

INTERIM STUDY PROPOSAL 2019-053

1
2 State of Arkansas
3 92nd General Assembly
4 Regular Session, 2019

A Bill

HOUSE BILL 1957

5
6 By: Representative Love

7 Filed with: House Select Committee on Rules
8 pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

9
10 AN ACT TO CREATE THE ARKANSAS ELECTED OFFICIAL
11 ACCOUNTABILITY ACT OF 2019; TO REQUIRE DRUG SCREENING
12 AND TESTING OF ELECTED OFFICIALS; TO PREVENT THE USE
13 OF TAXPAYER MONEY TO FUND DRUG-RELATED ACTIVITIES;
14 AND FOR OTHER PURPOSES.

Subtitle

15
16
17
18 TO CREATE THE ARKANSAS ELECTED OFFICIAL
19 ACCOUNTABILITY ACT OF 2019.

20
21
22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

23
24 SECTION 1. Arkansas Code Title 21, Chapter 8, is amended to add an
25 additional subchapter to read as follows:

26 Subchapter 11 – Arkansas Elected Official Accountability Act of 2019

27
28 21-8-1101. Title.

29 This act shall be known and may be cited as the “Arkansas Elected
30 Official Accountability Act of 2019”.

31
32 21-8-1102. Definitions.

33 As used in this subchapter:

34 (1) “Chain of custody” means the methodology of tracking
35 specified materials or substances for the purpose of maintaining control and
36 accountability from initial collection to final disposition for all materials

1 or substances, providing accountability at each stage in handling, testing,
2 and storing specimens and reporting test results;

3 (2) "Compensation" means an elected official's salary, hourly
4 wage, or reimbursement of expenses paid by government money;

5 (3) "Confirmation test" means a second analytical procedure used
6 to identify the presence of a specific drug or drug metabolite in a specimen.
7 The confirmation test may be different in scientific principle from that of
8 the initial test procedure and must be capable of providing requisite
9 specificity, sensitivity, and quantitative accuracy;

10 (4) "Drug" means:

11 (A) Marijuana, cocaine, methamphetamine,
12 amphetamine, and opiates, including without limitation morphine; and

13 (B) Other substances not listed in subdivision
14 (4)(A) of this section that the Arkansas Ethics Commission may define by
15 rule;

16 (5) "Drug test" means any chemical, biological, or physical
17 instrumental analysis administered by a drug testing agency authorized to
18 test under this subchapter for the purpose of determining the presence or
19 absence of a drug or its metabolites;

20 (6) "Elected official" means any state, district, county, or
21 municipal official who was elected to office or appointed to fill an elected
22 office;

23 (7) "Five-panel drug test" means a test for marijuana, cocaine,
24 methamphetamine, amphetamine, and opiates, including without limitation
25 morphine; and

26 (8) "Specimen" means tissue, fluid, or a product of the human
27 body capable of revealing the presence of drugs or drug metabolites.

28
29 21-8-1103. Administration.

30 (a)(1) Subject to state appropriation, the Arkansas Ethics Commission,
31 in coordination with the Department of Human Services, shall establish and
32 administer a drug screening and testing program for each elected official in
33 the state.

34 (2) The drug screening and testing program under this section
35 shall be administered to include:

36 (A) Suspicion-based drug screening and testing; and

1 (B) Random drug screening and testing.

2 (b) Random drug screening and testing under this section shall be
3 performed at least one (1) time each year for each elected official.

4 (c)(1) An elected official may inform the commission of any
5 prescription or over-the-counter medication that the individual is taking.

6 (2) An elected official shall not be denied compensation on the
7 basis of failing a drug test if the elected official has a current and valid
8 prescription or a written certification and a registry identification card
9 issued under the Arkansas Medical Marijuana Amendment of 2016, Arkansas
10 Constitution, Amendment 98, for the drug in question.

11 (d)(1) An elected official shall undergo a confirmation test using the
12 same specimen sample from the initial positive test before receiving
13 compensation.

14 (2) The results of the confirmation test shall be used to
15 determine final eligibility for compensation.

16
17 21-8-1104. Powers and duties.

18 (a) The Arkansas Ethics Commission, in coordination with the
19 Department of Human Services, shall:

20 (1) Consult with substance abuse treatment experts;

21 (2) Develop appropriate screening techniques and processes to
22 establish reasonable cause that an elected official is using a drug and to
23 establish the necessary criteria to permit the Arkansas Ethics Commission, in
24 coordination with the Department of Human Services, to require the elected
25 official to undergo no less than a five-panel drug test;

26 (3) Identify and select a screening tool as a part of the
27 development of the screening technique that will be employed for the drug
28 screening and testing program under this subchapter;

29 (4) Develop a plan for funding of the costs of the screening
30 process, the no less than five-panel drug testing process, personnel and
31 information systems modification, and other costs associated with the
32 development and implementation of the testing process; and

33 (5) Develop a plan for any modification of its information
34 systems necessary to properly track and report the status of elected
35 officials who are screened and who must undergo testing as required by this
36 subchapter, including without limitation a detailed analysis of costs for

1 systems analysis, programming, and testing of modifications and for
2 implementation dates for completion of the modifications.

3 (b) Annually, the Arkansas Ethics Commission, in coordination with the
4 Department of Human Services, shall submit a report of the past calendar year
5 on or before February 1 to the General Assembly that includes without
6 limitation:

7 (1) The number of individuals screened;

8 (2) The number of screened individuals for whom there was a
9 reasonable suspicion of illegal drug use;

10 (3) The number of screened individuals who took a drug test;

11 (4) The number of screened individuals who refused to take a
12 drug test;

13 (5) The number of screened individuals who received a positive
14 result on the drug test;

15 (6) The number of screened individuals who received a negative
16 result on the drug test;

17 (7) The number of individuals who received a positive result on
18 a drug test for a second or subsequent time; and

19 (8) The amount of costs incurred by the commission for the
20 administration of the drug screening and testing program.

21
22 21-8-1105. Standards in drug screening and testing program.

23 The drug screening and testing program under this subchapter shall
24 include without limitation:

25 (1)(A) A requirement that an elected official shall be screened
26 using an empirically validated drug screening tool.

27 (B) If the result of the drug screening tool gives the
28 Arkansas Ethics Commission a reasonable suspicion to believe that the elected
29 official has engaged in the use of drugs, then the elected official shall be
30 required to take a drug test.

31 (C) A refusal by an elected official to take a drug test
32 shall result in lack of eligibility for compensation for a period of six (6)
33 months;

34 (2) A process for administering the cost of drug tests as
35 follows:

1 (A) If an elected official receives a negative result on a
2 drug test, the cost of administering the drug test shall be paid by the
3 commission; and

4 (B) If an elected official receives a positive result on a
5 drug test or refuses to take the drug test, the cost of administering the
6 drug test shall be paid by the elected official;

7 (3)(A) A referral process for any elected official who receives
8 a positive result on a drug test to be referred to an appropriate treatment
9 resource for drug abuse treatment or other resource by the commission for an
10 appropriate treatment period as determined by the commission.

11 (B) Evidence of ongoing compliance during the determined
12 treatment period shall be required;

13 (4) A requirement that a refusal to enter a treatment plan or
14 failure to complete the treatment plan by an elected official who receives a
15 positive result on a drug test shall result in lack of eligibility for
16 compensation for a period of six (6) months; and

17 (5)(A) A requirement that an elected official be tested using
18 the no less than five-panel drug test upon the conclusion of the determined
19 treatment period.

20 (B) If an elected official receives a positive result on
21 the no less than five-panel drug test or any subsequent drug test, the
22 elected official shall be ineligible for compensation for a period of six (6)
23 months.

24
25 21-8-1106. Information regarding drug testing.

26 (a) Except as provided in subsections (b) and (c) of this section, all
27 information, interviews, reports, statements, memoranda, and drug test
28 results, written or otherwise, received by the Arkansas Ethics Commission as
29 a part of the drug screening and testing program under this subchapter:

30 (1) Shall be confidential, exempt from disclosure under the
31 Arkansas Freedom of Information Act of 1967, § 25-19-110, and not subject to
32 disclosure; and

33 (2) Shall not be used as evidence, received in evidence,
34 obtained in discovery, or disclosed in any public or private proceedings.

1 (b) If an elected official has a positive drug test under this
2 subchapter, the commission shall provide the information regarding drug test
3 results to the:

4 (1) Prosecuting attorney for the jurisdiction in which the
5 elected official resides; and

6 (2) Department of Arkansas State Police.

7 (c) This subchapter does not prohibit the commission from having
8 access to an elected official's drug test information or using the
9 information when consulting with legal counsel in connection with actions
10 brought under or related to this subchapter or when the information is
11 relevant to its defense in a civil or administrative matter.

12
13 21-8-1107. Rulemaking authority.

14 (a) The Arkansas Ethics Commission, in coordination with the
15 Department of Human Services, shall promulgate rules necessary for the
16 implementation of this subchapter.

17 (b) The commission shall consider the following when promulgating
18 rules:

19 (1) Testing procedures established by the United States
20 Department of Health and Human Services and the United States Department of
21 Transportation;

22 (2) Screening procedures established by the substance abuse
23 experts to determine when a person exhibits the criteria to determine that
24 there is reasonable cause to suspect that a person is likely to use drugs;

25 (3) Body specimens and minimum specimen amounts that are
26 appropriate for drug testing;

27 (4) Methods of analysis and procedures to ensure reliable drug
28 testing results, including without limitation standards for initial tests and
29 confirmation tests;

30 (5) Minimum detection levels for each drug or drug metabolite
31 for the purpose of determining a positive result;

32 (6) Chain-of-custody procedures to ensure proper identification,
33 labeling, and handling of specimens tested; and

34 (7) Retention, storage, and transportation procedures to ensure
35 reliable results of drug tests used in the administration of this subchapter.

1 (c)(1) When adopting the initial rules to implement this subchapter,
2 the final rule shall be filed with the Secretary of State for adoption under
3 § 25-15-204(f):

4 (A) On or before January 1, 2020; or
5 (B) If approval under § 10-3-309 has not occurred by
6 January 1, 2020, as soon as practicable after approval under § 10-3-309.

7 (2) The commission shall file the proposed rule with the
8 Legislative Council under § 10-3-309(c) sufficiently in advance of January 1,
9 2020, so that the Legislative Council may consider the rule for approval
10 before January 1, 2020.

11
12 SECTION 2. TEMPORARY LANGUAGE. DO NOT CODIFY. Drug screening and
13 testing effective date.

14 Drug screening and reporting under this act shall begin no later than
15 February 1, 2020.

16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

Referred requested by the Arkansas House of Representatives
Prepared by: JAW/VJF