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89th General Assembly
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A Bill

DRAFT ANS/ANS
HOUSE BILL

By: Representative <NA>

For An Act To Be Entitled

AN ACT TO MAKE TECHNICAL CORRECTIONS TO TITLE 23 OF
THE ARKANSAS CODE CONCERNING PUBLIC UTILITIES AND
REGULATED INDUSTRIES; AND FOR OTHER PURPOSES.

Subtitle

TO MAKE TECHNICAL CORRECTIONS TO TITLE 23
OF THE ARKANSAS CODE CONCERNING PUBLIC
UTILITIES AND REGULATED INDUSTRIES.

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

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

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

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

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

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1 applicable, as:

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

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

7 (b) Established park and recreational areas; and

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

11 (ii) Any other relevant environmental effects.
12

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

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

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

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

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

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

35 (2) The notification by the Insurance Commissioner to the
36 insurer of an adjusted RBC report that indicates an event in subdivision

(a)(1) of this section, if the insurer does not challenge the adjusted RBC report under § 23-63-1308; or

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

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

(a) ~~"Company action level event" means any of the following events:~~

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

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

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

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

As used in this subchapter, "company action level event" means any of the following events:

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

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

(B) For the year ending December 31, 2011, and each following year, the health organization's total adjusted capital is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and three (3) and triggers the trend test determined according to the trend test calculation included in the health

1 organization's RBC instructions;

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

6 ~~(4)~~(3) If under § 23-63-1507 a health organization challenges an
7 adjusted RBC report that indicates the event in subdivision (a)(1) of this
8 section, the notification by the commissioner to the health organization that
9 the commissioner, after a hearing, has rejected the health organization's
10 challenge.

11
12 SECTION 5. Arkansas Code § 23-65-317(a)(1), concerning the revocation
13 of a surplus lines broker's license under the Surplus Lines Insurance Law, is
14 amended to read as follows to correct obsolete language:

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

17
18 SECTION 6. Arkansas Code § 23-112-403(a)(2)(K), concerning unlawful
19 practices under the Arkansas Motor Vehicle Commission Act, is amended to read
20 as follows to correct the subdividing:

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

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

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

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

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

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

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

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

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

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

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

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

~~(e)~~(3) Subdivisions (a)(2)(K)~~(vii)(a)~~ and (b)(i)(g)(1) and (2) of this section do not apply to motor vehicle

dealers, manufacturers, or distributors of motor homes;

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

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

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

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

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

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

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

SECTION 7. Arkansas Code § 23-112-403(a)(2)(U), concerning unlawful practices under the Arkansas Motor Vehicle Commission Act, is amended to read

as follows to correct the subdividing:

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

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

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

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

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

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

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

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