

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995

A Bill

HOUSE BILL 1719

4 By: Representatives Johnson, D. Wood, Hendrix, McKissack, Malone and Kidd

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For An Act To Be Entitled

8 "AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS MOTOR
9 CARRIER ACT, ARKANSAS CODE §§ 23-13-201 ET SEQ., TO ENSURE
10 PROVISIONS OF THE ARKANSAS LAW COMPLY WITH FEDERAL LAWS
11 PARTIALLY PRE-EMPTING THE STATE REGULATION OF CERTAIN
12 MOTOR CARRIERS; TO DECLARE AN EMERGENCY; AND FOR OTHER
13 PURPOSES."

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Subtitle

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

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23 SECTION 1. Arkansas Code § 23-13-204 is amended to read as follows:

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"23-13-204. Applicability of subchapter. The provisions of this subchapter, except as specifically limited in this subchapter, shall apply to the transportation of passengers or property by motor carriers over public highways of this state and the procurement of, and provisions of, facilities for such transportation. Provided, nothing contained in this subchapter shall be construed to authorize the regulation of intrastate fares for the transportation of passengers by bus by an interstate motor carrier of passengers over any routes authorized by the Interstate Commerce Commission. Provided, further, nothing contained in this subchapter shall be construed to abrogate the laws of this state or any authority of the Arkansas State Highway Commission with regard to the routing of hazardous materials."

1 SECTION 2. Arkansas Code § 23-13-206(a) is amended to read as follows:

2 "(a) Nothing in this subchapter shall be construed to include:

3 (1) Motor vehicles employed solely in transporting school
4 children and teachers to or from school and motor vehicles used in carrying
5 set-up houses, ordinary livestock, unprocessed fish including shellfish,
6 unprocessed agricultural commodities, baled cotton, cottonseed, cottonseed
7 meal, cottonseed hulls, cottonseed cake, rice hulls, rice bran, rice mill
8 feed, rice mill screenings, soybean meal, commercial fertilizer but not
9 including the component parts used in the manufacture thereof. However,
10 carriers of such exempt commodities and passengers shall be subject to safety
11 of operation and equipment standards provisions prescribed or hereafter
12 prescribed by the Arkansas State Highway Commission. Additionally, for-hire
13 carriers of such exempt commodities shall file with the commission evidence
14 of security for the protection of the public in the same amount and to the
15 same extent as nonexempt carriers as provided in § 23-13-227;

16 (2) Taxicabs or other motor vehicles performing a bona fide
17 taxicab service. Bona fide taxicab service as employed in this section
18 means and refers only to service rendered by motor-driven vehicles having a
19 seating capacity not in excess of six (6) passengers and used for the
20 transportation of persons for hire, which vehicles are owned and operated by
21 a person, firm, or corporation authorized by the governing authorities of
22 municipalities to conduct a taxicab business over or upon the streets and
23 public ways;

24 (3) Any private carrier of property and motor vehicles employed
25 in the hauling of gravel, rock, dirt, bituminous mix materials, rip-rap,
26 quarried stone, crushed stone, and similar materials, and any movements and
27 services performed by wreckers and wrecker services; provided, all of the
28 above private carriers, motor vehicles and wrecker and wrecker services shall
29 be subject to the provisions prescribed, including all regulations made and
30 promulgated pursuant to this subchapter, with respect to safety of operation
31 and equipment standards;

32 (4) Trolley buses operated by electric power or other buses
33 furnishing local passenger transportation similar to street railway service,
34 unless and to the extent that the Arkansas State Highway Commission shall
35 from time to time find that such application is necessary to carry out the

1 policy of this subchapter as to safety of operation or standards of equipment
2 apply to:

3 (A) The transportation of passengers or property wholly
4 within a municipality or between contiguous municipalities or within a
5 commercial zone, as defined in § 23-13-203(15), adjacent to, and commercially
6 a part of, any such municipalities, except when the transportation is under a
7 common control, management, or arrangement for a continuous carriage, or
8 shipment to or from a point outside such municipalities or zone, and provided
9 that the motor carrier engaged in such transportation of passengers over
10 regular or irregular routes is also lawfully engaged in the intrastate
11 transportation of passengers over the entire length of the routes in
12 accordance with the laws of this state. The rights, duties, and privileges of
13 any motor carrier previously granted a certificate of convenience and
14 necessity by the Arkansas State Highway Commission to operate in, through,
15 to, or from municipalities or in, through, to, or from a commercial zone or
16 territory contiguous to a municipality shall not be impaired or abridged by
17 reason of the subsequent annexation of the municipality or territory by
18 another municipality. And any such motor carrier shall remain subject to the
19 exclusive jurisdiction and control of the Arkansas State Highway Commission;
20 or

21 (B) The occasional or reciprocal transportation of
22 passengers or property for compensation by any person not engaged in
23 transportation by motor vehicle as a regular occupation or business, except
24 when such transportation is sold, offered for sale, provided, procured, or
25 furnished or arranged for; by any person who holds himself or itself out as
26 one who sells or offers for sale transportation wholly or partially subject
27 to this subchapter, or negotiates for, or holds himself or itself out by
28 solicitation, advertisements, or otherwise, as one who sells, provides,
29 furnishes, contracts, or arranges for such transportation; or by any person
30 or his or its agent, servant, or employee who regularly engages in the exempt
31 transportation of passengers for hire;

32 (5) Motor vehicles controlled and operated by an agricultural
33 cooperative association as defined in §§ 2-2-101 - 2-2-124, 2-2-201, 2-2-202,
34 and 2-2-401 - 2-2-428 or any similar act of another state or by the U. S.
35 Agricultural Marketing Act, as amended, or by a federation of such

1 cooperative associations, if the federation possesses no greater powers or
2 purposes than cooperative associations so defined;

3 (6)(A) Motor carriers of property, except household goods
4 carriers, provided, the motor carriers of property shall be subject to all
5 safety of operation and equipment standards provisions prescribed by the
6 Arkansas State Highway Commission. Provided, further, all motor carriers of
7 property shall be subject to the provisions of § 23-13-265, § 23-13-252 and
8 all rules and regulations made and promulgated by the Commission with respect
9 to financial fitness and insurance requirements.

10 (B) For the purposes of this subchapter, the term
11 household goods carrier shall mean any motor carrier transporting:
12 personal effects and property used or to be used in a dwelling when it is a
13 part of the equipment or supply of the dwelling; furniture, fixtures,
14 equipment and the property of stores, offices, museums, institutions,
15 hospitals, or other establishments when they are a part of the stock,
16 equipment, or supply of the stores, offices, museums, institutions,
17 hospitals, or other establishments; and articles including objects of art,
18 displays and exhibits, voting machines and tabulating machines, including the
19 auxiliary machines or component parts as are necessary to the performance of
20 a complete tabulating process, including, but not limited to, punches,
21 sorters, computers, verifiers, collators, reproducers, interpreters,
22 multipliers, wiring units, and control panels and spare parts therefor, which
23 because of the unusual nature or value require specialized handling and
24 equipment usually employed in moving household goods. The household goods
25 carriers shall continue to be regulated by the Commission in accordance with
26 this subchapter and all rules and regulations made and promulgated by the
27 Commission, provided, a household goods carrier, upon application with the
28 Commission, shall not be required to prove that the proposed services or
29 operations are required by the present or future public convenience and
30 necessity *nor shall the rates of such household goods carriers be subject to*
31 *regulation by the Commission;*

32 (7) The transportation of passengers by private or public motor
33 carrier either under contract or by cooperative agreement with the state of
34 Arkansas when the transportation is provided exclusively in connection with,
35 or a result of, federally or state funded assistance programs serving the

1 public need. Provided the motor carriers shall be subject to the provisions
2 prescribed, including all regulations made and promulgated pursuant to this
3 subchapter, with respect to safety of operation and equipment standards;

4 (8) The transportation of passengers in a private vehicle with a
5 maximum seating capacity of fifteen (15) passengers, including the driver,
6 provided, the transportation is for the purposes of vanpooling or carpooling;

7 (9) Except as otherwise provided in this subchapter, the
8 transportation of passengers by motor vehicle shall continue to be regulated
9 by the Commission. Provided, a carrier of passengers, which carrier proposes
10 strictly charter services or charter operations for the transportation of
11 passengers, upon application with the Commission, shall not be required to
12 prove that the proposed charter services or charter operations are required
13 by the present or future public convenience and necessity."
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15 SECTION 3. Title 23, Chapter 13, Subchapter 2 of the Arkansas Code of
16 1987 Annotated is amended to add a new Section 23-13-265 to read as follows:

17 "23-13-265. Exempt motor carrier to possess annual receipt.

18 (a) It is declared unlawful for any motor carrier of property who is
19 exempt from certain provisions of this subchapter pursuant to § 23-13-
20 206(a)(6)(A) to use any of the public highways of this state for the
21 transportation of property for hire in intrastate commerce without possessing
22 a copy of an annual receipt from the Arkansas State Highway Commission
23 permitting those operations. Copies of the annual receipt shall be made and
24 maintained in the cab of the power unit of each motor vehicle operated over
25 the highways of this state while transporting property for hire, intrastate.

26 Every application for a permit for the transportation of property by a
27 carrier shall be in writing on a form to be specified by the Commission. The
28 application shall contain and be accompanied by the following:

29 (1) The name and trade name (if any), and address or location of
30 the principal office or place of business of the applicant;

31 (2) A statement giving full information concerning the
32 ownership, reasonable value, and physical condition of vehicles and other
33 property to be used by the applicant in the intrastate operations;

34 (3) A full and complete financial statement giving detailed
35 information concerning the financial condition of the applicant;

1 (4) Proof of public liability insurance in the amounts set out
2 in all rules and regulations made and promulgated by the Commission;

3 (5) In the event the motor carrier did not hold a valid
4 certificate or permit authorizing intrastate transportation by motor vehicle
5 in this state on December 31, 1994, remittance of a processing fee in the
6 amount of twenty-five dollars (\$25.00);

7 (6) Remittance of an insurance filing fee in the amount of five
8 dollars (\$5.00) for each motor vehicle (truck or truck-tractor) to be
9 operated in the state of Arkansas in intrastate operations;

10 (7) Remittance of a copy of the motor carrier_s latest United
11 States Department of Transportation (DOT) safety rating or, in the event the
12 carrier has not been given a safety rating, a signed notarized statement
13 indicating the company_s intention to comply with all DOT safety regulations.
14 At any time as may be practical, a physical inspection of the equipment may
15 be made by the Arkansas Highway Police;

16 (8) At the option of the applicant, the motor carrier may
17 request that any and all laws, regulations or other provisions relating to
18 uniform cargo liability rules, uniform bills of lading and receipts for
19 property being transported, uniform cargo credit rules, or antitrust immunity
20 for joint line rates or routes, classification and mileage guides, apply to
21 the carrier; and

22 (9) Any other information that may be required by the
23 Commission.

24 (b) Every motor carrier of property complying to the satisfaction of
25 the Commission with the provisions of subsection (a) shall be issued a
26 receipt for the current year indicating the name of the motor carrier_s
27 company, the principal place of business of the carrier, and the number of
28 motor vehicles to be operated in Arkansas. Copies of the receipt shall be
29 made by the motor carrier and shall be maintained in the power unit of each
30 motor vehicle operated over the highways of Arkansas while transporting
31 property for hire, intrastate. The receipt shall be presented by the driver
32 of the motor vehicle for inspection by any authorized government personnel.
33 Failure to carry the receipt and maintain adequate proof of public liability
34 insurance shall subject the motor carrier to the civil and criminal penalties
35 and fines as are authorized by this subchapter.

1 (c) Every motor carrier of property which held a valid certificate or
2 permit authorizing intrastate transportation by motor vehicle in the state on
3 December 31, 1994, shall continue to be authorized to transport property for
4 hire in the state and shall be issued an annual receipt after complying with
5 the provisions of subdivisions (a)(4), (a)(6), (a)(8), and (a)(9) of this
6 section, provided, neither the previously held certificate, the previously
7 held permit, nor any annual receipt issued pursuant to this section shall
8 have any asset value. Every motor carrier of property initially complying
9 with all the provisions of subsection (a) to the satisfaction of the
10 Commission and is issued an annual receipt shall thereafter be issued an
11 annual receipt upon complying with subdivisions (a)(4), (a)(6), (a)(8), and
12 (a)(9) of this section.

13 (d) The annual fee required by subdivision (a)(6) of this section shall
14 not be required for each motor vehicle if the motor carrier of property
15 otherwise remits the proper annual registration fees to the Commission
16 pursuant to § 23-13-235 or the motor carrier of property otherwise remits the
17 proper annual registration fees for the benefit of the state of Arkansas to
18 the motor carrier_s base state.

19 (e) Notwithstanding any other provision of this section to the
20 contrary, the Commission shall have the authority to periodically review the
21 motor carrier_s fitness and shall have the authority to suspend or revoke the
22 annual receipt or other credential granting the right of the motor carrier to
23 operate intrastate if the motor carrier is determined by the Commission to be
24 unfit, unsafe, or fails to maintain adequate public liability insurance.

25 (f) The Arkansas State Highway Commission shall have the authority to
26 make and promulgate rules and regulations for the implementation of this
27 section.

28 (g) All fees received by the Commission pursuant to subsection (a)
29 shall be deposited with the Treasurer of State and classified as general
30 revenues for distribution and usage as provided by the laws of this state;
31 provided one and one-half percent (1.5%) of all the funds so deposited shall
32 be classified as special revenues and transferred by the Treasurer on the
33 last business day of each month in which they are deposited to the State
34 Highway and Transportation Department Fund to be utilized by the Arkansas
35 State Highway and Transportation Department for the purpose of administering

1 this subchapter."

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3 SECTION 4. All provisions of this act of general and permanent nature
4 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
5 Revision Commission shall incorporate the same in the Code.

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7 SECTION 5. If any provisions of this act or the application thereof to
8 any person or circumstance is held invalid, the invalidity shall not affect
9 other provisions or applications of the act which can be given effect without
10 the invalid provisions or application, and to this end the provisions of this
11 act are declared to be severable.

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13 SECTION 6. All laws and parts of laws in conflict with this act are
14 hereby repealed.

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16 SECTION 7. Emergency. It is hereby found and determined by the
17 Eightieth General Assembly of the State of Arkansas that the U. S. Congress
18 through its passage of P.L. 103-305 has largely pre-empted state regulation
19 of intrastate transportation of property with regard to prices, routes, and
20 services; that Congress through its passage of P.L. 103-311 has pre-empted
21 state regulation of intrastate fares for the transportation of passengers by
22 bus by the interstate motor carriers of passengers over a route authorized by
23 the Interstate Commerce Commission; that this federal pre-emption eliminated
24 the asset value of any certificates of authority or permits held by certain
25 types of motor carriers on December 31, 1994; that certain regulatory
26 functions such as insurance requirements, financial fitness, and safety of
27 operations were not pre-empted; and that since the passage of these federal
28 laws, there has been much confusion and misunderstanding among the motor
29 carriers as to those matters pre-empted from regulation by the state of
30 Arkansas and to those matters not pre-empted. Therefore, in order to
31 eliminate the confusion and misunderstanding of the intrastate regulation as
32 soon as possible, an emergency is hereby declared to exist, and this act
33 being necessary for the immediate preservation of the public peace, health,
34 and safety, shall be in full force and effect from and after its passage and
35 approval.

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/s/Rep. Johnson, et al