31 (a) After an operator of a railroad within the State of Arkansas has
 32 filed a notice of rail line abandonment consistent with the Interstate
 33 Commerce Commission Termination Act of 1995, Pub. L. No. 104-88, and notice
 34 of the proposed rail line abandonment has been received by the Arkansas
 35 Economic Development Council, the council shall ~~be responsible for notifying~~
 36 notify appropriate entities of the proposed abandonment.

1
 2 SECTION 3. Arkansas Code § 23-13-602 is amended to read as follows to
 3 subdivide the section for clarity and to correct a reference:

4 23-13-602. Registration with a base state required.

5 Foreign and domestic motor carriers, motor private carriers, leasing
 6 companies, brokers, and freight forwarders shall not operate in interstate
 7 commerce in this state without:

8 (1) ~~being~~ Being registered with a base state; and

9 (2) ~~paying~~ Paying all fees as required under the Unified Carrier
 10 Registration Act of 2005, Pub. L. No. 109-59, § 4301 et seq., ~~as in effect on~~
 11 ~~January 1, 2007.~~

12
 13 SECTION 4. Arkansas Code § 23-13-603(b)(3) is amended to read as
 14 follows to correct a reference and to make stylistic changes:

15 (3) To cooperate with the various law enforcement agencies to
 16 ensure compliance with and enforcement of ~~the provisions of~~ the Unified
 17 Carrier Registration Act of 2005, Pub. L. No. 109-59, § 4301 et seq., ~~as in~~
 18 ~~effect on January 1, 2007,~~ and regulations; and

19
 20 SECTION 5. Arkansas Code § 23-13-604 is amended to read as follows to
 21 correct a reference and to further subdivide the section for clarity:

22 23-13-604. Registration fees.

23 (a) Any fees collected by the Director of the Department of Finance
 24 and Administration under this section shall be classified as special revenues
 25 and shall be deposited into the State Treasury.

26 (b) Upon receipt of the funds, and if not prohibited by the Unified
 27 Carrier Registration Act of 2005, Pub. L. No. 109-59, § 4301 et seq., ~~as in~~
 28 ~~effect on January 1, 2007,~~ the Treasurer of State shall:

29 (1) ~~deduct~~ Deduct three percent (3%) of the funds as a charge by
 30 the state for its services as specified in this section; and

31 (2) ~~shall credit~~ Credit the three percent (3%) to the
 32 Constitutional Officers Fund and the State Central Services Fund, as defined
 33 in the Revenue Classification Law, § 19-6-101 et seq., or to any successor
 34 State Treasury fund or funds established by law to replace the Constitutional
 35 Officers Fund and the State Central Services Fund.

36 (c) The net amount of the fees collected by the director under this

1 section shall be:

2 ~~(1) transferred~~ Transferred by the Treasurer of State on the
 3 last business day of each month to the State Highway and Transportation
 4 Department Fund; and

5 ~~(2) shall be distributed~~ Distributed and expended in the manner
 6 directed by the Unified Carrier Registration Act of 2005, Pub. L. No. 109-59,
 7 § 4301 et seq., ~~as it existed on January 1, 2007~~, for the payment of expenses
 8 incurred by the Arkansas State Highway and Transportation Department for
 9 motor carrier law enforcement and safety operations.

10

11 SECTION 6. Arkansas Code § 23-13-605 is amended to read as follows to
 12 correct a reference and to reorganize the section for clarity:

13 23-13-605. Violation – Enforcement – Penalties.

14 (a)~~(1)~~ A person who is subject to the Unified Carrier Registration Act
 15 of 2005, Pub. L. No. 109-59, § 4301 et seq., ~~as in effect on January 1, 2007~~,
 16 and who uses the highways of this state without first registering in
 17 accordance with this subchapter is guilty of a violation.

18 ~~(b)(2)~~ The Department of Arkansas State Police, the Arkansas Highway
 19 Police Division of the Arkansas State Highway and Transportation Department,
 20 and local authorities may enforce ~~subsection (a) of this section~~ this
 21 subsection.

22 ~~(e)(b)~~ A person who is found guilty or enters a plea of guilty or nolo
 23 contendere under this section shall be ordered to pay a fine of:

24 (1) For a first offense, not less than one hundred dollars
 25 (\$100) or more than five hundred dollars (\$500); ~~and~~ and

26 (2) For a second or subsequent offense, not less than one
 27 hundred dollars (\$100) or more than one thousand dollars (\$1,000).

28 ~~(d)(1)(c)(1)~~ Fifty percent (50%) of the amount of the fines imposed
 29 and collected under this section shall be remitted by the tenth day of each
 30 month to the Administration of Justice Fund Section of the Office of
 31 Administrative Services of the Department of Finance and Administration on a
 32 form provided by that office for deposit into the General Revenue Fund
 33 Account of the State Apportionment Fund.

34 (2) Fifty percent (50%) of the amount of the fines imposed and
 35 collected under this section shall remain in the jurisdiction in which the
 36 violation occurred.

1
 2 SECTION 7. Arkansas Code § 23-18-511(9) is amended to read as follows
 3 to correct word usage in the subdivision:

4 (9) The interstate benefits expected to be achieved by the
 5 proposed construction or modification of a major electric transmission
 6 facility, as ~~defined by~~ described in § 23-18-503(5)(B), that is located
 7 within a national interest electric transmission corridor; and

8
 9 SECTION 8. Arkansas Code § 23-18-519(b)(11) and (12) are amended to
 10 read as follows to correct a reference and to correct word usage in the
 11 subdivisions:

12 (11) The interstate benefits expected to be achieved by the
 13 proposed construction or modification of a major electric transmission
 14 facility, as ~~defined~~ described in § 23-18-503(5)(B), that is located within a
 15 national interest electric transmission corridor; and

16 (12) That any conditions attached to a certificate for the
 17 construction or modification of a major electric transmission facility, as
 18 ~~defined~~ described in § 23-18-503(5)(B), that is located within a national
 19 interest electric transmission corridor do not interfere with reduction of
 20 electric transmission congestion in interstate commerce or render the project
 21 economically infeasible.

22
 23 SECTION 9. Arkansas Code § 23-18-703(a) is amended to read as follows
 24 to correct word usage in the subsection and to ensure consistent use of
 25 terms:

26 (a)(1) The Arkansas Public Service Commission ~~is authorized to~~ may
 27 consider, propose, develop, solicit, approve, implement, and monitor measures
 28 by electric public utilities subject to its jurisdiction that cause the
 29 ~~companies~~ electric public utilities to incur costs of service and investments
 30 that utilize, generate, or involve clean energy resources or renewable energy
 31 resources, or both.

32 (2) The commission may encourage or require electric public
 33 utilities subject to its jurisdiction to consider clean energy or renewable
 34 energy resources, or both, as part of any resource plan.

35 (3) After proper notice and hearings, the commission may approve
 36 any clean energy resource or renewable energy resource that it determines to

1 be in the public interest.

2 (4) If the commission determines that the cost of a clean energy
3 resource or renewable energy resource is in the public interest, the
4 commission may allow the affected electric public utility to implement a
5 temporary surcharge to recover a portion of the costs of such a resource
6 until the implementation of new rate schedules in connection with the
7 electric public utility's next general rate filing ~~wherein~~ in which such
8 costs can be included in the electric public utility's base rate schedules.

9

10 SECTION 10. Arkansas Code § 23-39-505(g) is amended to read as follows
11 to reorganize the subsection for clarity:

12 (g)(1) Each applicant filing for licensure as a mortgage banker or
13 mortgage servicer shall file with the commissioner as part of his or her
14 application audited financial statements:

15 (A) ~~that~~ That reflect that the applicant has a net worth
16 of at least twenty-five thousand dollars (\$25,000); and ~~are~~

17 ~~(A)-(B)~~ That are:

18 (i) Prepared by an independent certified public
19 accountant;

20 ~~(B)-(ii)~~ Prepared ~~in accordance with~~ according to
21 generally accepted accounting principals as promulgated by the Financial
22 Accounting Standards Board;

23 ~~(C)-(iii)~~ Accompanied by an opinion acceptable to the
24 commissioner; and

25 ~~(D)-(iv)~~ Dated within fifteen (15) months preceding
26 the date on which the application is filed.

27 (2) Each applicant filing for licensure as a mortgage broker
28 shall file with the commissioner as part of his or her application financial
29 statements:

30 (A) ~~that~~ That reflect that the applicant has a net worth
31 of at least twenty-five thousand dollars (\$25,000); and ~~are~~

32 (B) That are:

33 (i) Certified as true and correct by the president
34 or chief financial officer of the mortgage broker;

35 ~~(B)-(ii)~~ Prepared ~~in accordance with~~ according to
36 generally accepted accounting principles as promulgated by the Financial

1 Accounting Standards Board; and

2 ~~(C)(iii)~~ Dated within eighteen (18) months preceding
3 the date on which the application is filed.

4
5 SECTION 11. Arkansas Code § 23-39-513(8)(B) is amended to read as
6 follows to reorganize the subdivision for clarity:

7 (B) Any penalty for prepayment under subdivision (8)(A) of
8 this section made within the thirty-six-month period shall not exceed the
9 greater of:

10 (i) Any of the following amounts:

11 (a) Three percent (3%) of the principal loan
12 amount remaining on the date of prepayment if the prepayment is made within
13 the first twelve-month period immediately following the date the loan was
14 made;

15 (b) ~~two~~ Two percent (2%) of the principal loan
16 amount remaining on the date of prepayment if the prepayment is made within
17 the second twelve-month period immediately following the date the loan was
18 made; or

19 (c) ~~one~~ One percent (1%) of the principal loan
20 amount remaining on the date of prepayment if the prepayment is made within
21 the third twelve-month period immediately following the date the loan was
22 made; or

23 (ii) An amount equal to interest for six (6) months
24 calculated on eighty percent (80%) of the remaining principal balance due on
25 the residential mortgage loan as of the date the prepayment is made;

26
27 SECTION 12. Arkansas Code § 23-48-503 is amended to read as follows to
28 reorganize the section for clarity:

29 23-48-503. Merger of bank or savings and loan association into state
30 bank.

31 (a)(1)(A) With the approval of the Bank Commissioner and the State
32 Banking Board and after a public hearing as prescribed by the applicable law
33 of this state, any bank, including an out-of-state bank, upon compliance with
34 § 23-48-901 et seq., or savings and loan association may be merged with a
35 state bank creating one (1) or more resulting banks.

36 (B) However, if any national bank, out-of-state bank, or

1 savings and loan association is involved in the merger under subdivision
 2 (a)(1)(A) of this section, there shall be compliance with the requirements of
 3 the state or federal laws applicable to the national bank, out-of-state bank,
 4 or savings and loan association.

5 (2)(A) A plan of merger involving a state bank shall provide:

6 ~~(A)(i)~~ The name of each party to the merger;

7 ~~(B)(ii)~~ The name of each entity that will result
 8 from the merger; and

9 ~~(C)(iii)~~ The terms and conditions of the merger.

10 (B) If more than one (1) bank, out-of-state bank, or
 11 savings and loan association will result or be created by the terms of the
 12 plan of merger, the terms and conditions of the merger shall include:

13 (i) The manner and basis of allocating and vesting
 14 the assets from the merger among one (1) or more of the parties;

15 (ii) The name of the party that will be obligated to
 16 pay the fair value of any shares of stock of a bank that is a party to the
 17 merger that ~~is~~ are held by a stockholder that has complied with the
 18 requirements of § 23-48-506 for the recovery of the fair value of the
 19 stockholder's shares; and

20 (iii) Either of the following:

21 (a) The manner and basis of allocating the
 22 liabilities and obligations of each bank, out-of-state bank, or savings and
 23 loan association that is a party to the merger among one (1) or more of the
 24 parties; or

25 (b) Adequate provision for the payment and
 26 discharge of the liabilities and obligations of each bank, out-of-state bank,
 27 or savings and loan association that is a party to the merger among one (1)
 28 or more of the parties.

29 (3) A bank, including an out-of-state bank, or savings and loan
 30 association may merge into a state bank ~~provided that~~ if none of the Arkansas
 31 banks ~~which~~ that are parties to the merger has a de novo charter.

32 (4)(A) The applicant shall file an application with the
 33 commissioner containing the information that the commissioner ~~may require~~
 34 requires, and if.

35 (B) If an out-of-state bank is a party to the merger, all
 36 applicable provisions of § 23-48-901 et seq. and the applicable law of the

1 home state of the merging bank shall be satisfied.

2 (5)(A) The assenting vote of a simple majority of each class of
3 voting stock of the merging banks and resulting bank shall be required for
4 the merger, ~~provided that,~~

5 (B) However, ~~no~~ a vote of the shareholders of the
6 resulting bank shall not be required if the number of shares to be issued in
7 connection with the merger does not exceed twenty percent (20%) of the
8 outstanding shares of the resulting bank ~~prior to~~ before the merger.

9 (b) The commissioner shall provide the board with the results of the
10 investigation of the application.

11 (c) The commissioner shall approve the application if, at the hearing,
12 both the commissioner and the board find that:

13 (1) The proposed merger provides adequate capital structure;

14 (2) The terms of the merger agreement are fair;

15 (3) The merger is not contrary to the public interest;

16 (4) The proposed merger adequately provides for dissenters'
17 rights; and

18 (5) The requirements of all applicable state and federal laws
19 have been complied with.

20
21 SECTION 13. The introductory language of Arkansas Code § 23-55-403(a)
22 is amended to read as follows to insert necessary language:

23 (a) When an application for a license is made under this subchapter,
24 the commissioner shall investigate the applicant's financial condition and
25 responsibility, financial and business experience, character, and general
26 fitness. The commissioner may conduct an on-site investigation of the
27 applicant, the reasonable cost of which the applicant must pay. The
28 commissioner shall issue a license to an applicant under this subchapter if
29 the commissioner finds that all of the following conditions have been
30 fulfilled:

31
32 SECTION 14. Arkansas Code § 23-55-604(e) is amended to read as follows
33 to correct word usage in the subsection:

34 (e) The commissioner, by rule ~~of~~ or order, may exempt a person from
35 any of the requirements of subsection (a)(2) and (3) if it is in the public
36 interest to do so.

1
2 SECTION 15. The introductory language of Arkansas Code § 23-63-503(4)
3 is amended to read as follows to correct a reference and to substitute the
4 correct term for a pronoun:

5 (4) "Insurer" shall have the same meaning as set forth in § 23-
6 60-102(2), except that ~~it~~ "insurer" shall not include:

7
8 SECTION 16. Arkansas Code § 23-114-104(a) is amended to read as
9 follows to clarify that the criminal penalty set out in the subsection is a
10 violation rather than an unclassified misdemeanor:

11 (a)(1) A violation of this chapter by a licensed authorized
12 organization is ~~an unclassified misdemeanor and shall be~~ a violation
13 punishable by a fine not to exceed five thousand dollars (\$5,000).

14 (2) A second or subsequent offense is ~~an unclassified~~
15 ~~misdemeanor and shall be~~ a violation punishable by a fine not to exceed ten
16 thousand dollars (\$10,000).

17
18 SECTION 17. Arkansas Code § 23-114-303(b)(4) is amended to read as
19 follows to correct a term:

20 (4) If the premises upon which a raffle or bingo session will be
21 conducted has been leased by the authorized ~~agent~~ organization, a copy of the
22 lease agreement; and

23
24 SECTION 18. The introductory language of Arkansas Code § 23-114-
25 303(d)(1) is amended to read as follows to correct a term:

26 (d)(1) Before the renewal of an annual license, the licensed
27 authorized organization shall report the following information:

28
29 SECTION 19. Arkansas Code § 23-114-704(c) is amended to read as
30 follows to subdivide the subsection and correct word usage:

31 (c) If the court finds that this chapter has been violated or is about
32 to be violated, the court shall ~~issue~~ restrain the violation by issuing:

- 33 (1) a A temporary restraining order;
34 (2) ~~and, after~~ After due notice and hearing, a temporary
35 injunction; and
36 (3) ~~after~~ After a final trial, a permanent injunction ~~to~~

1 ~~restrain the violation.~~

2
3 SECTION 20. Arkansas Code § 23-114-705 is amended to read as follows
4 to subdivide the section and to correct word usage:

5 23-114-705. Examination of records.

6 To verify compliance with this chapter, The the Department of Finance
7 and Administration ~~is authorized to~~ may audit and examine the books, papers,
8 records, equipment, and place of business of a:

9 (1) ~~licensed~~ Licensed authorized organization;

10 (2) ~~a licensed distributor~~ Distributor licensed under this
11 chapter; or

12 (3) ~~a licensed manufacturer~~ Manufacturer licensed under this
13 chapter to verify compliance with the provisions of this chapter.

14
15 SECTION 21. The enactment and adoption of this act shall not repeal,
16 expressly or impliedly, the acts passed at the regular session of the 87th
17 General Assembly. All such acts shall have full effect and, so far as those
18 acts intentionally vary from or conflict with any provision contained in this
19 act, those acts shall have the effect of subsequent acts and as amending or
20 repealing the appropriate parts of the Arkansas Code of 1987.

21
22 **APPROVED: 2/16/2009**