

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

A Bill

HOUSE BILL 1808

4 By: Representative D. Wood

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For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE §§ 23-13-219, 23-13-223,
9 23-13-228, 23-13-229, 23-13-232, 23-13-234, 23-13-264,
10 23-13-265(g) AND 8-7-216(a) TO PROVIDE THAT CERTIFICATE
11 FEES, FILING FEES, MISCELLANEOUS FEES, PERMIT FEES,
12 PENALTIES AND FORFEITED BOND PROCEEDS AND FINES AND ANNUAL
13 FEES FROM MOTOR CARRIERS AND TRANSPORTERS OF HAZARDOUS
14 WASTES COLLECTED BY THE ARKANSAS STATE HIGHWAY AND
15 TRANSPORTATION DEPARTMENT BE DEPOSITED AS SPECIAL REVENUES
16 IN THE STATE HIGHWAY AND TRANSPORTATION DEPARTMENT FUND TO
17 BE USED TO DEFRAY THE COSTS AND EXPENSES OF THE REGULATION
18 OF MOTOR CARRIERS AND OF TRANSPORTERS OF HAZARDOUS WASTES;
19 TO FUND THE ENFORCEMENT OF THE LAWS AND REGULATIONS
20 PERTAINING TO MOTOR CARRIERS AND TRANSPORTERS AND TO FUND
21 THE FEDERALLY MANDATED STATE HIGHWAY SAFETY PROGRAM; TO
22 PROVIDE FUNDING FOR THE CONSTRUCTION, RECONSTRUCTION AND
23 MAINTENANCE OF HIGHWAYS AND BRIDGES IN THE STATE HIGHWAY
24 SYSTEM; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES."

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Subtitle

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

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SECTION 1. Legislative Intent. It is the intent of the General

1 Assembly that all monies received by the Arkansas State Highway and
2 Transportation Department as application for certificate fees, filing fees,
3 miscellaneous fees, permit fees, and penalties and forfeited bond proceeds
4 and fines from motor carriers, which monies pursuant to Act 565 of 1983 are
5 currently deposited in the State Treasury to the credit of the General
6 Revenue Fund Account of the State Apportionment Fund, from and after the
7 effective date of this Act should become special revenues and be deposited to
8 the State Highway and Transportation Department Fund to be utilized by the
9 State Highway and Transportation Department to regulate motor carriers and
10 enforce the laws and regulations pertaining to those carriers, to fund the
11 federally mandated State Highway Safety Program, and to fund the
12 construction, reconstruction, and maintenance of highways and bridges in the
13 State Highway System. It is also the intent of the General Assembly that all
14 funds received by that Department as annual fees pursuant to Arkansas Code
15 §§ 23-13-228, 23-13-235, and 23-13-265, from and after the effective date of
16 this Act, should become special revenues and deposited to the State Highway
17 and Transportation Department Fund to be used to regulate motor carriers and
18 enforce the laws and regulations pertaining to those carriers, to fund the
19 federally mandated State Highway Safety Program, and to fund the
20 construction, reconstruction, and maintenance of highways and bridges in the
21 State Highway System. Further, funds received by the Highway Department for
22 permits to transport hazardous wastes under Arkansas Code § 8-7-216(a) should
23 become special revenues to be used by the Department to defray the costs
24 associated with the regulation of transporters of hazardous wastes.

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26 SECTION 2. Arkansas Code § 23-13-219 is amended to read as follows:

27 "23-13-219. Certificate of public convenience and necessity -
28 Application and Fees.

29 (a) Applications for certificates of public convenience and necessity
30 shall be made in writing to the Arkansas State Highway Commission, be
31 verified under oath, and shall be in such form, contain such information, and
32 be accompanied by proof of service upon such interested parties as the
33 Arkansas State Highway Commission shall, by regulation, require.

34 (b) Every application shall be accompanied by certified check made
35 payable to the Arkansas State Highway and Transportation Department for the

1 sum of fifty dollars (\$50.00). The funds shall be collected by the
2 Department to be deposited in the State Treasury as special revenues to the
3 credit of the State Highway and Transportation Department Fund to be utilized
4 by that Department to defray the costs and expenses of the regulation of
5 motor carriers and the enforcement of the laws and regulations pertaining to
6 such carriers which that Department is charged by law to enforce and to fund
7 the federally mandated State Highway Safety Program which that Department is
8 charged by law to effectuate and for the purposes of providing funding for
9 the construction, reconstruction and maintenance of highways and bridges in
10 the State Highway System."

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12 SECTION 3. Arkansas Code § 23-13-223 is amended to read as follows:

13 "23-13-223. Permits for contract carriers - Application and fees.

14 (a) Applications for permits for contract carriers by motor vehicles
15 shall be made to the Arkansas State Highway Commission in writing, be
16 verified under oath, and shall be in such form, contain such information, and
17 be accompanied by proof of service upon such interested parties as the
18 Arkansas State Highway Commission may, by regulation, require.

19 (b) Every application shall be accompanied by a certified check made
20 payable to the Arkansas State Highway and Transportation Department for the
21 sum of fifty dollars (\$50.00). The funds shall be collected by the
22 Department to be deposited in the State Treasury as special revenues to the
23 credit of the State Highway and Transportation Department Fund to be utilized
24 by that Department to defray the costs and expenses of the regulation of
25 motor carriers and the enforcement of the laws and regulations pertaining to
26 such carriers which that Department is charged by law to enforce and to fund
27 the federally mandated State Highway Safety Program which that Department is
28 charged by law to effectuate and for the purposes of providing funding for
29 the construction, reconstruction and maintenance of highways and bridges in
30 the State Highway System."

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32 SECTION 4. Arkansas Code § 23-13-228 is amended to read as follows:

33 "23-13-228. Certificate or permit for interstate or foreign commerce -
34 Disposition of funds.

35 (a) It is declared unlawful for any motor carrier to use any of the

1 public highways of this State for the transportation of persons or property
2 in interstate commerce unless there is in force with respect to the carrier
3 adequate surety for the protection of the public on file with the Arkansas
4 State Highway Commission or the base state of the motor carrier.

5 (b) Each carrier engaged in interstate commerce for which the State of
6 Arkansas serves as the base registration state shall file an application,
7 verified under oath, accompanied by the following:

8 (1) A check made payable to the Arkansas State Highway and
9 Transportation Department in an amount sufficient to qualify the total number
10 of motor vehicles, as the term motor vehicle is defined by rules and
11 regulations of the federal Interstate Commerce Commission, operating in
12 interstate commerce in all participating states. Such fee shall conform to
13 the fee requirements of each state in which the carrier wishes to travel;

14 (2) A copy of the applicant's authority granted by the federal
15 Interstate Commerce Commission;

16 (3) Evidence of security for the protection of the public in an
17 amount required by the rules and regulations of the federal Interstate
18 Commerce Commission; and

19 (4) The name of an agent for service of process for each of the
20 jurisdictions in which travel is to be authorized.

21 (c) Upon the filing of the application and the appropriate
22 documentation fees, the commission shall issue a receipt evidencing that
23 adequate surety for the protection of the public is on file. Such receipt
24 shall authorize travel in the states for which fees have been paid for only
25 the number of motor vehicles for which fees have been paid. The motor
26 carrier may not operate more motor vehicles in a particular state than the
27 number with respect to which it has paid fees.

28 (d) The receipt evidencing adequate surety for the protection of the
29 public shall be carried at all times in the motor vehicle and must be
30 presented by the driver of the motor vehicle for inspection by any authorized
31 government personnel. Failure to carry the receipt authorizing travel in the
32 State of Arkansas shall subject the motor carrier to such civil and criminal
33 penalties and fines as are authorized by this subchapter.

34 (e) In addition to the terms and provisions of this section, all other
35 terms and provisions of this subchapter shall be applicable to interstate

1 motor carriers insofar as the terms and provisions of this subchapter are not
2 prohibited under the provisions of the Constitution of the United States and
3 acts of Congress.

4 (f) The funds paid as provided in subsection (b)(1) of this section or
5 as provided in § 23-13-235 which remain, after payments are made to the other
6 states participating in the base state registration program, with the
7 Arkansas State Highway and Transportation Department or which are collected
8 and forwarded to that department by other states participating in that
9 program shall be deposited with the Treasurer of State and classified as
10 special revenues and transferred by the Treasurer of State on the last
11 business day of the month such funds are deposited to the State Highway and
12 Transportation Department Fund, there, notwithstanding the provisions of any
13 law to the contrary, to be utilized by the Arkansas State Highway and
14 Transportation Department to defray the costs and expenses of the regulation
15 of motor carriers and the enforcement of the laws and regulations pertaining
16 to such carriers which that Department is charged by law to enforce and to
17 fund the federally mandated State Highway Safety Program which that
18 Department is charged by law to effectuate and for the purposes of providing
19 funding for the construction, reconstruction and maintenance of highways and
20 bridges in the State Highway System."

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22 SECTION 5. Arkansas Code § 23-13-229 is amended to read as follows:

23 "23-13-229. Temporary authority.

24 (a) To provide motor carrier service for which there is an urgent and
25 immediate need to, from, or between points within a territory having no motor
26 carrier service deemed capable of meeting that need, the Arkansas State
27 Highway Commission may, in its discretion and without hearing or other
28 proceeding, grant temporary authority for a period not exceeding ninety (90)
29 days for the service by common or contract carrier, as the case may be.
30 Satisfactory proof of the urgent and immediate need shall be made by
31 affidavit or other verified proof, as the Arkansas State Highway Commission
32 shall prescribe.

33 (b) The temporary authority shall be granted only upon payment of a
34 filing fee in the amount of twenty-five dollars (\$25.00) and compliance with
35 the requirements of §§ 23-13-227 and 23-13-244. The filing fee shall be

1 collected by the Arkansas State Highway and Transportation Department and
2 deposited in the State Treasury as special revenues to the credit of the
3 State Highway and Transportation Department Fund to be utilized by that
4 Department to defray the costs and expenses of the regulation of motor
5 carriers and the enforcement of the laws and regulations pertaining to such
6 carriers which the Department is charged by law to enforce and to fund the
7 federally mandated State Highway Safety Program which that Department is
8 charged by law to effectuate and for the purposes of providing funding for
9 the construction, reconstruction and maintenance of highways and bridges in
10 the State Highway System.

11 (c) After the temporary authority is granted, the Department shall
12 notify any carrier already authorized to perform all or any part of the
13 service so authorized temporarily. Upon application in writing by the
14 carrier to the Department, the Arkansas State Highway Commission shall hold
15 such hearings and make such further determination with respect to such
16 temporary authority as the public interest shall require.

17 (d) The grant of temporary authority shall not be extended for any
18 cause.

19 (e) Issuance of such temporary authority shall create no presumption
20 that corresponding permanent authority will be granted thereafter."

21

22 SECTION 6. Arkansas Code § 23-13-232 is amended to read as follows:

23 "23-13-232. Certificates, permits, and licenses - Transfer,
24 assignment, etc.

25 (a) Certificates, permits, and licenses shall not be assigned,
26 transferred, or hypothecated in any manner, nor shall the operation under any
27 such permit, certificate, or license be leased without authority of the
28 Arkansas State Highway Commission and on written application, and after ten
29 (10) days' notice, to parties in interest and hearing.

30 (b) The transfer, lease, assignment, or hypothecation of the permits,
31 certificates, or licenses shall not be authorized when the Arkansas State
32 Highway Commission finds the action will be inconsistent with the public
33 interest or will have the effect of destroying competition or creating a
34 monopoly, nor where it appears that reasonably continuous service under the
35 authority or that part of the authority granted by the permit, certificate,

1 or license which is sought to be transferred has not been rendered prior to
2 the application for transfer, assignment, or hypothecation.

3 (c)(1) All applications for transfer must be made on proper forms
4 prescribed by the Arkansas State Highway Commission.

5 (2) There must be attached to such application for a transfer of
6 a certificate, permit, or license a joint affidavit executed by the vendor
7 and vendee certifying that all accrued taxes, station rents, wages of
8 employees, and all other indebtedness incident to vendor's operation have
9 been paid in full or, if such is not the case, will be assumed by the vendee.
10 Provided, the provisions of this subsection shall not apply in any respect
11 to either the vendor or the vendee, where the vendor has filed for protection
12 under the federal bankruptcy laws and is transferring the authority as part
13 of a reorganization or liquidation under an order directing the sale entered
14 under the federal bankruptcy laws.

15 (d) Every such application for the transfer of a certificate or permit
16 shall be accompanied by a certified check or money order in the amount of
17 fifty dollars (\$50.00) made payable to the Arkansas State Highway and
18 Transportation Department. The funds shall be collected by that Department
19 and deposited in the State Treasury as special revenues to the credit of the
20 State Highway and Transportation Department Fund to be utilized by that
21 Department to defray the costs and expenses of the regulation of motor
22 carriers and the enforcement of the laws and regulations pertaining to such
23 carriers which the Department is charged by law to enforce and to fund the
24 federally mandated State Highway Safety Program which that Department is
25 charged by law to effectuate and for the purposes of providing funding for
26 the construction, reconstruction and maintenance of highways and bridges in
27 the State Highway System."

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29 SECTION 7. Arkansas Code § 23-13-234 is amended to read as follows:

30 "23-13-234. Operation without certificate or permit prohibited -
31 Violation of terms, conditions, etc., of certificate, permit, or license
32 prohibited.

33 (a)(1) Any motor carrier using the highways of this state without
34 first having obtained a permit or certificate from the Arkansas State Highway
35 and Transportation Department, as provided by this subchapter, or who, being

1 a holder thereof, violates any term, condition, or provision thereof, shall
2 be subject to a civil penalty to be collected by the Arkansas State Highway
3 and Transportation Department, after notice and hearing before the Arkansas
4 State Highway Commission, in an amount of not less than one hundred dollars
5 (\$100) nor more than five hundred dollars (\$500).

6 (2) If the penalty is not paid within ten (10) days from the
7 date of the order of the Arkansas State Highway Commission assessing the
8 penalty, twenty-five percent (25%) thereof shall be added to the penalty.

9 (3) Any amounts collected from the penalties provided for under
10 this subsection shall be deposited by the Department in the State Treasury as
11 special revenues to the credit of the State Highway and Transportation
12 Department Fund to be utilized by that Department to defray the costs and
13 expenses of the regulation of motor carriers and the enforcement of the laws
14 and regulations pertaining to such carriers which the Department is charged
15 by law to enforce and to fund the federally mandated State Highway Safety
16 Program which that Department is charged by law to effectuate and for the
17 purposes of providing funding for the construction, reconstruction and
18 maintenance of highways and bridges in the State Highway System.

19 (b) Any person required by this subchapter to obtain a certificate of
20 convenience and necessity as a common carrier or a permit as a contract
21 carrier and operates as such a carrier without doing so shall be deemed
22 guilty of a misdemeanor. Upon conviction he shall be fined not less than one
23 hundred dollars (\$100) nor more than five hundred dollars (\$500) for the
24 first such offense, and not less than one hundred dollars (\$100) nor more
25 than one thousand dollars (\$1,000) for each subsequent offense. Each day of
26 the violation shall be a separate offense.

27 (c)(1) Any person violating any other provision or any term or
28 condition of any certificate, permit, or license, except as otherwise
29 provided in § 23-13-258, shall be guilty of a misdemeanor and upon conviction
30 shall be fined not more than one hundred dollars (\$100) for the first offense
31 and not more than five hundred dollars (\$500) for any subsequent offense.
32 Each day of the violation shall constitute a separate offense.

33 (2) In addition thereto, such person shall be subject to the
34 civil penalties provided in subsection (a)."

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1 SECTION 8. Arkansas Code § 23-13-264 is amended to read as follows:

2 "23-13-264. Disposition of forfeited bonds and fines.

3 One-half (1/2) of the amount of forfeited bonds and one-half (1/2) of
4 the fines assessed by any court for violations of this subchapter shall be
5 remitted by the court, by the clerk thereof, or by the collecting officer, to
6 the Arkansas State Highway and Transportation Department to be deposited by
7 the Department in the State Treasury as special revenues to the credit of the
8 State Highway and Transportation Department Fund to be utilized by that
9 Department to defray the costs and expenses of the regulation of motor
10 carriers and the enforcement of the laws and regulations pertaining to such
11 carriers which the Department is charged by law to enforce and to fund the
12 federally mandated State Highway Safety Program which that Department is
13 charged by law to effectuate and for the purposes of providing funding for
14 the construction, reconstruction and maintenance of highways and bridges in
15 the State Highway System."

16

17 SECTION 9. Subsection (g) of Arkansas Code § 23-13-265, as added to
18 Arkansas Code Annotated Title 23, Chapter 13, Subchapter 2 by this Eightieth
19 Regular Session of the General Assembly, is amended to read as follows:

20 "(g) All fees received by the Commission pursuant to subsection (a)
21 shall be deposited with the Treasurer of State and classified as special
22 revenues and transferred by the Treasurer on the last business day of each
23 month such fees are deposited to the State Highway and Transportation
24 Department Fund, there, notwithstanding the provisions of any law to the
25 contrary, to be utilized by the Arkansas State Highway and Transportation
26 Department to defray the costs and expenses of the regulation of motor
27 carriers and the enforcement of the laws and regulations pertaining to such
28 carriers which that Department is charged by law to enforce and to fund the
29 federally mandated State Highway Safety Program which that Department is
30 charged by law to effectuate and for the purposes of providing funding for
31 the construction, reconstruction and maintenance of highways and bridges in
32 the State Highway System."

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34 SECTION 10. Arkansas Code § 8-7-216(a) is amended to read as follows:

35 "(a) Permits shall be issued under such terms and conditions as the

1 department may prescribe under the provisions of this subchapter and under
2 such terms and conditions as the Arkansas State Highway and Transportation
3 Department may prescribe for the transportation of hazardous wastes. The
4 Arkansas State Highway and Transportation Department may collect a fee not
5 exceeding fifty dollars (\$50.00) in conjunction with any permit issued by the
6 Arkansas Department of Pollution Control and Ecology. All fees remitted to
7 the Arkansas State Highway and Transportation Department in conjunction with
8 such permits pursuant to rules and regulations adopted by the Arkansas State
9 Highway Commission shall be deposited in the State Treasury as special
10 revenues to the credit of the State Highway and Transportation Department
11 Fund to be utilized by the Arkansas State Highway and Transportation
12 Department to defray the costs and expenses associated with assistance to the
13 Arkansas Department of Pollution Control and Ecology regarding the regulation
14 of transporters of hazardous wastes."

15

16 SECTION 11. All provisions of this act of general and permanent nature
17 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
18 Revision Commission shall incorporate the same in the Code.

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20 SECTION 12. If any provisions of this act or the application thereof
21 to any person or circumstance is held invalid, the invalidity shall not
22 affect other provisions or applications of the act which can be given effect
23 without the invalid provisions or application, and to this end the provisions
24 of this act are declared to be severable.

25

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

28

29 SECTION 14. Emergency. It is hereby found and determined by the
30 Eightieth General Assembly of the State of Arkansas that the certificate
31 fees, filing fees, miscellaneous fees, permit fees, penalties and forfeited
32 bond proceeds, fines, and annual fees collected by the Arkansas State Highway
33 and Transportation Department from motor carriers and fees collected from
34 transporters of hazardous wastes are levied to fund the regulation of these
35 activities by the regulatory programs of the Arkansas Highway and

1 Transportation Department; that these fees, penalties, and fines are
2 currently classified as general revenues and should be more properly
3 designated as special revenues and deposited into the State Highway and
4 Transportation Department Fund; and that any delay in effecting such
5 designations could jeopardize the financial support of those regulatory and
6 enforcement activities of that Department pertaining to motor carriers and
7 transporters, funding of the federally mandated State Highway Safety Program,
8 and construction, reconstruction and maintenance of highways and bridges in
9 the State Highway System. Therefore, in order to insure funding for those
10 regulatory programs of the Highway Department, an emergency is hereby
11 declared to exist, and this act being necessary for the immediate
12 preservation of the public peace, health, and safety, shall be in full force
13 and effect from and after July 1, 1995.

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