

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 87th General Assembly  
3 Regular Session, 2009  
4

# A Bill

SENATE BILL 69

5 By: Senator Madison  
6  
7

## For An Act To Be Entitled

9 AN ACT TO MAKE VARIOUS CORRECTIONS TO TITLE 23 OF  
10 THE ARKANSAS CODE OF 1987 ANNOTATED; AND FOR  
11 OTHER PURPOSES.  
12

## Subtitle

13 AN ACT TO MAKE VARIOUS CORRECTIONS TO  
14 TITLE 23 OF THE ARKANSAS CODE OF 1987  
15 ANNOTATED.  
16  
17  
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
20

21 SECTION 1. Arkansas Code § 23-3-201 is amended to read as follows to  
22 rewrite the section for clarity:

23 23-3-201. Requirement for new construction or extension.

24 ~~(a)(1) No new construction or operation of any equipment or facilities~~  
25 ~~for supplying a public service or extension thereof shall be undertaken~~  
26 ~~without first obtaining from the Arkansas Public Service Commission a~~  
27 ~~certificate that public convenience and necessity require or will require the~~  
28 ~~construction or operation.~~

29 ~~(2) If no increase in the width of an existing right-of-way is~~  
30 ~~required, the replacement or expansion of existing equipment or facilities~~  
31 ~~with similar equipment or facilities in substantially the same location or~~  
32 ~~the rebuilding, upgrading, modernizing, or reconstructing of equipment or~~  
33 ~~facilities that increase capacity shall not constitute new construction and~~  
34 ~~shall not require a certificate of public convenience and necessity under~~  
35 ~~subdivision (a)(1) of this section.~~

36 ~~(b) If the construction or operation has been commenced under a~~



1 ~~limited or conditional certificate or authority as provided in §§ 23-3-203—~~  
 2 ~~23-3-205, this section shall not be construed to require the certificate, nor~~  
 3 ~~shall the certificate be required for an extension within any municipality or~~  
 4 ~~district within which service has been lawfully supplied, or for any~~  
 5 ~~extension within, or to territory then being served, or necessary in the~~  
 6 ~~ordinary course.~~

7 (a) New construction or operation of any equipment or facilities for  
 8 supplying a public service or the extension of a public service shall not be  
 9 undertaken without first obtaining from the Arkansas Public Service  
 10 Commission a certificate that public convenience and necessity require or  
 11 will require the construction or operation.

12 (b) This section does not require a certificate of public convenience  
 13 and necessity for:

14 (1) The replacement or expansion of existing equipment or  
 15 facilities with similar equipment or facilities in substantially the same  
 16 location or the rebuilding, upgrading, modernizing, or reconstructing of  
 17 equipment or facilities that increase capacity if no increase in the width of  
 18 an existing right-of-way is required;

19 (2) The construction or operation of equipment or facilities for  
 20 supplying a public service that has begun under a limited or conditional  
 21 certificate or authority as provided in §§ 23-3-203 – 23-3-205; or

22 (3) The extension of a public service:

23 (A) Within a municipality or district where a public  
 24 service has been lawfully supplied;

25 (B) Within or to territory then being served; or

26 (C) That is necessary in the ordinary course.

27  
 28 SECTION 2. Arkansas Code § 23-12-206(a) is amended to read as follows  
 29 to correct a term and to correct word usage in the subsection:

30 (a) After an operator of a railroad within the State of Arkansas has  
 31 filed a notice of rail line abandonment consistent with the Interstate  
 32 Commerce Commission Termination Act of 1995, Pub. L. No. 104-88, and notice  
 33 of the proposed rail line abandonment has been received by the Arkansas  
 34 Economic Development Council, the council shall ~~be responsible for notifying~~  
 35 notify appropriate entities of the proposed abandonment.

1 SECTION 3. Arkansas Code § 23-13-602 is amended to read as follows to  
2 subdivide the section for clarity and to correct a reference:

3 23-13-602. Registration with a base state required.

4 Foreign and domestic motor carriers, motor private carriers, leasing  
5 companies, brokers, and freight forwarders shall not operate in interstate  
6 commerce in this state without:

7 (1) being Being registered with a base state; and

8 (2) paying Paying all fees as required under the Unified Carrier  
9 Registration Act of 2005, Pub. L. No. 109-59, § 4301 et seq., ~~as in effect on~~  
10 ~~January 1, 2007.~~

11  
12 SECTION 4. Arkansas Code § 23-13-603(b)(3) is amended to read as  
13 follows to correct a reference and to make stylistic changes:

14 (3) To cooperate with the various law enforcement agencies to  
15 ensure compliance with and enforcement of ~~the provisions of~~ the Unified  
16 Carrier Registration Act of 2005, Pub. L. No. 109-59, § 4301 et seq., ~~as in~~  
17 ~~effect on January 1, 2007,~~ and regulations; and

18  
19 SECTION 5. Arkansas Code § 23-13-604 is amended to read as follows to  
20 correct a reference and to further subdivide the section for clarity:

21 23-13-604. Registration fees.

22 (a) Any fees collected by the Director of the Department of Finance  
23 and Administration under this section shall be classified as special revenues  
24 and shall be deposited into the State Treasury.

25 (b) Upon receipt of the funds, and if not prohibited by the Unified  
26 Carrier Registration Act of 2005, Pub. L. No. 109-59, § 4301 et seq., ~~as in~~  
27 ~~effect on January 1, 2007,~~ the Treasurer of State shall:

28 (1) deduct Deduct three percent (3%) of the funds as a charge by  
29 the state for its services as specified in this section; and

30 (2) shall credit Credit the three percent (3%) to the  
31 Constitutional Officers Fund and the State Central Services Fund, as defined  
32 in the Revenue Classification Law, § 19-6-101 et seq., or to any successor  
33 State Treasury fund or funds established by law to replace the Constitutional  
34 Officers Fund and the State Central Services Fund.

35 (c) The net amount of the fees collected by the director under this  
36 section shall be:

1           (1) ~~transferred~~ Transferred by the Treasurer of State on the  
2 last business day of each month to the State Highway and Transportation  
3 Department Fund; and

4           (2) ~~shall be distributed~~ Distributed and expended in the manner  
5 directed by the Unified Carrier Registration Act of 2005, Pub. L. No. 109-59,  
6 § 4301 et seq., ~~as it existed on January 1, 2007~~, for the payment of expenses  
7 incurred by the Arkansas State Highway and Transportation Department for  
8 motor carrier law enforcement and safety operations.

9  
10           SECTION 6. Arkansas Code § 23-13-605 is amended to read as follows to  
11 correct a reference and to reorganize the section for clarity:

12           23-13-605. Violation – Enforcement – Penalties.

13           (a)(1) A person who is subject to the Unified Carrier Registration Act  
14 of 2005, Pub. L. No. 109-59, § 4301 et seq., ~~as in effect on January 1, 2007~~,  
15 and who uses the highways of this state without first registering in  
16 accordance with this subchapter is guilty of a violation.

17           ~~(b)~~(2) The Department of Arkansas State Police, the Arkansas Highway  
18 Police Division of the Arkansas State Highway and Transportation Department,  
19 and local authorities may enforce ~~subsection (a) of this section~~ this  
20 subsection.

21           ~~(e)~~(b) A person who is found guilty or enters a plea of guilty or nolo  
22 contendere under this section shall be ordered to pay a fine of:

23           (1) For a first offense, not less than one hundred dollars  
24 (\$100) or more than five hundred dollars (\$500)~~+~~; and

25           (2) For a second or subsequent offense, not less than one  
26 hundred dollars (\$100) or more than one thousand dollars (\$1,000).

27           ~~(d)~~(1)(c)(1) Fifty percent (50%) of the amount of the fines imposed  
28 and collected under this section shall be remitted by the tenth day of each  
29 month to the Administration of Justice Fund Section of the Office of  
30 Administrative Services of the Department of Finance and Administration on a  
31 form provided by that office for deposit into the General Revenue Fund  
32 Account of the State Apportionment Fund.

33           (2) Fifty percent (50%) of the amount of the fines imposed and  
34 collected under this section shall remain in the jurisdiction in which the  
35 violation occurred.

36

1 SECTION 7. Arkansas Code § 23-18-511(9) is amended to read as follows  
 2 to correct word usage in the subdivision:

3 (9) The interstate benefits expected to be achieved by the  
 4 proposed construction or modification of a major electric transmission  
 5 facility, as ~~defined by~~ described in § 23-18-503(5)(B), that is located  
 6 within a national interest electric transmission corridor; and

7  
 8 SECTION 8. Arkansas Code § 23-18-519(b)(11) and (12) are amended to  
 9 read as follows to correct a reference and to correct word usage in the  
 10 subdivisions:

11 (11) The interstate benefits expected to be achieved by the  
 12 proposed construction or modification of a major electric transmission  
 13 facility, as ~~defined~~ described in § 23-18-503(5)(B), that is located within a  
 14 national interest electric transmission corridor; and

15 (12) That any conditions attached to a certificate for the  
 16 construction or modification of a major electric transmission facility, as  
 17 ~~defined~~ described in § 23-18-503(5)(B), that is located within a national  
 18 interest electric transmission corridor do not interfere with reduction of  
 19 electric transmission congestion in interstate commerce or render the project  
 20 economically infeasible.

21  
 22 SECTION 9. Arkansas Code § 23-18-703(a) is amended to read as follows  
 23 to correct word usage in the subsection and to ensure consistent use of  
 24 terms:

25 (a)(1) The Arkansas Public Service Commission ~~is authorized to~~ may  
 26 consider, propose, develop, solicit, approve, implement, and monitor measures  
 27 by electric public utilities subject to its jurisdiction that cause the  
 28 ~~companies~~ electric public utilities to incur costs of service and investments  
 29 that utilize, generate, or involve clean energy resources or renewable energy  
 30 resources, or both.

31 (2) The commission may encourage or require electric public  
 32 utilities subject to its jurisdiction to consider clean energy or renewable  
 33 energy resources, or both, as part of any resource plan.

34 (3) After proper notice and hearings, the commission may approve  
 35 any clean energy resource or renewable energy resource that it determines to  
 36 be in the public interest.

1 (4) If the commission determines that the cost of a clean energy  
 2 resource or renewable energy resource is in the public interest, the  
 3 commission may allow the affected electric public utility to implement a  
 4 temporary surcharge to recover a portion of the costs of such a resource  
 5 until the implementation of new rate schedules in connection with the  
 6 electric public utility's next general rate filing ~~wherein~~ in which such  
 7 costs can be included in the electric public utility's base rate schedules.  
 8

9 SECTION 10. Arkansas Code § 23-39-505(g) is amended to read as follows  
 10 to reorganize the subsection for clarity:

11 (g)(1) Each applicant filing for licensure as a mortgage banker or  
 12 mortgage servicer shall file with the commissioner as part of his or her  
 13 application audited financial statements;

14 (A) ~~that~~ That reflect that the applicant has a net worth  
 15 of at least twenty-five thousand dollars (\$25,000); and ~~are+~~

16 ~~(A)-(B)~~ That are:

17 (i) Prepared by an independent certified public  
 18 accountant;

19 ~~(B)-(ii)~~ Prepared ~~in accordance with~~ according to  
 20 generally accepted accounting principals as promulgated by the Financial  
 21 Accounting Standards Board;

22 ~~(C)-(iii)~~ Accompanied by an opinion acceptable to the  
 23 commissioner; and

24 ~~(D)-(iv)~~ Dated within fifteen (15) months preceding  
 25 the date on which the application is filed.

26 (2) Each applicant filing for licensure as a mortgage broker  
 27 shall file with the commissioner as part of his or her application financial  
 28 statements;

29 (A) ~~that~~ That reflect that the applicant has a net worth  
 30 of at least twenty-five thousand dollars (\$25,000); and ~~are+~~

31 (B) That are:

32 (i) Certified as true and correct by the president  
 33 or chief financial officer of the mortgage broker;

34 ~~(B)-(ii)~~ Prepared ~~in accordance with~~ according to  
 35 generally accepted accounting principles as promulgated by the Financial  
 36 Accounting Standards Board; and

1                   ~~(C)(iii)~~ Dated within eighteen (18) months preceding  
 2 the date on which the application is filed.

3  
 4           SECTION 11. Arkansas Code § 23-39-513(8)(B) is amended to read as  
 5 follows to reorganize the subdivision for clarity:

6                   (B) Any penalty for prepayment under subdivision (8)(A) of  
 7 this section made within the thirty-six-month period shall not exceed the  
 8 greater of:

9                   (i) Any of the following amounts:

10                   (a) Three percent (3%) of the principal loan  
 11 amount remaining on the date of prepayment if the prepayment is made within  
 12 the first twelve-month period immediately following the date the loan was  
 13 made;

14                   (b) ~~two~~ Two percent (2%) of the principal loan  
 15 amount remaining on the date of prepayment if the prepayment is made within  
 16 the second twelve-month period immediately following the date the loan was  
 17 made; or

18                   (c) ~~one~~ One percent (1%) of the principal loan  
 19 amount remaining on the date of prepayment if the prepayment is made within  
 20 the third twelve-month period immediately following the date the loan was  
 21 made; or

22                   (ii) An amount equal to interest for six (6) months  
 23 calculated on eighty percent (80%) of the remaining principal balance due on  
 24 the residential mortgage loan as of the date the prepayment is made;

25  
 26           SECTION 12. Arkansas Code § 23-48-503 is amended to read as follows to  
 27 reorganize the section for clarity:

28           23-48-503. Merger of bank or savings and loan association into state  
 29 bank.

30           (a)(1)(A) With the approval of the Bank Commissioner and the State  
 31 Banking Board and after a public hearing as prescribed by the applicable law  
 32 of this state, any bank, including an out-of-state bank, upon compliance with  
 33 § 23-48-901 et seq., or savings and loan association may be merged with a  
 34 state bank creating one (1) or more resulting banks.

35           (B) However, if any national bank, out-of-state bank, or  
 36 savings and loan association is involved in the merger under subdivision

1 (a)(1)(A) of this section, there shall be compliance with the requirements of  
 2 the state or federal laws applicable to the national bank, out-of-state bank,  
 3 or savings and loan association.

4 (2)(A) A plan of merger involving a state bank shall provide:

5 ~~(A)(i)~~ The name of each party to the merger;

6 ~~(B)(ii)~~ The name of each entity that will result  
 7 from the merger; and

8 ~~(C)(iii)~~ The terms and conditions of the merger.

9 (B) If more than one (1) bank, out-of-state bank, or  
 10 savings and loan association will result or be created by the terms of the  
 11 plan of merger, the terms and conditions of the merger shall include:

12 (i) The manner and basis of allocating and vesting  
 13 the assets from the merger among one (1) or more of the parties;

14 (ii) The name of the party that will be obligated to  
 15 pay the fair value of any shares of stock of a bank that is a party to the  
 16 merger that ~~is~~ are held by a stockholder that has complied with the  
 17 requirements of § 23-48-506 for the recovery of the fair value of the  
 18 stockholder's shares; and

19 (iii) Either of the following:

20 (a) The manner and basis of allocating the  
 21 liabilities and obligations of each bank, out-of-state bank, or savings and  
 22 loan association that is a party to the merger among one (1) or more of the  
 23 parties; or

24 (b) Adequate provision for the payment and  
 25 discharge of the liabilities and obligations of each bank, out-of-state bank,  
 26 or savings and loan association that is a party to the merger among one (1)  
 27 or more of the parties.

28 (3) A bank, including an out-of-state bank, or savings and loan  
 29 association may merge into a state bank ~~provided that~~ if none of the Arkansas  
 30 banks ~~which~~ that are parties to the merger has a de novo charter.

31 (4)(A) The applicant shall file an application with the  
 32 commissioner containing the information that the commissioner ~~may require~~  
 33 requires, and if.

34 (B) If an out-of-state bank is a party to the merger, all  
 35 applicable provisions of § 23-48-901 et seq. and the applicable law of the  
 36 home state of the merging bank shall be satisfied.



1           (5)(A) The assenting vote of a simple majority of each class of  
2 voting stock of the merging banks and resulting bank shall be required for  
3 the merger, ~~provided that,~~

4           (B) However, ~~no~~ a vote of the shareholders of the  
5 resulting bank shall not be required if the number of shares to be issued in  
6 connection with the merger does not exceed twenty percent (20%) of the  
7 outstanding shares of the resulting bank ~~prior to~~ before the merger.

8           (b) The commissioner shall provide the board with the results of the  
9 investigation of the application.

10          (c) The commissioner shall approve the application if, at the hearing,  
11 both the commissioner and the board find that:

12           (1) The proposed merger provides adequate capital structure;

13           (2) The terms of the merger agreement are fair;

14           (3) The merger is not contrary to the public interest;

15           (4) The proposed merger adequately provides for dissenters'  
16 rights; and

17           (5) The requirements of all applicable state and federal laws  
18 have been complied with.

19  
20          SECTION 13. The introductory language of Arkansas Code § 23-55-403(a)  
21 is amended to read as follows to insert necessary language:

22          (a) When an application for a license is made under this subchapter,  
23 the commissioner shall investigate the applicant's financial condition and  
24 responsibility, financial and business experience, character, and general  
25 fitness. The commissioner may conduct an on-site investigation of the  
26 applicant, the reasonable cost of which the applicant must pay. The  
27 commissioner shall issue a license to an applicant under this subchapter if  
28 the commissioner finds that all of the following conditions have been  
29 fulfilled:

30  
31          SECTION 14. Arkansas Code § 23-55-604(e) is amended to read as follows  
32 to correct word usage in the subsection:

33          (e) The commissioner, by rule ~~of~~ or order, may exempt a person from  
34 any of the requirements of subsection (a)(2) and (3) if it is in the public  
35 interest to do so.

36

1 SECTION 15. The introductory language of Arkansas Code § 23-63-503(4)  
 2 is amended to read as follows to correct a reference and to substitute the  
 3 correct term for a pronoun:

4 (4) "Insurer" shall have the same meaning as set forth in § 23-  
 5 60-102(2), except that ~~it~~ "insurer" shall not include:

6  
 7 SECTION 16. Arkansas Code § 23-114-104(a) is amended to read as  
 8 follows to clarify that the criminal penalty set out in the subsection is a  
 9 violation rather than an unclassified misdemeanor:

10 (a)(1) A violation of this chapter by a licensed authorized  
 11 organization is ~~an unclassified misdemeanor and shall be a violation~~  
 12 punishable by a fine not to exceed five thousand dollars (\$5,000).

13 (2) A second or subsequent offense is ~~an unclassified~~  
 14 ~~misdemeanor and shall be a violation~~ punishable by a fine not to exceed ten  
 15 thousand dollars (\$10,000).

16  
 17 SECTION 17. Arkansas Code § 23-114-303(b)(4) is amended to read as  
 18 follows to correct a term:

19 (4) If the premises upon which a raffle or bingo session will be  
 20 conducted has been leased by the authorized ~~agent~~ organization, a copy of the  
 21 lease agreement; and

22  
 23 SECTION 18. The introductory language of Arkansas Code § 23-114-  
 24 303(d)(1) is amended to read as follows to correct a term:

25 (d)(1) Before the renewal of an annual license, the licensed  
 26 authorized organization shall report the following information:

27  
 28 SECTION 19. Arkansas Code § 23-114-704(c) is amended to read as  
 29 follows to subdivide the subsection and correct word usage:

30 (c) If the court finds that this chapter has been violated or is about  
 31 to be violated, the court shall ~~issue~~ restrain the violation by issuing:

32 (1) a A temporary restraining order;  
 33 (2) ~~and, after~~ After due notice and hearing, a temporary  
 34 injunction; and

35 (3) ~~after~~ After a final trial, a permanent injunction ~~to~~  
 36 ~~restrain the violation.~~

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SECTION 20. Arkansas Code § 23-114-705 is amended to read as follows to subdivide the section and to correct word usage:

23-114-705. Examination of records.

To verify compliance with this chapter, The the Department of Finance and Administration ~~is authorized to~~ may audit and examine the books, papers, records, equipment, and place of business of a:

(1) licensed Licensed authorized organization;

(2) a licensed distributor Distributor licensed under this chapter; or

(3) a licensed manufacturer Manufacturer licensed under this chapter to verify compliance with the provisions of this chapter.

SECTION 21. The enactment and adoption of this act shall not repeal, expressly or impliedly, the acts passed at the regular session of the 87th General Assembly. All such acts shall have full 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 of the Arkansas Code of 1987.