

*As Engrossed: 2/1/95*

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

# **A Bill**

**ACT 352 OF 1995**  
**SENATE BILL 328**

4 **By: Senators Bradford, Hardin, Harriman, Russ, Keet, Beebe, Hoofman, Bookout, Hopkins,**  
5 **Scott, Bell, Everett, Fitch, Gordon, Malone, Ross, Edwards, Walters, Bearden, *Walker and***  
6 ***Webb***

## **For An Act To Be Entitled**

10 "AN ACT TO REVISE ARKANSAS TITLE CODE TITLE 7, CONCERNING  
11 THE ARKANSAS ETHICS COMMISSION AND FOR OTHER PURPOSES."

### **Subtitle**

14 "AN ACT TO REVISE ARKANSAS TITLE CODE  
15 TITLE 7, CONCERNING THE ARKANSAS ETHICS  
16 COMMISSION."

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

20 SECTION 1. Arkansas Code 7-6-217 is amended to read as follows:

21 "§ 7-6-217. Creation of Arkansas Ethics Commission.

22 (a) The Arkansas Ethics Commission shall be composed of five (5)  
23 members, one each appointed by the Governor, Attorney General, Lieutenant  
24 Governor, Speaker of the Arkansas House of Representatives, and President Pro  
25 Tempore of the Arkansas Senate. Members of the commission shall be appointed  
26 for terms of five (5) years. No person may be appointed to serve consecutive  
27 terms on the commission. Provided, that any commissioner who has been  
28 appointed to serve two (2) years or less of an unexpired term shall be  
29 eligible for an appointment to a subsequent five-year term. Those  
30 commissioners currently serving shall complete their current term.

31 (b) In making appointments to the commission, the appointing officials  
32 shall insure that at least one (1) member of a minority race, one (1) woman,  
33 and one (1) member of the minority political party, as defined in §  
34 7-1-101(7), serves on the commission. Any person appointed as a member of the  
35 minority political party must have voted in the preferential primaries of the  
36 minority political party in the last two primaries in which he or she has

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1 voted.

2 (c) No member of the commission shall be a federal, state or local  
3 government official or employee, an elected public official, a candidate for  
4 public office, a lobbyist as defined in § 21-8-402(11), or an officer or paid  
5 employee of an organized political party as defined in § 7-1-101(1). During  
6 the entire term of service on the Arkansas Ethics Commission, a commissioner  
7 shall be prohibited from raising funds for, making contributions to, providing  
8 services to, or lending his or her name in support of any candidate for  
9 election to a state, county, municipal, or school board office under the laws  
10 of Arkansas or in support of a ballot issue or issues submitted or intended to  
11 be submitted to the voters of the state of Arkansas, or any of its political  
12 subdivisions, excluding the exercise of the right to vote or the mere signing  
13 of an initiative or referendum petition. Employees of the commission shall be  
14 similarly prohibited.

15 (d) In the event of a vacancy on the commission, a successor shall be  
16 appointed within thirty (30) days to serve the remainder of the unexpired  
17 term, such appointment to be made by the official holding the office  
18 responsible for appointing the predecessor. The commission shall elect its  
19 chairperson.

20 (e) A majority of the membership of the commission shall constitute a  
21 quorum for conducting business. No action shall be taken except by an  
22 affirmative vote of a majority of those present and voting. No sanctions  
23 shall be imposed without the affirmative vote of at least three (3) members of  
24 the commission who are physically present at a commission meeting. The vote  
25 of each member voting on any action shall be a public record.

26 (f) Members of the commission shall serve without compensation, but  
27 shall be entitled to receive reimbursement from the state for actual and  
28 reasonable expenses incurred in the performance of their official duties,  
29 including reimbursement for mileage for official travel in connection with  
30 commission business, at the same rate provided by travel and expense  
31 regulations for state employees.

32 (g) The commission shall meet at such times as may be provided by its  
33 rules, or upon call of the chairperson, or upon written request to the  
34 chairperson of any three (3) members.

35 (h) The commission shall have the authority to:

1           (1) Pursuant to the Arkansas Administrative Procedure Act, §§ 25-  
2 15-201 et seq., promulgate reasonable rules and regulations to implement and  
3 administer the requirements of this subchapter, as well as subchapters 4-9 of  
4 title 21, chapter 8, as amended, and to govern procedures before the  
5 commission, matters of commission operations, and all investigative and  
6 disciplinary procedures and proceedings:

7           (2) Issue advisory opinions and guidelines on the requirements of  
8 this subchapter and the requirements of subchapters 4-9 of title 21, chapter  
9 8, as amended;

10           (3) Investigate alleged violations of this subchapter and of  
11 subchapters 4-9 of title 21, chapter 8, as amended, and render findings and  
12 disciplinary action thereon;

13           (4) Pursuant to commission investigations, subpoena any person or  
14 the books, records, or other documents being held by any person and take sworn  
15 depositions;

16           (5) Administer oaths and conduct hearings for the purpose of  
17 taking sworn testimony of witnesses appearing before the commission;

18           (6) Hire a staff and retain legal counsel;

19           (7) Approve forms prepared by the Secretary of State pursuant to  
20 this act and subchapters 4-9 of title 21, chapter 8, as amended; and

21           (8) File suit in the Circuit Court of Pulaski County or in the  
22 circuit court of the county wherein the debtor resides, or, pursuant to A.C.A.  
23 16-17-601 et seq., in the small claims division of any municipal court in the  
24 state of Arkansas, to obtain a judgment for the amount of any fine imposed  
25 pursuant to §7-6-218(b)(4)(B). Said action by the court shall not involve  
26 further judicial review of the commission's actions. The fee normally charged  
27 for the filing of a suit in any of the circuit courts in the state of Arkansas  
28 shall be waived on behalf of the Arkansas Ethics Commission."

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30       SECTION 2. Arkansas Code 7-6-218 is amended to read as follows:

31       "§ 7-6-218. Citizen complaints.

32       (a) Any citizen wishing to file a complaint against a person covered by  
33 this subchapter or by subchapters 4-9 of title 21, chapter 8, as amended, for  
34 an alleged violation of such subchapters may file a complaint with the  
35 Arkansas Ethics Commission.

1 (b) (1) Upon a complaint stating facts constituting an alleged violation  
2 signed under penalty of perjury by any person, the Arkansas Ethics Commission  
3 shall investigate the alleged violation of this subchapter or of subchapters  
4 4-9 of title 21, chapter 8, as amended. The commission shall immediately  
5 notify any person under investigation of the investigation and of the nature  
6 of the alleged violation. The commission in a document shall advise the  
7 complainant and the accused of the final action taken together with the  
8 reasons for the action, and such document shall be a public record.

9 (2) If after the investigation, the commission finds that  
10 probable cause exists for a finding of a violation, the accused may request a  
11 hearing. The hearing shall be a public hearing.

12 (3) The commission shall keep a record of its investigations,  
13 inquiries, and proceedings. All proceedings, records, and transcripts of any  
14 investigations or inquiries shall be kept confidential by the commission,  
15 unless the accused requests disclosure of documents relating to investigation  
16 of the case, or in case of a hearing under (b) (2) of this section, or in case  
17 of judicial review of a commission decision pursuant to Ark. Code Ann. 25-15-  
18 212. Thirty (30) days after any final adjudication in which the commission  
19 makes a finding of a violation, all records relevant to the investigation and  
20 upon which the commission has based its decision, except working papers of the  
21 commission and its staff, shall be open to public inspection.

22 (4) If the commission finds a violation of this subchapter or of  
23 subchapters 4-9 of title 21, chapter 8, as amended, then the commission shall  
24 do one (1) or more of the following:

25 (A) Issue a public letter of caution or warning or  
26 reprimand;

27 (B) Notwithstanding the provisions of § 7-6-202, § 7-9-409,  
28 § 21-8-403, and § 21-8-903, impose a fine of not less than twenty-five dollars  
29 (\$25) nor more than one thousand dollars (\$1,000) for negligent or intentional  
30 violation of this subchapter, or of subchapters 4-9 of title 21, chapter 8, as  
31 amended. The commission shall adopt rules governing the imposition of such  
32 fines in accordance with the provisions of the Administrative Procedure Act,  
33 A.C.A. §§ 25-15-201 et seq. All monies received by the commission in payment  
34 of fines shall be deposited in the State Treasury as general revenues; or

35 (C) Report its finding, along with such

1 information and documents as it deems appropriate, and make recommendations to  
2 the proper law enforcement authorities.

3           (5) The commission shall complete its investigation of a  
4 complaint filed pursuant to this section within one hundred and fifty (150)  
5 days of the filing of the complaint; except that, if a hearing is conducted,  
6 all action on the complaint by the commission shall be completed within one  
7 hundred eighty (180) days.

8           (c) Any final action of the commission under this section shall  
9 constitute an adjudication for purposes of judicial review under § 25-15-212."

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11           SECTION 3. Arkansas Code 7-4-101(f) is amended to read as follows:

12           "(f) The State Board of Election Commissioners may perform the  
13 following duties:

14                   (1) Publish a plain English election handbook which addresses  
15 the do's and dont's for candidates under Arkansas law;

16                   (2) Conduct statewide training for election clerks and judges and  
17 county election commissioners;

18                   (3) Monitor all election law-related legislation;

19                   (4) Conduct investigations of citizen complaints and issue  
20 advisory opinions regarding violations of election laws, except as to Ark.  
21 Code Ann. 7-1-103(1) through (4), (6), (7) and (8), or except for any matter  
22 relating to campaign finance and disclosure laws, which the Arkansas Ethics  
23 Commission shall have the same power and authority to enforce as is provided  
24 the commission under §§ 7-6-217 and 7-6-218 for the enforcement of campaign  
25 finance laws;

26                   (5) To develop procedures for receiving citizen complaints which  
27 are referred to in subdivision (f)(4);

28                   (6) Establish guidelines for and monitor the qualifications of  
29 all election officials; and

30                   (7) Formulate, adopt, and promulgate all necessary rules and  
31 regulations to assure even and consistent application of fair and orderly  
32 election procedures."

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34           SECTION 4. All provisions of this act of a general and permanent nature  
35 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code

1 Revision Commission shall incorporate the same in the Code.

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

8

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

11

12 SECTION 7. EMERGENCY. It is hereby found and determined by the General  
13 Assembly that there now exists a vacancy on the Ethics Commission due to a  
14 decision by the Arkansas Supreme Court that invalidated the Chief Justice's  
15 appointment of a member of the commission; that this vacancy should be filled  
16 as soon as possible; and that this act establishes the mechanism for filling  
17 that vacancy and therefore should be placed into effect immediately.  
18 Therefore, an emergency is hereby declared to exist and this act being  
19 necessary for the immediate preservation of the public peace, health and  
20 safety shall be in full force and effect from and after its passage and  
21 approval.

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27 */s/Bradford et al*

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29 APPROVED: 2-17-95

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