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4

As Engrossed: H3/29/23

A Bill

SENATE BILL 341

5 By: Senator J. Boyd
6 By: Representative McClure
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE COMMERCIAL DRIVER ALCOHOL AND
10 DRUG TESTING ACT TO COMPLY WITH FEDERAL MOTOR CARRIER
11 SAFETY ADMINISTRATION REGULATIONS; AND FOR OTHER
12 PURPOSES.
13
14

Subtitle

15 TO AMEND THE COMMERCIAL DRIVER ALCOHOL
16 AND DRUG TESTING ACT TO COMPLY WITH
17 FEDERAL MOTOR CARRIER SAFETY
18 ADMINISTRATION REGULATIONS.
19
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code Title 27, Chapter 23, Subchapter 2 is amended
25 to read as follows:

26 27-23-202. Definitions.

27 (a) As used in this subchapter:

28 (1) "Commercial Driver's License Drug and Alcohol Clearinghouse"
29 means the Federal Motor Carrier Safety Administration's database that:

30 (A) Contains information required to be reported by
31 employers and service agents regarding drivers who are subject to the
32 Department of Transportation's controlled substance and alcohol testing
33 regulations; and

34 (B) Is used to provide information for queries concerning
35 driver records;

36 (2)(A)(i) "Consortium/third-party administrator" means a service



1 agent that provides or coordinates the provision of drug and alcohol testing
2 services to employers that are required to comply with the drug and alcohol
3 testing provisions under the Federal Motor Carrier Safety Regulations, 49
4 C.F.R. pts. 350-399, as in effect on ~~January 1, 2009~~ November 8, 2021.

5 (ii) A consortium/third-party administrator performs
6 tasks concerning the operation of an employer's drug and alcohol testing
7 programs.

8 (B) "Consortium/third-party administrator" includes
9 without limitation, groups of employers who join together to administer, as a
10 single entity, the drug and alcohol testing programs of its members that are
11 required under the Federal Motor Carrier Safety Regulations, 49 C.F.R. pts.
12 350-399, as in effect on ~~January 1, 2009~~ November 8, 2021.

13 (C) A consortium/third-party administrator is not an
14 "employer" for purposes of this subchapter;

15 ~~(2)(A)(3)~~ "Department of Transportation" means an agency or
16 operating administration of the United States Department of Transportation
17 administering regulations requiring alcohol or drug testing under 14 C.F.R.
18 pts. 61, 63, 65, 121, and 135 and 49 C.F.R. parts 199, 219, 382, and 655 as
19 in effect on November 8, 2021.

20 (4)(A) "Employee" means a person who is a holder of an Arkansas
21 commercial driver license and is subject to drug and alcohol tests under the
22 Federal Motor Carrier Safety Regulations, 49 C.F.R. pts. 350-399, as in
23 effect on ~~January 1, 2009~~ November 8, 2021.

24 (B) "Employee" includes an individual currently performing
25 safety-sensitive transportation jobs and an applicant for employment in
26 safety-sensitive transportation jobs subject to preemployment testing; and

27 ~~(3)(5)(A)~~ "Employer" means an Arkansas person or entity
28 employing one (1) or more employees subject to the drug and alcohol testing
29 provisions under the Federal Motor Carrier Safety Regulations, 49 C.F.R. pts.
30 350-399, as in effect on ~~January 1, 2009~~ November 8, 2021.

31 (B) "Employer" includes:

32 (i) An individual who holds an Arkansas commercial
33 driver license who is self-employed in a safety-sensitive transportation job
34 for which drug and alcohol tests are required under the Federal Motor Carrier
35 Safety Regulations, 49 C.F.R. pts. 350-399, as in effect on ~~January 1, 2009~~
36 November 8, 2021; and

1 (ii) An Arkansas employer's officer, representative,
2 or management personnel.

3 (b) Except as provided in this subchapter, the definition
4 under 49 C.F.R. § 40.3, as in effect on ~~January 1, 2009~~ November 8, 2021,
5 applies to a term that is used in this subchapter if that term is defined
6 under 49 C.F.R. § 40.3, as in effect on ~~January 1, 2009~~ November 8, 2021.

7
8 SECTION 2. Arkansas Code § 27-23-203 is amended to read as follows:
9 27-23-203. Applicability – Exemptions.

10 (a) This subchapter applies to:

11 (1) An Arkansas employer who is required to comply with the drug
12 and alcohol testing provisions under the Federal Motor Carrier Safety
13 Regulations, 49 C.F.R. pts. 350-399, as in effect on ~~January 1, 2009~~ November
14 8, 2021;

15 (2) An employee who holds an Arkansas commercial driver license
16 and who either:

17 (A) Is employed by an Arkansas employer in a safety-
18 sensitive transportation job for which drug and alcohol tests are required
19 under the Federal Motor Carrier Safety Regulations, 49 C.F.R. pts. 350-399,
20 as in effect on ~~January 1, 2009~~ November 8, 2021; or

21 (B) Has submitted an application for employment with an
22 Arkansas employer for a safety-sensitive transportation job for which drug
23 and alcohol tests are required under the Federal Motor Carrier Safety
24 Regulations, 49 C.F.R. pts. 350-399, as in effect on ~~January 1, 2009~~ November
25 8, 2021; and

26 (3) A consortium/third-party administrator that provides or
27 coordinates the provision of drug and alcohol testing services to Arkansas
28 employers that are required under the Federal Motor Carrier Safety
29 Regulations, 49 C.F.R. pts. 350-399, as in effect on ~~January 1, 2009~~ November
30 8, 2021.

31 (b) This subchapter does not apply to an individual who is exempt from
32 holding a commercial driver license notwithstanding whether the individual
33 holds a commercial driver license.

34
35 SECTION 3. Arkansas Code § 27-23-205 is repealed:

36 ~~27-23-205. Reporting test results.~~

1 ~~(a) An Arkansas employer shall report to the Office of Driver Services~~
2 ~~within three (3) business days the results of an alcohol screening test that~~
3 ~~is performed on an employee who holds an Arkansas commercial driver license~~
4 ~~if:~~

5 ~~(1) The alcohol screening test is performed pursuant to 49~~
6 ~~G.F.R. § 382.303 or § 382.305, as in effect on January 1, 2009; and~~

7 ~~(2) One (1) of the following occurs regarding the alcohol~~
8 ~~screening test:~~

9 ~~(A) A valid positive result; or~~

10 ~~(B) The refusal to provide a specimen for an alcohol~~
11 ~~screening test.~~

12 ~~(b) An Arkansas employer shall report within three (3) business days~~
13 ~~to the Office of Driver Services any of the following occurrences regarding a~~
14 ~~drug test result of an employee who holds an Arkansas commercial driver~~
15 ~~license:~~

16 ~~(1) A valid positive result on a drug test for any of the~~
17 ~~following drugs:~~

18 ~~(A) Marijuana metabolites;~~

19 ~~(B) Cocaine metabolites;~~

20 ~~(C) Amphetamines;~~

21 ~~(D) Opiate metabolites; or~~

22 ~~(E) Phencyclidine;~~

23 ~~(2) The refusal to provide a specimen for a drug test; or~~

24 ~~(3) The submission of an adulterated specimen, a dilute positive~~
25 ~~specimen, or a substituted specimen on a drug test performed.~~

26 ~~(c) A consortium/third party administrator shall report to the Office~~
27 ~~of Driver Services within three (3) business days the results of an alcohol~~
28 ~~screening test that is performed on an Arkansas employer or employee who~~
29 ~~holds an Arkansas commercial driver license if:~~

30 ~~(1) The alcohol screening test is performed pursuant to 49~~
31 ~~G.F.R. § 382.303 or § 382.305, as in effect on January 1, 2009; and~~

32 ~~(2) One (1) of the following occurs regarding the alcohol~~
33 ~~screening test:~~

34 ~~(A) A valid positive result; or~~

35 ~~(B) The refusal to provide a specimen for an alcohol~~
36 ~~screening test.~~

1 ~~(d) A consortium/third party administrator shall report within three~~
2 ~~(3) business days to the Office of Driver Services any of the following~~
3 ~~occurrences regarding a drug test result of an Arkansas employer or employee~~
4 ~~who holds an Arkansas commercial driver license.~~

5 ~~(1) A valid positive result on a drug test for any of the~~
6 ~~following drugs:~~

7 ~~(A) Marijuana metabolites;~~

8 ~~(B) Cocaine metabolites;~~

9 ~~(C) Amphetamines;~~

10 ~~(D) Opiate metabolites; or~~

11 ~~(E) Phenethylidine;~~

12 ~~(2) The refusal to provide a specimen for a drug test; or~~

13 ~~(3) The submission of an adulterated specimen, a dilute positive~~
14 ~~specimen, or a substituted specimen on a drug test performed.~~

15
16 SECTION 4. Arkansas Code § 27-23-206 is amended to read as follows:

17 27-23-206. Maintenance Application of Clearinghouse and maintenance of
18 information - Confidentiality.

19 ~~(a)(1) The Office of Driver Services shall maintain the information~~
20 ~~provided under this section in a database to be known as the "Commercial~~
21 ~~Driver Alcohol and Drug Testing Database" for at least three (3) years.~~

22 ~~(b) Notwithstanding any other provision of law to the contrary,~~
23 ~~personally identifying information of employees in the database is~~
24 ~~confidential and shall be released by the Office of Driver Services only as~~
25 ~~provided under § 27-23-207.~~

26 ~~(c) The use of one (1) report generated from the database to establish~~
27 ~~noncompliance for the imposition of a penalty under § 27-23-209 shall not~~
28 ~~subject the contents of the entire database to disclosure.~~

29 Upon receipt of an application to issue, renew, transfer, or upgrade a
30 commercial driver license or commercial learner permit, the Office of Driver
31 Services shall request the driver's record from the Commercial Driver's
32 License Drug and Alcohol Clearinghouse.

33 (2) If the query indicates that the driver is prohibited from
34 operating a commercial motor vehicle, the application for a commercial driver
35 license or commercial learner permit will be denied.

36 (3) A driver may resubmit his or her application to the office

1 after complying with the Federal Motor Carrier Safety Administration's
2 return-to-duty process, as set forth in 49 C.F.R. Part 40, Subpart O, as in
3 effect on January 1, 2023.

4 (4) The office shall not approve an application unless a
5 negative return-to-duty test result has been reported to the Commercial
6 Driver's License Drug and Alcohol Clearinghouse.

7 (b)(1)(A) If the office is notified by the Federal Motor Carrier
8 Safety Administration that a driver is prohibited from operating a commercial
9 motor vehicle under 49 C.F.R. 382.501(a), as in effect on January 1, 2023,
10 the office shall revoke the driver's commercial driver license or commercial
11 learner permit.

12 (B) A revocation under subdivision (b)(1)(A) of this
13 section shall be effective immediately upon receipt of the notification from
14 the Federal Motor Carrier Safety Administration.

15 (2) The revocation of the commercial driver license or
16 commercial learner permit will result in a downgrade to a standard driver's
17 license.

18 (3) The office shall complete and record the downgrade on the
19 driver's record within sixty (60) days of notification from the Federal Motor
20 Carrier Safety Administration.

21 (c) The office:

22 (1) Shall only use the information received from the Commercial
23 Driver's License Drug and Alcohol Clearinghouse to determine a driver's
24 qualifications to operate a commercial motor vehicle; and

25 (2) May not divulge or permit any other person or entity to
26 divulge any information from the Commercial Driver's License Drug and Alcohol
27 Clearinghouse to any person or entity not directly involved in determining a
28 driver's qualifications to operate a motor vehicle.

29
30 SECTION 5. Arkansas Code §§ 27-23-207 - 27-23-209 are repealed.

31 ~~27-23-207. Use of database by employers.~~

32 ~~(a) An Arkansas employer shall submit a request for information from~~
33 ~~the Commercial Driver Alcohol and Drug Testing Database for each employee who~~
34 ~~is subject to drug and alcohol testing under this subchapter.~~

35 ~~(b) The request for information shall be submitted to the Office of~~
36 ~~Driver Services by the Arkansas employer with an authorization that is signed~~

1 ~~by the employee.~~

2 ~~(c)(1)(A) The fee for the request for information is a nominal fee not~~
3 ~~to exceed one dollar (\$1.00) per employee per request.~~

4 ~~(B) The Office of Driver Services shall determine the~~
5 ~~amount of the fee.~~

6 ~~(C) The Office of Driver Services shall set the fee before~~
7 ~~implementation by rule.~~

8 ~~(2) The fee shall be assessed to and paid by the Arkansas~~
9 ~~employer requesting the information.~~

10 ~~(d) The Arkansas employer shall maintain a record of the report from~~
11 ~~the database that results from the request for information submitted under~~
12 ~~this section for at least three (3) years.~~

13

14 ~~27-23-208. Use of database by employee.~~

15 ~~(a) An employee who holds a commercial driver license may submit a~~
16 ~~request for information from the Commercial Driver Alcohol and Drug Testing~~
17 ~~Database for his or her report.~~

18 ~~(b) The request for information shall be submitted with a signed~~
19 ~~authorization to the Office of Driver Services by the employee who holds a~~
20 ~~commercial driver's license.~~

21 ~~(c)(1) The fee for the request for information is one dollar (\$1.00)~~
22 ~~per request.~~

23 ~~(2) The fee shall be submitted with the signed authorization.~~

24

25 ~~27-23-209. Penalties.~~

26 ~~(a)(1) The penalty for an Arkansas employer who knowingly fails to~~
27 ~~check the Commercial Driver Alcohol and Drug Testing Database as required~~
28 ~~under this subchapter is one thousand dollars (\$1,000).~~

29 ~~(2) The penalty described in subdivision (a)(1) of this section~~
30 ~~shall be assessed beginning July 1, 2008.~~

31 ~~(b)(1) Except as provided under subdivision (b)(2) of this section,~~
32 ~~the penalty for an Arkansas employer who knowingly hires an employee with a~~
33 ~~record of a positive alcohol or drug test in the database is five thousand~~
34 ~~dollars (\$5,000).~~

35 ~~(2) This subsection does not apply to an employee who has~~
36 ~~completed a treatment program or an education program prescribed by a~~

1 ~~substance abuse professional and who has been found eligible to return to~~
2 ~~duty by the employer as provided under 49 C.F.R. §§ 40.281—40.313, as in~~
3 ~~effect on January 1, 2009.~~

4 ~~(c) The penalty for an Arkansas employer who knowingly fails to report~~
5 ~~an occurrence regarding an alcohol or drug screening test as required under §~~
6 ~~27-23-205(a) or § 27-23-205(b) is five hundred dollars (\$500).~~

7 ~~(d)(1) The penalty for a consortium/third party administrator who~~
8 ~~knowingly fails to report an occurrence regarding a drug or alcohol test~~
9 ~~result as required under § 27-23-205(c) or § 27-23-205(d) is five hundred~~
10 ~~dollars (\$500).~~

11 ~~(2) If the consortium/third party administrator is out of state,~~
12 ~~the penalty under subdivision (d)(1) of this section shall be extended to the~~
13 ~~Arkansas employer that contracted with the consortium/third party~~
14 ~~administrator.~~

15 ~~(e) The penalties under this section do not apply to the State of~~
16 ~~Arkansas, an agency of the state, or a political subdivision of the state.~~

17 ~~(f) Moneys collected under this section are special revenues and shall~~
18 ~~be deposited into the State Treasury to the credit of the State Highway and~~
19 ~~Transportation Department Fund.~~

20
21 SECTION 6. Arkansas Code § 27-23-210 is amended to read as follows:

22 27-23-210. Miscellaneous authority – Rules.

23 (a) The Office of Driver Services shall pursue grants available
24 through the United States Department of Transportation or other entity to
25 assist with the cost of ~~this program~~ compliance with the Commercial Driver’s
26 License Drug and Alcohol Clearinghouse.

27 (b) The Office of Driver Services may:

28 (1) Adopt rules to administer this subchapter; and

29 (2) Receive and expend any moneys arising from grants,
30 contributions, or reimbursements from the United States Department of
31 Transportation or other entity for performing its duties under this
32 subchapter; ~~and~~

33 ~~(3) Contract with a third party to administer the Commercial~~
34 ~~Driver Alcohol and Drug Testing Database.~~

35
36 APPROVED: 4/11/23