

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

As Engrossed: H3/21/07

A Bill

HOUSE BILL 2391

5 By: Representatives S. Prater, Blount, E. Brown, D. Creekmore, Davis, R. Green, Lamoureux, Norton,
6 Rogers, Wills
7 By: Senators Altes, Baker, Crumbly, Glover
8
9

For An Act To Be Entitled

11 AN ACT TO IMPROVE COMMERCIAL DRIVER SAFETY BY
12 REQUIRING THE REPORTING OF CERTAIN ALCOHOL OR
13 DRUG TEST RESULTS FOR AN EMPLOYEE WHO HOLDS A
14 COMMERCIAL DRIVER'S LICENSE AND BY REQUIRING AN
15 EMPLOYER TO OBTAIN A REPORT FROM THE COMMERCIAL
16 DRIVER ALCOHOL AND DRUG TESTING DATABASE; AND FOR
17 OTHER PURPOSES.
18

Subtitle

19 TO IMPROVE COMMERCIAL DRIVER SAFETY BY
20 REQUIRING THE REPORTING OF CERTAIN
21 ALCOHOL OR DRUG TEST RESULTS FOR AN
22 EMPLOYEE WHO HOLDS A COMMERCIAL DRIVER'S
23 LICENSE AND BY REQUIRING AN EMPLOYER TO
24 OBTAIN A REPORT FROM THE DATABASE.
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28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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30 SECTION 1. Arkansas Code Title 27, Chapter 23 is amended to add an
31 additional subchapter to read as follows:
32

SUBCHAPTER 2 – DRUG AND ALCOHOL TESTING

33
34
35 27-23-201. Title.

36 This subchapter is known and may be cited as the "Commercial Driver



1 Alcohol and Drug Testing Act”.

2
3 27-23-202. Definitions.

4 The definition under 49 C.F.R. § 40.3, as in effect on January 1, 2007,
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, 2007.

7
8 27-23-203. Applicability – Exemptions.

9 (a) This subchapter applies to:

10 (1) An Arkansas employer who is required to comply with the drug
11 and alcohol testing provisions under the Federal Motor Carrier Safety
12 Regulations as in effect on January 1, 2007;

13 (2) An employee who holds a commercial driver’s license and who
14 either:

15 (A) Is employed by an Arkansas employer in a safety-
16 sensitive transportation job for which drug and alcohol tests are required
17 under the Federal Motor Carrier Safety Regulations, 49 C.F.R. § 350-399, as
18 in effect on January 1, 2007; or

19 (B) Has submitted an application for employment with an
20 Arkansas employer for a safety-sensitive transportation job for which drug
21 and alcohol tests are required under the Federal Motor Carrier Safety
22 Regulations, as in effect on January 1, 2007; and

23 (3) A medical review officer who reviews laboratory test results
24 generated by a drug test that an Arkansas employer is required to conduct
25 under the Federal Motor Carrier Safety Regulations, as in effect on January
26 1, 2007.

27 (b) This subchapter does not apply to an individual who is exempt from
28 holding a commercial driver’s license notwithstanding whether the individual
29 holds a commercial driver’s license.

30
31 27-23-204. Testing.

32 An employer shall test an employee for alcohol and drugs if the
33 provisions of this subchapter apply to both the employer and employee under §
34 27-23-203(a)(1) and (2).

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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 a commercial driver's licenseif:

4 (1) The alcohol screening test is performed pursuant to 49
5 C.F.R. § 382.303 or § 382.305 as in effect on January 1, 2007; and

6 (2) One (1) of the following occur regarding the alcohol
7 screening test:

8 (A) A valid positive result; or

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

11 (b) A medical review officer shall report within three (3) business
12 days to the Office of Driver Services any of the following occurrences
13 regarding a drug test result of an employee who holds a commercial driver's
14 license:

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

17 (A) Marijuana metabolites;

18 (B) Cocaine metabolites;

19 (C) Amphetamines;

20 (D) Opiate metabolites; or

21 (E) Phencyclidine (PCP);

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

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

25
26 27-23-206. Maintenance of information – Confidentiality.

27 (a) The Office of Driver Services shall maintain the information
28 provided under this section in a database to be known as the Commercial
29 Driver Alcohol and Drug Testing Database for at least three (3) years.

30 (b) Notwithstanding any other provision of law to the contrary,
31 personally identifying information of employees in the Commercial Driver
32 Alcohol and Drug Testing Database is confidential and shall be released by
33 the office only as provided under § 27-23-207.

34 (c) The use of one (1) report generated from the Commercial Driver
35 Alcohol and Drug Testing Database to establish noncompliance for the
36 imposition of a penalty under § 27-23-209 shall not subject the contents of

1 the entire database to disclosure.

2
3 27-23-207. Use of database by employers.

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

7 (b) The request for information shall be submitted to the Office of
8 Driver Services by the employer with an authorization that is signed by the
9 employee.

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

12 (B) The Office of Driver Services shall determine the
13 amount of the fee.

14 (C) The Office of Driver Services shall set the fee prior
15 to implementation by rule.

16 (2) The fee shall be assessed to and paid by the employer
17 requesting the information.

18 (d) The employer shall maintain a record of the report from the
19 Commercial Driver Alcohol and Drug Testing Database that results from the
20 request for information submitted under this section for at least three (3)
21 years.

22
23 27-23-208. Use of database by an employee.

24 (a) An employee who holds a commercial driver's license may submit a
25 request for information from the Commercial Driver Alcohol and Drug Testing
26 Database for his or her report.

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

30 (c)(1) The fee for the request for information is one dollar (\$1.00)
31 per request.

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

33
34 27-23-209. Penalties.

35 (a)(1) The penalty for an employer who knowingly fails to check the
36 Commercial Driver Alcohol and Drug Testing Database as required under this

1 subchapter is one thousand dollars (\$1,000).

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

4 (b)(1) Except as provided under subdivision (b)(2) of this section,
5 the penalty for an employer who knowingly hires an employee with a record of
6 a positive alcohol or drug test in the Commercial Driver Alcohol and Drug
7 Testing Database is five thousand dollars (\$5,000).

8 (2) This subsection (b) does not apply to an employee who has
9 completed a treatment program or an education program prescribed by a
10 substance abuse professional and who has been found eligible to return to
11 duty by the employer as provided under 49 C.F.R. §§ 40.281 -- 40.313, as in
12 effect on January 1, 2007.

13 (c) The penalty for an employer who knowingly fails to report an
14 occurrence regarding an alcohol screening test as required under § 27-23-
15 205(a) is five hundred dollars (\$500).

16 (d)(1) The penalty for a medical review officer who knowingly fails to
17 report an occurrence regarding a drug test result as required under § 27-23-
18 205(b) is five hundred dollars (\$500).

19 (2) If the medical review officer is out of state, the penalty
20 under subdivision (c)(1) shall be extended to the employer that contracted
21 with the medical review officer.

22 (e) The penalties under this section shall not apply to the State of
23 Arkansas, an agency of the state, or a political subdivision of the state.

24 (f) Moneys collected under this section shall be special revenues and
25 be deposited into the State Treasury to the credit of the State Highway and
26 Transportation Department Fund.

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28 27-23-210. Miscellaneous authority – Rules.

29 (a) The Office of Driver Services of the Revenue Division of the
30 Department of Finance and Administration shall pursue grants available
31 through the United States Department of Transportation or other entity to
32 assist with the cost of this program.

33 (b) The Office of Driver Services of the Revenue Division of the
34 Department of Finance and Administration may:

35 (1) Adopt rules to administer this subchapter;

36 (2) Receive and expend any moneys arising from grants,

1 contributions, or reimbursements from the United States Department of
2 Transportation or other entity for performing its duties under this
3 subchapter; and

4 (3) Contract with a third party to administer the Commercial
5 Driver Alcohol and Drug Testing Database.

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7 27-23-211. Immunity from civil liability.

8 The state or any entity required to perform duties under this
9 subchapter shall be immune from civil liability for performing the duties
10 required under this subchapter.

11
12 SECTION 2. Except for the penalty levied under § 27-23-209(a) of this
13 act, this act shall apply to alcohol and drug testing beginning on January 1,
14 2008.

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16 /s/ S. Prater, et al
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