

State of Arkansas

76th General Assembly

Second Extraordinary Session, 1987

SENATE BILL 3

By: Senator Cassady

"AN ACT TO PROVIDE A TAX TO BE IMPOSED ON ALL VEHICLES, WITH CERTAIN EXCEPTION, WHICH THE USERS OF SUCH VEHICLES ELECT TO OPERATE ON THE HIGHWAYS, ROADS AND STREETS OF THIS STATE HAVING DECLARED GROSS WEIGHTS IN EXCESS OF 73,280 POUNDS; TO REPEAL ACT 685 OF 1983; TO PROVIDE FOR A REFUND MECHANISM FOR RETALIATORY TAXES; TO AMEND ARK. STAT. ANN. §75-819(b) AND ARK. STAT. ANN. §75-201(c)(8); AND FOR OTHER PURPOSES."

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

SECTION 1. Any motor vehicle registered in Arkansas at the maximum registration fee for 68,001 to 73,280 pounds, as provided in Subsection (7) of Subsection (C) of Section 24 of Act 65 of 1929, as amended, including any motor vehicle registered under the International Registration Plan at the maximum fee for its Arkansas apportioned mileage or any motor vehicle registered in any non-IRP state to carry in excess of 73,280 pounds, shall be authorized to operate in this State with a gross loaded weight of up to 80,000 pounds, in accordance with Act 7 of 1983, provided said vehicle complies with the appropriate Subsections of the following Section 2 of this Act.

SECTION 2. (a) As used in this Act, the following terms shall have the following meanings:

(1) "Department" means the Arkansas State Highway and Transportation Department;

(2) "Heavy Motor Vehicle", as used herein, means all cargo vehicles which are required to be registered for use upon the public highways of this State, designed, used or maintained primarily for the transportation of property and have a declared gross weight, as defined herein, of 73,281 pounds or more. For the purpose hereof, truck-tractors, single unit trucks, semi-

trailers and trailers operated in combination thereof shall constitute a single vehicle. The person having the use or control, or the right to the use or control of the part of such a vehicle furnishing the motive power is the highway user with respect to the entire vehicle and is accordingly subject as such to the provisions of this Section of this Act;

(3) "Truck" includes the terms "truck" or "truck-tractor" and "semi-trailer" or "trailer" when operated in combination with a truck or truck-tractor;

(4) "User" means any person or entity having the use and control, or the right to the use and control, of any motor vehicle. Use and control of a motor vehicle includes vehicles under a long-term lease and not vehicles under a trip lease;

(5) "Highway" includes all highways, roads, and streets of this State generally open to the use of the public as a way for vehicular traffic;

(6) "Gross Weight" means the actual weight of the truck or truck-tractor, plus the actual weight of the heaviest semi-trailer or trailer or combinations thereof with which it is to be operated in combination plus the actual weight of the heaviest load to be carried thereon;

(7) "Actual Gross Weight" means the actual weight of the truck or truck-tractor, plus the actual weight of the trailer or semi-trailer, or combination thereof, in combination with which it is being operated at the time the weight is determined, plus the actual weight of the cargo being carried thereon at said time;

(8) "Taxable Miles" means all of those miles traveled in Arkansas by a "Heavy Motor Vehicle", during which such vehicle's actual gross weight is 73,281 pounds or more;

(9) "Arkansas Registered Vehicle" or "Arkansas Registered Truck" means a vehicle registered in Arkansas by a user who is an Arkansas resident, and bearing an Arkansas license plate;

(10) "Natural Resource Vehicle" means any motor vehicle which is used exclusively in hauling unfinished agricultural products, poultry products, wood products, farm products, and clay minerals, ores, from the point of production, harvesting, raising or severance to a point of processing. Provided, that rock or stone or crushed rock or crushed stone, except rock or stone which is to undergo further processing into a finished or semi-finished product other than crushed rock or crushed stone, shall not be construed as

"clay minerals" or "ores" under the provisions of this classification;

(11) "Animal Feed Vehicle" means any vehicle or combination of vehicles used exclusively by the owner of livestock or poultry for hauling animal feed to the owners' livestock and poultry; and

(12) "Qualification Period" means the time period, or any portion thereof, between July 1 and June 30 of any year other than 1987.

(b) (1) An annual tax is hereby imposed upon all users, as defined in Subsection (a), above, of motor vehicles, as herein defined, in compensation for the use of the highways of this State. Such tax shall be in addition to all other taxes and fees now required to be paid on such vehicles.

(2) Any Arkansas Registered vehicle user who desires to operate a motor vehicle having a gross weight, as herein defined, in excess of 73,280 pounds shall notify the Arkansas Department of Finance and Administration at the time of license registration. The Arkansas Department of Finance and Administration shall then record the maximum declared gross weight on the vehicle license registration and notify the Arkansas State Highway and Transportation Department, in writing, of those vehicles registered in excess of 73,280 pounds.

(c) The tax imposed herein shall not apply to (i) any miles traveled by a "Heavy Motor Vehicle", other than taxable miles, as defined in Subsection (a) above; (ii) any Natural Resource Vehicle, as defined herein; (iii) any Animal Feed Vehicle, as defined herein; or (iv) any vehicle owned and operated by the United States of America or the State of Arkansas, or any political subdivision thereof.

(d) The provisions of this Section of this Act shall not apply to any motor vehicle used on an interstate trip with an origin or destination within 10 miles of the geographic boundaries of this State, provided the one-way travel distance in this State is not over 10 miles.

(e) (1) Every user of a "Heavy Motor Vehicle" subject to the provisions of this Section of this Act, before operating such vehicle over the highways of this State, shall qualify such vehicle with the Department. Qualifications shall be made by application to the Department on forms to be provided by said Department. The Department may accept applications from owners of leasing and rental companies that lease vehicles under long term leases to customer lessees.

(2) Upon receipt of such application and payment of the tax as

hereinafter determined, the Department shall make appropriate record of the vehicle qualified and certify such qualification on the applicant's Tax cab card, one of which is to be carried in the cab of the vehicle at all times. The Department shall also issue a decal to the user, which shall, by the user, be affixed to the cab of such vehicle.

(3) Any user qualifying a Heavy Motor Vehicle within his fleet shall be responsible for the removal of the decal and cab card when that vehicle is terminated from the user's fleet; failure to remove such decal and cab card, which shall be retained by the user as proof of removal, shall result in a penalty of twenty-five dollars (\$25.00) per month for the remaining months of the qualification period after the vehicle was terminated from that user's fleet.

(f) (1) The tax hereby imposed on all "users" of "Heavy Motor Vehicles", as such terms are defined in this section of this Act, shall be applicable from and after the effective date of this Act, provided, however, that all users who have qualified vehicles pursuant to Act 685 of 1983 and have paid taxes for the qualification year beginning July 1, 1987 and ending June 30, 1988 on such vehicles pursuant to that Act shall be allowed to operate on the highways, roads and streets of this State until July 1, 1988 without payment of any additional taxes on those previously qualified vehicles that may otherwise have been due pursuant to this Section of this Act. Vehicles added to the user's fleet during the remainder of 1987 shall be subject to Section (2) (f) (2) and (2) (f) (3) of this Act.

(2) At the time of qualification of any vehicle subject to this tax, the Department shall collect a \$175.00 advance from the user to be applied against taxable miles for the qualification period.

(3) For any additional vehicles registered during 1987 and thereafter, beginning on July 1, 1988, the tax determined under this provision for every vehicle subject to the tax shall be two cents (\$.02) per mile for the taxable miles traveled in Arkansas during the qualification period. Vehicles added to the fleet during such twelve month qualification period must qualify by paying a \$175.00 advance to be applied against any taxable miles for the qualification period. Underpayments and overpayments may be reconciled as allowed by regulation based upon actual taxable miles traveled in the State during the qualification year and an amended application submitted for refund (or credit), or with any additional taxes due. Any user qualifying a

motor vehicle with the Department must, at the end of the qualification period, submit to the Department such records as the Department deems appropriate according to regulations promulgated by the Department indicating the total number of miles traveled through the State, both taxable and non-taxable, by the user's vehicle or vehicles. Such summary records submitted by the user must be supported by source documents retained by the user. In all cases, specific records must be maintained by the user indicating the above information for every trip, whether it is taxable or non-taxable, pursuant to rules and regulations to be promulgated by the Department. Such mileage reports and records shall be subject to inspection and audit by the Department, in the same manner that other books, records and documents of the user are subject to inspection and audit as provided by this Section of this Act. Claims made by the user on the applications, and the initial acceptance by the Department of those claims for registration purposes, shall not affect or preclude a later decision by the Department based on specific audit findings during an audit of the user. Any user who shall falsify any records required by this Section of this Act shall be guilty of a Class A misdemeanor.

(g) (1) The Department is hereby authorized to collect those taxes and fees imposed by this Section upon all users subject to the provisions of this Act, to make timely deposits into the State Treasury of all such monies collected by the Department, and to administer the provisions of this Section of this Act. The Department of Finance and Administration shall have the right to inspect and audit at reasonable times, at any place, without prior notice, the books, records and documents of any user or other qualifying persons required to pay the tax hereby imposed.

(2) No assessment shall be made upon any user for taxes accruing under this Section during the calendar year 1987, after the expiration of three years from the date the user's application for qualification was made; provided that, in those cases where such an application is deemed to have been fraudulently made, an assessment may be made for any prior qualification period or periods.

(h) The user of any Heavy Motor Vehicle subject to the provisions of this Section, may, in lieu of qualification in accordance with the provisions of Subsection (e) of this Section, pay a trip permit fee, provided, no Arkansas registered vehicle shall be allowed to utilize such a trip permit. If the user elects to utilize a trip permit, such trip permit for trucks with

a declared gross weight of 73,281 pounds through 80,000 pounds shall be issued at a fee of two dollars (\$2.00) for each 100 miles of travel, rounded to the nearest 100 miles, of taxable miles. In addition to such fee, the Department may charge for its reasonable administrative costs; provided such charge may not exceed the sum of \$2.00 per permit. Said permits shall be issued by the Department on such forms as it deems appropriate and shall be retained by the user for a period of three (3) years as proof of payment of any liability determined through audit.

(i) Reciprocal agreement or agreements heretofore or hereafter entered into between officials of this State and those of any other State may exempt any user of such vehicles using the highways of this State from the provisions of this Section of this Act and payment of the tax levied by this Section of this Act.

(j) (1) Any user of any vehicle subject to the provisions of this Section of this Act found operating such vehicle, or causing such vehicle to be operated, on the highways of this State without complying with this Section, or without having available in or on the cab thereof the appropriate cab card and decal or trip permit required by this Section, shall be guilty of a misdemeanor and upon conviction thereof shall each be punished by a fine of no less than two hundred dollars (\$200.00) and not more than five hundred dollars (\$500.00) for the first offense and of no less than five hundred dollars (\$500.00) and not more than one thousand dollars (\$1,000.00) for each subsequent offense.

(2) Any user who neglects or refuses to pay the Tax imposed by this Act shall be liable for the full amount of tax owed, plus interest at a rate equal to the United States Federal Reserve prime interest lending rate applicable at the end of the calendar quarter prior to the determination of the liability, plus three percent (3%).

(k) This Section of this Act shall be liberally construed to effectuate the purpose thereof.

(l) All fees, taxes, penalties and interest collected under the provisions of this Section of this Act shall be classified as "special revenues" and shall be deposited in the State Treasury, and the State Treasurer shall, after deducting therefrom the amount to be credited to the Constitutional Officers Fund and the State Central Services fund, as provided in the Revenue Stabilization law, credit the net amount thereof on the last day of each

month: 15% of the amount thereof, to the County Aid Fund; 15% of the amount thereof, to the Municipal Aid Fund; and 70% of the amount thereof, to the State Highway Department Fund, such funds to be further disbursed in the same manner and used for the same purposes as is set out in the "Arkansas Highway Revenue Distribution Law".

SECTION 3. The Taxes imposed by this Act shall not be subject to the provisions of the Arkansas Tax Procedure Act, Act 401 of 1979, as amended.

SECTION 4. The Arkansas State Highway and Transportation Commission shall, immediately following the passage and approval of this Act and shall thereafter as needed, promulgate reasonable rules and regulations and take all appropriate action the Commission deems necessary, as hereby authorized, in order to ensure that all provisions of this Act may be effectuated following the passage and approval of this Act.

SECTION 5. Subsection (b) of Section 8 of Act 98 of 1955, the same being Ark. Stat. 75-819(b), is hereby amended to read as follows:

"(b) Provided further that if the weight of the vehicle and load exceeds the maximum as prescribed by this Act or the gross weight as provided by a special permit, the operator or any owner, principal, employer, lessor, lessee, agent or officer of any firm or corporation who permits such operator to exceed the weight load herein provided or as provided by a special permit shall, in addition, pay a penalty to be computed as follows:

(1) Overweight one thousand (1,000) pounds or less, a minimum penalty of ten dollars (\$10.00), or a maximum penalty of not more than two cents (\$.02) per pound of excess weight;

(2) Overweight more than one thousand (1,000) pounds and not more than two thousand (2,000) pounds, a penalty of not more than three cents (\$.03) per pound of excess weight;

(3) Overweight more than two thousand (2,000) pounds and not more than three thousand (3,000) pounds, a penalty of not more than four cents (\$.04) per pound of excess weight:

(4) Overweight more than three thousand (3,000) pounds, a penalty of not more than five cents (\$.05) per pound for each pound of excess weight.

Provided, further, where the operator of an overloaded truck is found to

have willfully avoided being weighed at a weigh station in this State, the penalty shall be computed by doubling the otherwise appropriate penalty set out above."

SECTION 6. (a) For the purpose of this Act, "retaliatory tax" means an amount assessed by another state against a motor vehicle user in direct retaliation to and as a direct result of the imposition of the tax imposed pursuant to Section 2 of this Act which would not have been assessed in the absence of the tax imposed pursuant to said Section 2.

(b) Any motor vehicle user who has been assessed a retaliatory tax by another state after the effective date of this Act, and who has paid the tax, shall be entitled to reimbursement by the State of Arkansas for the tax so paid. Any person desiring reimbursement as provided herein shall apply to the Department, and shall furnish the Department a copy of the receipt for the payment of the retaliatory tax for which reimbursement is requested, together with such other information as the Department may reasonably request in order to verify that the applicant is entitled to reimbursement.

(c) When the Department determines that any applicant for reimbursement under this Act is entitled to such reimbursement, the Highway and Transportation Department is authorized and shall make such reimbursement.

SECTION 7. The first three paragraphs of Subsection (8) of Subsection (C) of Section 24 of Act 65 of 1929, as amended, the same being Arkansas Statute 75-201(C) (8), are hereby amended to read as follows:

"(8) (a) Class Eight - Special natural resources classification. In order to aid in the development of the natural resources of Arkansas, and in order to eliminate apparent inequities in license charges for vehicles using only improved roads, and those used on the farm, in the wooded areas and off the main highway system of this State, a special classification is hereby created to provide a different and more equitable rate for those vehicles used exclusively for hauling animal feed by owners of livestock or poultry for consumption in this State by livestock or poultry owned by them; and, in hauling unfinished and unprocessed farm products, forest products, and clay minerals and ores from the point of production, harvesting or severance to the point at which the same shall first undergo any processing, preparation for processing, conversion or

transformation from their raw, natural or severed state. Provided, that rock or stone or crushed rock or crushed stone, except rock or stone which is to undergo further processing into a finished or semi-finished product other than crushed rock or crushed stone, shall not be construed as 'clay minerals' or 'ores' under the provisions of this classification.

The annual license fees for vehicles classified natural resources vehicles shall be as follows:

(a) For a vehicle with two axles, a fee of three dollars and ninety cents (\$3.90) per thousand pounds of gross loaded weight of the vehicle, with a minimum fee of \$32.50 and a maximum fee of \$65.00 for each vehicle.

(b) For a vehicle with three axles, a fee of \$97.50.

(c) For a vehicle with four axles, a fee of \$130.00.

(d) For a vehicle with five axles, a fee of \$162.50.

(e) For a vehicle with five axles used exclusively by the owner of livestock or poultry in hauling animal feed for consumption in this State by the owner's livestock or poultry, a fee of \$650.00.

Provided, that the foregoing vehicles shall not exceed the maximum axle load permitted by law. Provided, further, that such five (5) axle vehicles may haul maximum gross loaded weights of up to 80,000 pounds without the purchase of any additional or different type license and without the payment of the tax imposed by other Sections of this Act. The Commissioner of Revenues shall cause to be issued special and distinctive license plates for vehicles in this classification, with separate license plates to be established for those vehicles hauling 'farm products' or 'animal feed' and separate license plates to be established for those vehicles hauling 'timber products', 'clay minerals', or 'ores'. Provided that before any license may be issued for a vehicle designated a natural resources vehicle, the applicant therefor shall, by affidavit, state that he is familiar with the purposes for which such licenses may be used as authorized under this classification, and that he will not use such vehicle for which application for license is made for any purpose not authorized under this classification, and shall indicate on such affidavit whether the same is to be used for the hauling of 'farm products', 'animal feed', 'forest products', 'clay minerals', or 'ores'."

SECTION 8. If any provision of this Act or the application thereof to

any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 9. Act 685 of 1983 is hereby repealed and all laws and parts of laws in conflict with this Act are hereby repealed, nothing contained in this Act, however, repeals or modifies any existing laws on axle weight limitations or any variances or tolerances thereof.

SECTION 10. EMERGENCY. It is hereby found and determined by the General Assembly that some taxes currently imposed upon vehicles licensed to haul in excess of 73,280 pounds are inequitable and in need of replacement, that economic barriers to the free flow of commerce need to be curtailed, that the continued development of the economy is essential, that the State seeks to encourage the development of agricultural and related business in this State and Nation and that the State is in immediate need of revenues to support its current and anticipated expenditures. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

