

ARKANSAS REGISTER

Proposed Rule Cover Sheet



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Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____

DIVISION OF ELEMENTARY AND SECONDARY EDUCATION
RULES GOVERNING THE STUDENT PROTECTION ACT

1.00 REGULATORY AUTHORITY

1.01 These Rules shall be known as the Division of Elementary and Secondary Education Rules Governing the Student Protection Act.

1.02 These Rules are enacted pursuant to the Arkansas State Board of Education's authority under Ark. Code Ann. § 6-18-2201 *et seq.*

2.00 DEFINITIONS

2.01 "Abortion" means the act of using or prescribing an instrument, medicine, drug, device, or other substance or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. "Abortion" does not include an action taken with the intent to:

2.01.1 Save the life of the mother;

2.01.2 Save the life or preserve the health of the unborn child;

2.01.3 Remove a dead unborn child caused by spontaneous abortion; or

2.01.4 Remove an ectopic pregnancy.

2.02 "Abortion referral" means the act of recommending a pregnant woman to a doctor, clinic, or other person or entity for the purpose of obtaining or learning about obtaining an abortion.

2.03 "Affiliate" means an individual or entity that, directly or indirectly, owns, controls, is controlled by, or is under the common control of another person or entity, in whole or in part, or a subsidiary, parent, or sibling entity.

2.04 "Division" means the Division of Elementary and Secondary Education.

2.04 "Transaction" means a formal or informal agreement, contract, or arrangement of any kind between a public school or open-enrollment public charter school and a private entity, regardless of whether the private entity or the public school or open-enrollment public charter school receives anything of value in return.

3.00 PROHIBITED TRANSACTIONS AND ENFORCEMENT

3.01 A public school or open-enrollment public charter school shall not knowingly enter into any type of transaction with an individual or entity that:

3.01.1 Performs abortions;

3.01.2 Induces abortions; or

3.01.3 Provides abortions.

3.02 Each public school and open-enrollment public charter school shall promulgate policies for the implementation of these Rules and Ark. Code Ann. § 6-18-2201 *et seq.*

3.03 A public school or open-enrollment public charter school that knowingly violates these Rules and Ark. Code Ann. § 6-18-2201 *et seq.* shall, at the direction of the Division or the State Board of Education, appear before the State Board at its next regularly scheduled meeting, for the purpose of determining:

3.03.1 Why these Rules and Ark. Code Ann. § 6-18-2201 *et seq.* were violated; and

3.03.2 How to prevent a violation of these Rules and Ark. Code Ann. § 6-18-2201 *et seq.* in the future.

QUESTIONNAIRE
FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY _____
DIVISION _____
DIVISION DIRECTOR _____
CONTACT PERSON _____
ADDRESS _____
PHONE NO. _____ FAX NO. _____ E-MAIL _____
NAME OF PRESENTER AT COMMITTEE MEETING _____
PRESENTER E-MAIL _____

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this
- D. Rule" below.
- E. Submit two (2) copies of the Questionnaire and Financial Impact Statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Jessica C. Sutton
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

1. What is the short title of this rule?

2. What is the subject of the proposed rule?

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No

If yes, please provide the federal rule, regulation, and/or statute citation.

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?

Yes No

If yes, what is the effective date of the emergency rule? _____

When does the emergency rule expire? _____

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes No

5. Is this a new rule? Yes No If yes, please provide a brief summary explaining the rule.

Does this repeal an existing rule? Yes No If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes No If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled “mark-up.”

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation.

7. What is the purpose of this proposed rule? Why is it necessary?

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

9. Will a public hearing be held on this proposed rule? Yes No If yes, please complete the following:

Date: _____

Time: _____

Place: _____

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. _____

13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e). _____

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT _____
DIVISION _____
PERSON COMPLETING THIS STATEMENT _____
TELEPHONE NO. _____ FAX NO. _____ EMAIL: _____

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two (2) copies with the Questionnaire and proposed rules.

SHORT TITLE OF THIS RULE

1. Does this proposed, amended, or repealed rule have a financial impact? Yes No
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes No
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If an agency is proposing a more costly rule, please state the following:

- a) How the additional benefits of the more costly rule justify its additional cost;
- b) The reason for adoption of the more costly rule;
- c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and
- d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Total _____

b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Total _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

SUMMARY OF NEW RULES

DIVISION OF ELEMENTARY AND SECONDARY EDUCATION RULES GOVERNING THE STUDENT PROTECTION ACT

These new rules incorporate the provisions of Act 820 of 2021, which prohibits traditional public schools and open-enrollment public charter schools from knowingly entering into any transaction with an individual or entity that performs abortions, induces abortions, or provides abortions. The definition of “abortion” excludes actions taken with the intent of saving the life of a mother, saving the life of or preserving the health of an unborn child, removing an unborn child that died due to spontaneous abortion, or removing an ectopic pregnancy. The rules require that public schools and open-enrollment public charter schools develop a policy for implementing these rules and Act 820 (codified as Ark. Code Ann. § 6-18-2201 *et seq.*). If a public school or open-enrollment public charter school knowingly violates these rules and Act 820, it must appear before the State Board of Education at the Board’s next regularly scheduled meeting to discuss why the violation occurred and how future violations will be prevented.