

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
92nd General Assembly  
Regular Session, 2019

# A Bill

HOUSE BILL 1957

By: Representative Love

## For An Act To Be Entitled

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

## Subtitle

TO CREATE THE ARKANSAS ELECTED OFFICIAL  
ACCOUNTABILITY ACT OF 2019.

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

SECTION 1. Arkansas Code Title 21, Chapter 8, is amended to add an  
additional subchapter to read as follows:

Subchapter 11 – Arkansas Elected Official Accountability Act of 2019

21-8-1101. Title.

This act shall be known and may be cited as the “Arkansas Elected  
Official Accountability Act of 2019”.

21-8-1102. Definitions.

As used in this subchapter:

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



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

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

(4) "Drug" means:

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

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

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

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

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

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

21-8-1103. Administration.

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

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

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

(B) Random drug screening and testing.

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

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

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

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

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

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

#### 21-8-1104. Powers and duties.

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

(1) Consult with substance abuse treatment experts;

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

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

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

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

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

- (1) The number of individuals screened;
- (2) The number of screened individuals for whom there was a reasonable suspicion of illegal drug use;
- (3) The number of screened individuals who took a drug test;
- (4) The number of screened individuals who refused to take a drug test;
- (5) The number of screened individuals who received a positive result on the drug test;
- (6) The number of screened individuals who received a negative result on the drug test;
- (7) The number of individuals who received a positive result on a drug test for a second or subsequent time; and
- (8) The amount of costs incurred by the commission for the administration of the drug screening and testing program.

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

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

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

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

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

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

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

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

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

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

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

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

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

21-8-1106. Information regarding drug testing.

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

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

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

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

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

(2) Department of Arkansas State Police.

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

21-8-1107. Rulemaking authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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