

1 State of Arkansas
2 89th General Assembly
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4

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

25 (b)(1) Except as provided in subdivision (b)(2) of this section, a
26 government entity may not provide, directly or indirectly, basic local
27 exchange, voice, data, broadband, video, or wireless telecommunication
28 service.
29

30 SECTION 2. Arkansas Code § 23-18-511(8)(A), concerning requirements
31 for an exhibit to be included in an application for a certificate of
32 environmental compatibility and public need filed with the Arkansas Public
33 Service Commission, is amended to read as follows to correct an internal
34 reference:

35 (8)(A) An exhibit containing an environmental impact statement
36 that fully develops the ~~four (4)~~ six (6) factors listed in subdivision (8)(B)



1 of this section, treating in reasonable detail such considerations, if
2 applicable, as:

3 (i) The proposed major utility facility’s direct and
4 indirect effect on the following in the area in which the major utility
5 facility is to be located:

6 (a) The ecology of the land, air, and water
7 environment;

8 (b) Established park and recreational areas; and

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

12 (ii) Any other relevant environmental effects.

13
14 SECTION 3. Arkansas Code § 23-63-1304(a), concerning the definition of
15 "company action level event" under the Risk-Based Capital Act, is amended to
16 read as follows to clarify the wording:

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

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

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

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

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

36 (2) The notification by the Insurance Commissioner to the

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

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

8
9 SECTION 4. Arkansas Code § 23-63-1503(a), concerning the definition of
10 "company action level event" as applicable to risk-based capital requirements
11 for health maintenance organizations, is amended to read as follows to
12 clarify the wording:

13 (a) ~~“Company action level event” means any of the following events:~~

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

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

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

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

26 As used in this subchapter, “company action level event” means any of
27 the following events:

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

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

33 (B) For the year ending December 31, 2011, and each
34 following year, the health organization’s total adjusted capital is greater
35 than or equal to its company action level RBC but less than the product of
36 its authorized control level RBC and three (3) and triggers the trend test

1 determined according to the trend test calculation included in the health
 2 organization's RBC instructions;

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

7 ~~(4)~~(3) If under § 23-63-1507 a health organization challenges an
 8 adjusted RBC report that indicates the event in subdivision (a)(1) of this
 9 section, the notification by the commissioner to the health organization that
 10 the commissioner, after a hearing, has rejected the health organization's
 11 challenge.

12
 13 SECTION 5. Arkansas Code § 23-65-317(a)(1), concerning the revocation
 14 of a surplus lines broker's license under the Surplus Lines Insurance Law, is
 15 amended to read as follows to correct obsolete language:

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

18
 19 SECTION 6. Arkansas Code § 23-112-403(a)(2)(K), concerning unlawful
 20 practices under the Arkansas Motor Vehicle Commission Act, is amended to read
 21 as follows to correct the subdividing:

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

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

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

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

35 ~~(b)~~(2) Is identical to a part or
 36 accessory in the current parts catalogue except for the number assigned to

1 the part or accessory; or

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

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

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

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

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

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

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

36 ~~(e)(3)~~ Subdivisions (a)(2)(K) ~~(vii)(a)~~

1 ~~and (b)(i)(g)(1) and (2)~~ of this section do not apply to motor vehicle
2 dealers, manufacturers, or distributors of motor homes;

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

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

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

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

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

27 ~~(c)(3)~~ Reasonable attorney's fees and
28 costs; ~~or.~~

29 ~~(x)(ii)~~ Obligations under this subdivision (a)(2)(K)
30 do not apply if the termination is a result of the conviction of the
31 franchisee in a court of competent jurisdiction of an offense that is
32 punishable by a term of imprisonment in excess of one (1) year and the
33 offense is substantially related to the business conducted pursuant to the
34 franchise;

35
36 SECTION 7. Arkansas Code § 23-112-403(a)(2)(U), concerning unlawful

1 practices under the Arkansas Motor Vehicle Commission Act, is amended to read
 2 as follows to correct the subdividing:

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

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

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

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

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

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

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

29
 30 SECTION 8. DO NOT CODIFY. The enactment and adoption of this act
 31 shall not repeal, expressly or impliedly, the acts passed at the regular
 32 session of the Eighty-Ninth General Assembly. All such acts shall have the
 33 full force and effect and, so far as those acts intentionally vary from or
 34 conflict with any provision contained in this act, those acts shall have the
 35 effect of subsequent acts and as amending or repealing the appropriate parts
 36 of the Arkansas Code of 1987.