

1 **State of Arkansas**
2 **78th General Assembly**
3 **First Extraordinary Session, 1992**
4 **By: Senator Walters**

A Bill

Call Item

SENATE BILL 12

For An Act To Be Entitled

8 "AN ACT TO AMEND ARK. CODE ANN. § 23-13-232(C) TO CONFORM
9 TO THE FEDERAL BANKRUPTCY LAWS; AND FOR OTHER PURPOSES."

10

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

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13 SECTION 1. It is the purpose and intent of this Act to amend Ark. Code
14 Ann. § 23-13-232(c) to conform that statute to the federal bankruptcy laws,
15 and further to enhance the prospects of recovery of claims in bankruptcy
16 proceedings. The current statute provides that, whenever a common carrier
17 seeks to transfer Arkansas intrastate operating authority, the transferor and
18 the transferee must verify either that all debts of the transferor have been
19 paid in full by the transferor, or that the transferee will assume all such
20 indebtednesses. The current statute contains no exceptive provision for
21 circumstances where the intrastate authority is being transferred by a common
22 carrier that has filed for protection under the federal bankruptcy laws. The
23 General Assembly finds and determines that, unless the statute is amended to
24 conform to the federal bankruptcy laws, the statute is prone to the challenge
25 that it unconstitutionally conflicts with the federal bankruptcy laws, in
26 violation of the supremacy clause of the United States Constitution. The
27 General Assembly further finds and determines that, by excepting the statute's
28 coverage from such situations, such action will enhance the prospects of the
29 recovery of creditors' claims in bankruptcy proceedings.

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31 SECTION 2. Ark. Code Ann. § 23-13-232(c) is hereby amended as follows:

32 "(c) (1) All applications for transfer must be made on proper forms
33 prescribed by the Commission.

34 (2) There must be attached to such application for transfer of a
35 certificate, permit, or license a joint affidavit executed by the vendor and

1 vendee certifying that all accrued taxes, station rents, wages of employees,
2 and all other indebtedness incident to vendor's operation have been paid in
3 full or, if such is not the case, will be assumed by the vendee. Provided,
4 the provisions of this subsection (c)(2) shall not apply in any respect, to
5 either the vendor or the vendee, where the vendor has filed for protection
6 under the federal bankruptcy laws and is transferring the authority as part of
7 a reorganization or liquidation *under an order directing the sale entered*
8 *under* to the federal bankruptcy laws."
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10 SECTION 3. All provisions of this act of a general and permanent nature
11 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
12 Revision Commission shall incorporate the same in the Code.

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14 SECTION 4. If any provision of this act or the application thereof to
15 any person or circumstance is held invalid, such invalidity shall not affect
16 other provisions or applications of the act which can be given effect without
17 the invalid provision or application, and to this end the provisions of this
18 act are declared to be severable.

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20 SECTION 5. All laws and parts of laws in conflict with this act are
21 hereby repealed.

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23 SECTION 6. It is found and determined by the General Assembly that a
24 situation now exists that requires the curative measures of this Act in order
25 to preserve the integrity of the statute and to enhance the prospects of
26 recovery on claims by creditors. Accordingly, an emergency is hereby declared
27 to exist and this Act being necessary for the immediate preservation of public
28 peace, health and safety shall take effect and be in full force from and after
29 its passage and approval, and shall be applicable to all applications for
30 transfer pending before the Commission as of the date of passage and approval.

31 /s/Sen. Walters
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