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89th General Assembly
Regular Session, 2013

SENATE BILL 190

By: Senator D. Johnson
By: Representatives Williams, Vines

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 § 23-1-101(4), concerning the definition of
"corporation", is amended to read as follows:
(4) "Corporation" includes, but is not limited to, without limitation a
private corporation, an association, a joint-stock association, a business
trust, and an electric cooperative corporation, and a limited liability
company providing service for charge or compensation in any area or from any
facility for which the commission has granted a certificate of convenience
and necessity;

SECTION 2.  Because the section of the United States Code referenced in
Arkansas Code § 23-1-101(5)(B) has been repealed by the United States
Congress, Arkansas Code § 23-1-101(5), concerning the definition of "exempt
wholesale generator", is amended to read as follows:
(5) "Exempt wholesale generator" means a person, including an
affiliate of a public utility, that:
(A) Is engaged directly or indirectly through one (1) or more affiliates and exclusively in the business of owning or operating all or part of a facility for generating electric energy and selling electric energy at wholesale; and who:

(A)(B) Does not own or operate a facility for the transmission of electricity other than interconnecting transmission facilities used to effect a sale of electric energy at wholesale; and

(B) Has applied to the Federal Energy Regulatory Commission for a determination under 15 U.S.C. § 79z-5a;

SECTION 3. 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 4. Because the term "major electric transmission facility" is undefined and to further clarify the wording of the section, Arkansas Code § 23-18-510 is amended to read as follows:


(a)(1) No person shall commence to construct a major utility facility in the state, except those Exempt for persons exempted as provided in subsection (c) of this section and §§ 23-18-504(a) and 23-18-508, a person shall not begin construction of a major utility facility in the state, without first having obtained obtaining a certificate of environmental compatibility and public need, hereafter called a "certificate", issued with respect to for the major utility facility by from the Arkansas Public Service Commission.

(2) The replacement or expansion of an existing transmission facility with a similar facility in substantially the same location or the rebuilding, upgrading, modernizing, or reconstruction for the purposes of increasing capacity shall not constitute construction of a major utility facility if no increase in width of right-of-way is required.
(b) No An entity, including but not limited to, without limitation a person, public utility, utility, regional transmission organization, municipality, merchant transmission provider, merchant generator, or other entity, whether regulated or not by the commission, shall commence to construct a major electric transmission facility, as defined in § 23-18-503 not begin construction of an electric transmission line and associated facilities, as described in § 23-18-503(6)(B), within a national interest electric transmission corridor without first having obtained obtaining a certificate of environmental compatibility and public need issued with respect to such a facility by from the commission.

(c) Nothing in this subchapter shall be construed to This subchapter does not require a certificate under this subchapter of environmental compatibility and public need or an amendment thereof of such a certificate for:

   (1) Reconstruction, alteration, or relocation of any a major utility facility which that must be reconstructed, altered, or relocated because of the requirements of any a federal, state, or county governmental body or agency for purposes of highway transportation, public safety, or air and water quality; or

   (2) Any major electric transmission facility An electric transmission line and associated facilities including substations of a design voltage of one hundred kilovolts (100 kV) or more to be constructed or operated by a municipal electric utility system that is located within the territorial limits of such the municipal electric utility system.

(d) Any An entity granted a certificate of environmental compatibility and public need pursuant to subsection (b) of this section shall have the right of eminent domain as provided by Arkansas law for the limited purpose of constructing the certificated major electric transmission facility electric transmission line and associated facilities, as described in § 23-18-503(6)(B), to the extent that the facility is located within a national interest electric transmission corridor.

SECTION 5. 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 applicable, as:

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

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

(b) Established park and recreational areas; and

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

(ii) Any other relevant environmental effects.

SECTION 6. Because the reference to a major utility facility is incomplete, Arkansas Code § 23-18-519(b)(9), concerning the energy efficiency of a major utility facility, is amended to read as follows:

(9) That the energy efficiency of the major utility facility, as described in § 23-18-503(6)(A), has been given significant weight in the decision-making process;

SECTION 7. Arkansas Code § 23-63-1304(a), concerning the definition of "company action level event" under the Risk-Based Capital Act, is amended to read as follows to clarify the wording:

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

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

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

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

(C) For the year ending December 31, 2011, and each year
following, if a property and casualty insurer, the property and casualty
insurer has total adjusted capital that is more 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 Property and Casualty RBC
Instructions;

(2) The notification by the Insurance Commissioner to the
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 8. Arkansas Code § 23-65-317(a)(1), concerning the revocation
of a surplus lines broker's license under the Surplus Lines Insurance Law, is
amended to read as follows to correct obsolete language:

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

practices under the Arkansas Motor Vehicle Commission Act, is amended to read
as follows to correct the subdividing:

(K)(1) Notwithstanding the terms of any franchise
agreement, to fail to pay to a dealer or any lienholder in accordance with
their respective interests after the termination of franchise;

(4)(a) The dealer cost plus any charges by the
manufacturer, distributor, or a representative for distribution, delivery,
and taxes, less all allowances paid to the dealer by the manufacturer,
distributor, or representative for new, unsold, undamaged, and complete motor
vehicles of current model year and one (1) year prior model year in the
dealer’s inventory;
(ii)(b) The dealer cost of each new, unused, undamaged, and unsold part or accessory if the part or accessory:

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

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

(c)(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)(4)(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.

(c)(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

(e)(3) Reasonable attorney’s fees and

costs; or

(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 10. 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 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;

(b) To 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;

(c) To 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;

(d) To 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

(e) To 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.

(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 11. 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

/s/D. Johnson

APPROVED: 04/11/2013