

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

# A Bill

HOUSE BILL 1957

5 By: Representative Love  
6

## For An Act To Be Entitled

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

15 TO CREATE THE ARKANSAS ELECTED OFFICIAL  
16 ACCOUNTABILITY ACT OF 2019.  
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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22 SECTION 1. Arkansas Code Title 21, Chapter 8, is amended to add an  
23 additional subchapter to read as follows:

24 Subchapter 11 – Arkansas Elected Official Accountability Act of 2019  
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26 21-8-1101. Title.

27 This act shall be known and may be cited as the “Arkansas Elected  
28 Official Accountability Act of 2019”.  
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30 21-8-1102. Definitions.

31 As used in this subchapter:

32 (1) “Chain of custody” means the methodology of tracking  
33 specified materials or substances for the purpose of maintaining control and  
34 accountability from initial collection to final disposition for all materials  
35 or substances, providing accountability at each stage in handling, testing,  
36 and storing specimens and reporting test results;



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

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

8           (4) "Drug" means:

9                   (A) Marijuana, cocaine, methamphetamine,  
10 amphetamine, and opiates, including without limitation morphine; and

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

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

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

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

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

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27       21-8-1103. Administration.

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

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

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

35                   (B) Random drug screening and testing.

36       (b) Random drug screening and testing under this section shall be

1 performed at least one (1) time each year for each elected official.

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

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

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

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

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15 21-8-1104. Powers and duties.

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

18 (1) Consult with substance abuse treatment experts;

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

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

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

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

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

5           (1) The number of individuals screened;

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

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

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

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

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

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

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

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20           21-8-1105. Standards in drug screening and testing program.

21           The drug screening and testing program under this subchapter shall  
22 include without limitation:

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

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

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

32           (2) A process for administering the cost of drug tests as  
33 follows:

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

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

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

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

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

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

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

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22                  21-8-1106. Information regarding drug testing.

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

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

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

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

35                   (1) Prosecuting attorney for the jurisdiction in which the  
36 elected official resides; and

1           (2) Department of Arkansas State Police.

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

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 8           21-8-1107. Rulemaking authority.

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

12           (b) The commission shall consider the following when promulgating  
 13 rules:

14                   (1) Testing procedures established by the United States  
 15 Department of Health and Human Services and the United States Department of  
 16 Transportation;

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

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

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

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

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

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

31           (c)(1) When adopting the initial rules to implement this subchapter,  
 32 the final rule shall be filed with the Secretary of State for adoption under  
 33 § 25-15-204(f):

34                           (A) On or before January 1, 2020; or

35                           (B) If approval under § 10-3-309 has not occurred by  
 36 January 1, 2020, as soon as practicable after approval under § 10-3-309.

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

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6           SECTION 2. TEMPORARY LANGUAGE. DO NOT CODIFY. Drug screening and  
7 testing effective date.

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

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