

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas As Engrossed: S2/19/13 S3/4/13

2 89th General Assembly

# A Bill

3 Regular Session, 2013

SENATE BILL 190

4

5 By: Senator D. Johnson

6 By: Representatives Williams, Vines

7

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.

18

19

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

21

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23 *Arkansas Code § 23-1-101(5)(B) has been repealed by the United States*  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

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

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

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

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



1  
2       SECTION 2. Arkansas Code § 23-17-409(b)(1), concerning a prohibition on  
3 the provision of certain telecommunications services, is amended to read as  
4 follows to correct an internal reference:

5           (b)(1) Except as provided in subdivision (b)(2) of this section, a  
6 government entity may not provide, directly or indirectly, basic local  
7 exchange, voice, data, broadband, video, or wireless telecommunication  
8 service.

9  
10       SECTION 3. Because the term "major electric transmission facility" is  
11 undefined and to further clarify the wording of the section, Arkansas Code §  
12 23-18-510 is amended to read as follows:

13       23-18-510. Certificate of environmental compatibility and public need –  
14 Requirement – Exceptions.

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

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

28           (b) ~~No An~~ entity, including ~~but not limited to,~~ without limitation a  
29 person, public utility, utility, regional transmission organization,  
30 municipality, merchant transmission provider, merchant generator, or other  
31 entity, whether regulated or not by the commission, shall ~~commence to~~  
32 ~~construct a major electric transmission facility, as defined in § 23-18-503~~  
33 not begin construction of an electric transmission line and associated  
34 facilities, as described in § 23-18-503(6)(B), within a national interest  
35 electric transmission corridor without first ~~having obtained~~ obtaining a  
36 certificate of environmental compatibility and public need ~~issued with~~

1 ~~respect to such a~~ for the facility ~~by~~ from the commission.

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

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

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

16 (d) ~~Any~~ An entity granted a certificate of environmental compatibility  
 17 and public need pursuant to subsection (b) of this section shall have the  
 18 right of eminent domain as provided by Arkansas law for the limited purpose  
 19 of constructing the certificated ~~major electric transmission facility~~  
 20 electric transmission line and associated facilities, as described in § 23-  
 21 18-503(6)(B), to the extent that the facility is located within a national  
 22 interest electric transmission corridor.

23  
 24 SECTION 4. Arkansas Code § 23-18-511(8)(A), concerning requirements  
 25 for an exhibit to be included in an application for a certificate of  
 26 environmental compatibility and public need filed with the Arkansas Public  
 27 Service Commission, is amended to read as follows to correct an internal  
 28 reference:

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

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

36 (a) The ecology of the land, air, and water

1 environment;

2 (b) Established park and recreational areas; and

3 (c) Any sites of natural, historic, and scenic

4 values and resources of the area in which the major utility facility is to be  
5 located; and

6 (ii) Any other relevant environmental effects.

7

8 *SECTION 5. Because the reference to a major utility facility is*  
9 *incomplete, Arkansas Code § 23-18-519(b)(9), concerning the energy efficiency*  
10 *of a major utility facility, is amended to read as follows:*

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

14

15 *SECTION 6. Arkansas Code § 23-63-1304(a), concerning the definition of*  
16 *"company action level event" under the Risk-Based Capital Act, is amended to*  
17 *read as follows to clarify the wording:*

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

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

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

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

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

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

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

9  
10 SECTION 7. Arkansas Code § 23-65-317(a)(1), concerning the revocation  
11 of a surplus lines broker's license under the Surplus Lines Insurance Law, is  
12 amended to read as follows to correct obsolete language:

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

15  
16 SECTION 8. Arkansas Code § 23-112-403(a)(2)(K), concerning unlawful  
17 practices under the Arkansas Motor Vehicle Commission Act, is amended to read  
18 as follows to correct the subdividing:

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

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

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

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

32 ~~(b)(2)~~ (2) Is identical to a part or  
33 accessory in the current parts catalogue except for the number assigned to  
34 the part or accessory; or

35 ~~(c)(3)~~ (3) Was purchased in the ordinary  
36 course of business by the dealer from another authorized dealer so long as

1 the authorized dealer purchased the part or accessory directly from the  
2 manufacturer or distributor or from an outgoing authorized dealer as part of  
3 the dealer's initial inventory;

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

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

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

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

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

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

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

36 ~~(viii)(a)(h)(1)~~ Compensation for the actual

1 pecuniary loss caused by the franchise termination, cancellation, or  
2 nonrenewal unless for due cause.

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

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

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

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

24 ~~(c)~~(3) Reasonable attorney's fees and  
25 costs; ~~or.~~

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

32  
33 SECTION 9. Arkansas Code § 23-112-403(a)(2)(U), concerning unlawful  
34 practices under the Arkansas Motor Vehicle Commission Act, is amended to read  
35 as follows to correct the subdividing:

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

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

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

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

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

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

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

26  
27           SECTION 10. DO NOT CODIFY. The enactment and adoption of this act  
28 shall not repeal, expressly or impliedly, the acts passed at the regular  
29 session of the Eighty-Ninth General Assembly. All such acts shall have the  
30 full force and effect and, so far as those acts intentionally vary from or  
31 conflict with any provision contained in this act, those acts shall have the  
32 effect of subsequent acts and as amending or repealing the appropriate parts  
33 of the Arkansas Code of 1987.

34  
35   /s/D. Johnson  
36