

ARKANSAS ETHICS COMMISSION

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Written Update on Progress in Rule Promulgation

Agency: The Arkansas Ethics Commission
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To: Administrative Rules Subcommittee

Re: Written Update, Pursuant to Ark. Code Ann. 25-15-216(b)(4)

Date: September 29, 2023

Pursuant to Ark. Code Ann. § 25-15-216, as amended by Act 595 of 2021, the following is the monthly written update on the agency's progress in promulgating rules it has determined are required by law to the Legislative Council or its appropriate subcommittee until the final version of the new, amended, or repealed rule is filed for adoption with the Secretary of State.

Pursuant to Ark. Code Ann. § 25-15-216, staff reviewed the laws enacted by the 94th General Assembly in its Regular Session as of the date provided above to determine whether any of the existing rules of the Arkansas Ethics Commission ("AEC") should be repealed or amended, or whether any new rule should be adopted. Having reviewed the laws and analyzed the effect of such laws on the rules of the AEC, the table on the following pages sets forth the results of such review, and provided below is the written update on the agency's progress in promulgating rules.

The Rules on Campaign Contribution Limits were amended and became effective on September 4, 2023. No new sets of rules are being promulgated. There is one set of rules, the Rules on Display of Campaign Literature on Vehicle of Candidate or Public Official While on State Capitol Grounds, that the Commission seeks to repeal. The Commission seeks to amend all of the other sets of Rules listed below in order to bring the rules into conformity with the changes to the Arkansas Code. They are as follows:

1. Rules on Ballot and Legislative Question Committees
2. Rules on Campaign Finance & Disclosure
3. Rules on Conflicts

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4. Rules on Display of Campaign Literature on Vehicle of Candidate or Public Official While on State Capitol Grounds
5. Rules on Independent Expenditures
6. Rules on Local-Option Ballot Question Committees
7. Rules on Political Committees
8. Rules on Practice & Procedure

Each set of Rules has followed the same progress and timeline, as follows:

- Sine Die May 1, 2023
- Report, pursuant to Ark. Code Ann. § 25-15-216, submitted by staff to Commission May 19, 2023
- Submitted to the Commission for preliminary approval June 16, 2023.
- Submitted to the Governor's office June 30, 2023, pursuant to Executive Order 23-02
- Approval received from Governor's office on August 2, 2023.
- Rules were filed on August 17, 2023, with the Secretary of State and the Bureau of Legislative Research
- Notice of rulemaking ran in the Arkansas Democrat-Gazette newspaper August 18,19, & 20, 2023.
- Notice to interested persons sent on August 23, 2023
- Public Hearing held on September 22, 2023.
- No public comments were received.
- Final approval voted on by Commission at public hearing on September 22, 2023
- Intend to seek placement on the ALC Rules subcommittee agenda in November.

ARKANSAS CODE ANNOTATED	ACT	DESCRIPTION	Sponsor	RULE AFFECTED
§ 7-6-207(a)(1)(D)	<u>85</u> (Section 1)	Act 85 moved the due date for Final report from thirty (30) days after the end of the month in which an election took place, to being due on "the last day of the month" after the end of the month in which an election took place. Likewise, it clarified that this Final report is only for contributions and expenditures made "for that election."	Sen. C. Tucker & Rep. Evans	Rules on Campaign Finance & Disclosure § 236(b)(4)
§ 7-6-207(a)(1)(F)	<u>85</u> (Section 2)	Act 85 also clarified that if a candidate keeps remaining campaign funds after an election, "but does not have any activity before the end of the year, the	Sen. C. Tucker & Rep. Evans	Rules on Campaign Finance & Disclosure § 236(b)(5)

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		<p>candidate shall not be required to file a fourth quarter report.”</p> <p>Moreover, it clarified that, “If a candidate keeps remaining campaign funds and raises campaign funds for a future campaign, or expends campaign funds for office holder expenses or a future election,” the candidate shall continue filing the reports required by this subsection.</p>		
§ 7-6-203 (b)(1)(A)	<u>307</u> (Section 1)	<p>Act 307 amended the description of the contribution limit from, “the total aggregate amount exceeds two thousand seven hundred dollars (\$2,700) per election” to “<u>the maximum campaign contribution limit established by rule of the AEC per election.</u>”</p> <p>The AEC is required, pursuant to § 7-6-203 (i) to adjust the campaign contribution limit once every two (2) years for inflation. This amendment removed the perennially outdated amount from the Code and protects the Code from having to be amended every time the limit changes.</p>	Senators J. Dismang & Hester & Rep. L. Fite	Rules on Campaign Finance & Disclosure § 202(h)(2)(A)
§ 7-6-220(a)(1)	<u>307</u> (Section 6)	<p>Act 307 amended the reporting schedule for Independent Expenditures (“IE”). It now provides that the first IE report is due within fifteen (15) days following the month in which the five hundred dollars (\$500) threshold required under this section is met. Likewise, each subsequent report shall be filed no later than fifteen (15) days after the end of each month until the election is held.</p>	Senators J. Dismang & Hester & Rep. L. Fite	Rules on Independent Expenditures § 702

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§7-6-228 (c)(1)(A)	<u>307</u> (Section 7)	When the printed campaign material is a two-sided sign, the "Paid for by" language required by this subsection shall appear on both sides of the sign. The effective date of this Section is on and after November 1, 2023.	Senators J. Dismang & Hester & Rep. L. Fite	Rules on Campaign Finance & Disclosure § 245(h)(2) Rules on Political Committees § 506 Rules on Independent Expenditures § 704
§ 21-8-303 (a)(2)	<u>307</u> (Section 8)	Related to a filing of a complaint for filing/running for office after having been convicted of a public trust crime, Act 307 clarified that the AEC could investigate and "render findings and disciplinary action," and added that, "To be considered valid, a complaint alleging a violation of § 21-8-305 shall include a copy of a court record reflecting that the person has pleaded guilty or nolo contendere to or has been found guilty of a public trust crime."	Senators J. Dismang & Hester & Rep. L. Fite	Rules on Campaign Finance & Disclosure § 253(b)(4)
§ 7-6-201	<u>455</u> (Section 1)	Act 455 raised the contribution limit to Political Action Committees ("PAC") on an annual basis from \$5,000 to \$10,000 a year.	Rep. Ray	- Rules on Ballot and Legislative Committees § 600(a)(ii) - Rules on Political Committees § 500 - Rules on Campaign Finance & Disclosure § 600(a)(iii) - Rules on Campaign Contribution Limit §100(a)

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				-Rules on Local Option Ballot Question Committees §800(a)(ii)
§ 7-1-114	<u>456</u> (Section 1)	Act 456 repealed the prohibition on campaign literature on vehicles of candidates and public officials on State Capitol grounds.	Rep. Ray	-Rules on Display of Campaign Literature on Vehicle of Candidate or Public Official While on State Capitol Grounds (NEEDS TO BE REPEALED) - Rules on Campaign Finance & Disclosure §245
§ 7-6-215	<u>552</u> (Sections 1 and 2)	Act 552 amended the law requiring PACs to re-register annually. The law now provides that the PAC shall be active unless the PAC has requested termination of its registration. Act 552 also amended the law to provide that a PAC shall indicate on its fourth quarter report if it wishes to renew "terminate". Furthermore, Act 552 added that that if a PAC does not file any quarterly reports for a period of two (2) years, the Secretary of State ("SOS") shall terminate the PAC's registration due to inactivity."	Rep. Ray	Rules on Political Committees § 501

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§ 7-6-207(a)(1)(B)	<u>753</u> (Section 1)	Act 753 amended the campaign finance reporting schedule, moving the monthly Contribution & Expenditure ("C&E") report due date from the 15 th following the end of each month to 20 th following the end of each month.	Rep. Shepherd, Rep. Ray, & Sen. Hester	Rules on Campaign Finance & Disclosure § 236
§ 7-6-207(b)(1)(B)	<u>753</u> (Section 2)	Act 753 raised the itemization threshold for contributions on C&Es filed by state and district candidates from \$50 to \$200.	Rep. Shepherd, Rep. Ray, & Sen. Hester	Rules on Campaign Finance & Disclosure § 237(a)(2)
§ 7-6-208(b)(1)(B)	<u>753</u> (Section 4)	Act 753 raised the itemization threshold on C&Es for contributions received by candidates for school district, township, or municipal office from \$50 to \$200.	Rep. Shepherd, Rep. Ray, & Sen. Hester	Rules on Campaign Finance & Disclosure § 240
§ 7-6-209(b)(1)(B)	<u>753</u> (Section 5)	Act 753 raised the itemization threshold on C&Es for contributions received by candidates for county office from \$50 to \$200.	Rep. Shepherd, Rep. Ray, & Sen. Hester	Rules on Campaign Finance & Disclosure § 243
§ 7-6-215(d)(1)(C)	<u>753</u> (Section 6)	Act 753 lowered the itemization threshold for contributions received by PACs from \$500 to \$200.	Rep. Shepherd, Rep. Ray, & Sen. Hester	Rules on Political Committees § 502
§ 7-6-215(d)(1)(D)	<u>753</u> (Section 7)	Act 753 raised the itemization threshold for contributions made by PACs from \$50 to \$200.	Rep. Shepherd, Rep. Ray, & Sen. Hester	Rules on Political Committees § 502
§ 7-6-216 (c)(2)	<u>753</u> (Section 8)	Act 753 raised the itemization threshold for contributions made to Exploratory Committees from \$50 to \$200.	Rep. Shepherd, Rep. Ray, & Sen. Hester	Rules on Campaign Finance & Disclosure § 251
§ 7-6-218(a)(3)	<u>753</u> (Section 9)	Act 753 specified acceptable manners of delivery of complaints filed with the AEC. Specifically, it provides complaints can be hand delivered...on or before the date that the complaint is due; mailed; or received via email or facsimile by the AEC on or before the date that the complaint is due, provided the original is received by the AEC	Rep. Shepherd, Rep. Ray, & Sen. Hester	Rule on Practice & Procedure Add as § V(A)(4)*

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		within ten (10) days of the transmission.		
§ 7-6-218(a)(4)	<u>753</u> (Section 9)	The AEC shall prepare a citizen complaint form and make it publicly available on the AEC website.	Rep. Shepherd, Rep. Ray, & Sen. Hester	Rule on Practice & Procedure Add as § V(A)(7)*
§ 7-6-220(a)	<u>753</u> (Section 10)	Act 753 lowered the trigger amount for IEC reporting from \$500 to \$200. (Note: this did not affect the threshold to trigger registration, which remains at \$500.)	Rep. Shepherd, Rep. Ray, & Sen. Hester	Rules on Independent Expenditures § 702
§ 7-6-226(c)(1)(C)	<u>753</u> (Section 12)	Act 753 lowered the itemization threshold for contributions received by County Political Party Committees from \$500 to \$200.	Rep. Shepherd, Rep. Ray, & Sen. Hester	Rules on Political Committees § 508
§ 7-6-226(c)(1)(D)	<u>753</u> (Section 12)	Act 753 raised the itemization threshold for contributions made by County Political Party Committees from \$50 to \$200.	Rep. Shepherd, Rep. Ray, & Sen. Hester	Rules on Political Committees § 508
§ 7-6-232	<u>753</u> (Section 13)	<p>Relating to "Delinquent Reports", Act 753 created a requirement that the AEC shall review the timeliness of reports filed with the SOS by all candidates for state or district office.</p> <p>If a candidate for state or district office has failed to file a required report, the AEC shall notify the candidate in writing via regular mail that the report is delinquent and request that the report be filed within thirty (30) days of the report's original due date.</p> <p>Upon the third late report during an election cycle, the AEC shall bring a complaint against the candidate and, if a violation is found, impose a fine of one thousand dollars (\$1,000) unless good cause shown.</p>	Rep. Shepherd, Rep. Ray, & Sen. Hester	Rule on Practice & Procedure Add as § IV(D)*

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		<p>In addition to the fine, the AEC can do one or more of the following: issue a public letter, order the reports be filed, or report the matter and make recommendations to law enforcement.</p> <p>NOTE: DO NOT CODIFY. (a) When adopting the initial rules required under this act, the AEC shall file the final rules with the SOS for adoption on or before November 1, 2023.</p>		
§ 7-6-233	<u>753</u> (Section 13)	Act 753 mandated that the AEC issue one or more reporting calendars for candidates no later than December 31 preceding the year of the reporting calendar.	Rep. Shepherd, Rep. Ray, & Sen. Hester	-Rules on Practice & Procedure -Rule on Campaign Finance & Disclosure Add as § 254* ⁱ
§ 6-24-116	<u>883</u> (Section 4)	Act 883 amended Title 6, Chapter 24 of the Arkansas Code to read as follows: (a) No board member, administrator, or employee shall: (A) Use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others; (B) Accept employment, contract, or engage in any public or professional activity that a reasonable person would expect might require or induce him or her to disclose any information acquired by the member by reason of his or her official position that is declared by law or rule to be confidential; (C) Disclose any confidential information gained by reason of his or her position, including without limitation disclosing information acquired by attending an executive session of	Sen. K. Hammer & Rep. Cozart	Rules on Conflicts Add as § 406*

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		<p>the board of directors unless the disclosure of that information is otherwise authorized or required by law; or (D) Use information acquired by reason or his or her position for his or her personal gain or benefit.</p> <p>(b) A board member shall not act in a manner on school grounds or at a school-sponsored event that:</p> <p>(1) Results or otherwise would have resulted in the removal of the board member from campus or the event if the board member's actions resulted in removal or otherwise would have resulted in removal if the actions were conducted by a member of the public; or</p> <p>(2) Results in a violation of the criminal laws of this state or the Federal government.</p> <p>(c) Any board member, administrator, or employee who knew or should have known his or her actions were prohibited under subsections (a) or (b) of this section may be subject to § 6-24-118.</p> <p>(d) Nothing in this chapter prohibits board members, administrators, or employees of public educational entities from donating services or property to a public educational entity.</p>		
§ 6-24-116	883 (Section 5)	Act 883 added the AEC to the list of governmental bodies that can request that the prosecuting attorney review contracts or transactions for compliance with the provisions of Chapter 24 of Title 6 of the Arkansas Code.	Sen. K. Hammer & Rep. Cozart	Rules on Conflicts Add as § 406*

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§ 6-24-118	<u>883</u> (Section 8)	<p>Act 883 provided that the AEC shall supervise compliance with Title 6, Chapter 24 (As listed above in Section 4, 5, and 7 of Act 883) by board members and investigate citizen complaints alleging violations of Chapter 24 by board members. (Pursuant to § 6-24-118(a), primary responsibility rests with the prosecuting attorney). Upon completion of an investigation of a complaint that a board member has violated this chapter, the AEC may assess a penalty under § 7-6-218(b)(4).</p> <p>All moneys received by the AEC as payment of fines shall be deposited in the State Treasury as general revenues.</p> <p>The AEC “<i>may</i>” promulgate rules that it deems necessary to perform its duties under this section.</p>	Sen. K. Hammer & Rep. Cozart	Rules on Conflicts Add as § 406*

* Denotes a new section.