

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

John Thurston

500 Woodlane, Suite 026

Little Rock, Arkansas 72201-1094

(501) 682-5070

www.sos.arkansas.gov



For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency _____

Department _____

Contact _____ E-mail _____ Phone _____

Statutory Authority for Promulgating Rules _____

Rule Title: _____

Intended Effective Date

(Check One)

Emergency (ACA 25-15-204)

10 Days After Filing (ACA 25-15-204)

Other _____
(Must be more than 10 days after filing date.)

Legal Notice Published _____

Final Date for Public Comment _____

Reviewed by Legislative Council _____

Adopted by State Agency _____

Date

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Signature

Phone Number

E-mail Address

Title

Date

RULES ON CONFLICTS

**ARKANSAS ETHICS COMMISSION
Post Office Box 1917
Little Rock, Arkansas 72203-1917
(501) 324-9600 or (800) 422-7773
Facsimile (501) 324-9606**

TABLE OF CONTENTS

§ 400 Definitions 1

§ 401 Confidential Information 3

§ 402 Fair Treatment 3

§ 403 Decision Making 4

§ 404 Appearances 4

§ 405 Reporting 5

§ 406 School District Board of Directors6

§ 400 Definitions

- (a) **Administrative action** – As used in these rules, the term “administrative action” means any decision on, or proposal, consideration, or making of any rule, ratemaking proceeding, or policy action by a governmental body. It does not include ministerial action.
- (b) **Business** – As used in these rules, the term “business” means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, receivership, trust, or any legal entity through which business is conducted.
- (c) **County government** – As used in these rules, the term “county government” means any office, department, commission, council, board, bureau, committee, legislative body, agency, or other establishment of a county.
- (d) **Family** – As used in these rules, the term “family” means an individual’s spouse, children of that individual or his or her spouse, or brothers, sisters, or parents of the individual or his or her spouse.
- (e) **Governmental body** – As used in these rules, the term “governmental body” means any office, department, commission, council, board, committee, legislative body, agency, or other establishment of the executive, judicial, or legislative branch of the state, municipality, county, school district, improvement district, or any political district or subdivision thereof.
- (f) **Income or compensation** – As used in these rules, the term “income or compensation” means any money or anything of value received or to be received as a claim for future services, whether in the form of a retainer, fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, or any other form of recompense or any combination thereof. It includes a payment made under obligation for services or other value received. The term “compensation” does not include anything of value presented to an employee of a public school district, the Arkansas School for the Blind, the Arkansas School for the Deaf, the Arkansas School for Mathematics, Sciences, and the Arts, a university, a college, a technical college, a technical institute, a comprehensive life-long learning center, or a community college in recognition of the employee’s contribution to education.
- (g) **Legislative action** – As used in these rules, the term “legislative action” means introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, veto, or any other official action or nonaction on any bill, ordinance, law, resolution, amendment, nomination, appointment, report, or other matter pending

or proposed before a committee or house of the General Assembly, a quorum court, or a city council or board of directors of a municipality.

- (h) **Legislator** – As used in these rules, the term “legislator” means any person who is a member of:
1. The General Assembly;
 2. A quorum court of any county;
 3. The city council or board of directors of any municipality; or
 4. A member of a school district board of directors.
- (i) **Lobbying** – As used in these rules, the term “lobbying” means communicating directly or soliciting others to communicate with any public servant with the purpose of influencing legislative action or administrative action.
- (j) **Municipal government** – As used in these rules, the term “municipal government” means any office, department, commission, council, board, bureau, committee, legislative body, agency, or other establishment of a municipality.
- (k) **Person** – As used in these rules, the term “person” means a business, individual, corporation, union, association, firm, partnership, committee, club, or other organization or group of persons.
- (l) **Public appointee** – As used in these rules, the term “public appointee” means an individual who is appointed to a governmental body. It does not include an individual appointed to an elective office.
- (m) **Public employee** – As used in these rules, the term “public employee” means an individual who is employed by a governmental body or who is appointed to serve a governmental body. It does not include public officials or public appointees.
- (n) **Public official** – (1) As used in these rules, the term “public official” means a person holding an elective office of any governmental body, whether elected or appointed to the office
- (2) “Public official” includes without limitation:
- (A) A person holding an elective office of any governmental body, whether elected or appointed to the office, during the time period between the date he or she is elected or appointed and the date he or she takes office; and
- (B) A member of a school district board of directors.
- (o) **Public servant** – As used in these rules, the term “public servant” means all public officials, public employees, and public appointees.

- (p) **Special privileges or exemption** – As used in these rules, the term “special privileges or exemption” means a particular benefit or advantage unfairly extended to a person beyond the common advantages of others or the unjustified release of a person from a duty or obligation required of others.
- (q) **State government** – As used in these rules, the term “state government” means any office, department, commission, council, board, bureau, committee, legislative body, agency, or other establishment of the State of Arkansas.
- (r) **Unwarranted privileges or exemptions** – As used in these rules, the term “unwarranted privileges or exemptions” means a particular benefit or advantage unfairly extended to a person beyond the common advantages of others or the unjustified release of a person from a duty or obligation required of others.

§ 401 Confidential Information

- (a)(1) No public servant shall accept employment or engage in any public or professional activity while serving as a public official which he or she might reasonably expect would require or induce him or her to disclose any information acquired by him or her by reason of his or her official position which is declared by law or rule to be confidential.
- (2) No public servant shall disclose any such information gained by reason of his or her position, nor shall he or she otherwise use such information for his or her personal gain or benefit.
- (b) No public servant shall purposely use or disclose to any other person or entity confidential government information acquired by him or her in the course of and by reason of the public servant’s official duties, to secure anything of material value or benefit for himself or herself or his or her family.
- (c) No member of a state board or commission or board member of an entity receiving state funds shall disclose confidential information acquired by him or her in the course of the member’s official duties or use such information to further his or her personal interests.

§ 402 Fair Treatment

- (a) No public servant shall use or attempt to use his or her official position to secure special privileges or exemption for himself or herself or his or her spouse, child, parents, or other persons standing in the first degree of relationship, or for those with whom he or she has a substantial financial relationship that is not available to others except as may be otherwise provided by law.

- (b) No member of a state board or commission or board member of an entity receiving state funds shall use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others.

§ 403 Decision Making

- (a)(1) No member of a state board or commission or board member of an entity receiving state funds shall participate in, vote on, influence, or attempt to influence an official decision if the member has a pecuniary interest in the matter under consideration by the board, commission, or entity.
 - (2) A member of a state board or commission or board member of an entity receiving state funds may participate in, vote on, influence, or attempt to influence an official decision if the only pecuniary interest that may accrue to the member is incidental to his or her position or accrues to him or her as a member of a profession, occupation, or large class to no greater extent than the pecuniary interest could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.
- (b) No member of a state board or commission or board member of an entity receiving state funds shall participate in any discussion or vote on a rule or regulation that exclusively benefits the member.

§ 404 Appearances

- (a) No legislator shall appear for compensation on behalf of another person, firm, corporation, or entity before any entity of:
 - (1) State government, if the legislator is a member of the General Assembly;
 - (2) The legislator's county government, if the legislator is a member of a quorum court;
 - (3) The legislator's municipal government, if the legislator is a member of a city council or board of directors of a municipality; or
 - (4) The legislator's school district board of directors, if the legislator is a member of a school district board of directors.
- (b) This section shall not:

- (1) Apply to any judicial proceeding or to any hearing or proceeding which is adversarial in nature or character;
 - (2) Apply to any hearing or proceeding on which a record is made by the entity of state government, entity of county government, entity of municipal government, or school district board of directors;
 - (3) Apply to an appearance which is a matter of public record;
 - (4) Apply to ministerial actions; or
 - (5) Preclude a legislator from acting on behalf of a constituent to determine the status of a matter without accepting compensation.
- (c) An appearance which is a matter of public record as provided in subdivision (b)(3) of this section may be made by:
- (1)(A) Filing a written statement within twenty-four (24) hours with the agency head of the entity of state government, entity of county government, entity of municipal government, or school district before which an appearance is sought.
 - (B) In the event that a written statement cannot be provided to the agency head prior to the meeting, telephonic notice must be given the agency head or his office; or
 - (2) Filing a quarterly statement with the agency head of the entity of state government before which an appearance is sought.
- (d)(1) A statement filed under subsection (c) of this section shall identify the client on behalf of whom the appearance is made and contain a general statement of the action sought from the governmental body.
- (2)(A) The statements shall be retained by the agency head and shall be a matter of public record.
 - (B) If the agency head determines that the release of the client's name would be an unwarranted invasion of individual privacy or would give advantage to competitors for bidding, the agency head may withhold the name until appropriate.
- (e) No member of the General Assembly shall receive any income or compensation as defined in § 400(f) other than income and benefits from the governmental body to which he or she is duly entitled, for lobbying other members of the General Assembly by communicating directly or soliciting others to communicate with any other member with the purpose of influencing legislative action by the General Assembly.

§ 405 Reporting

- (a) A legislator who is required to take an action in the discharge of his or her official duties that may affect his or her financial interest or cause financial benefit or detriment to him, or a business in which he or she is an officer, director, stockholder owning more than ten percent (10%) of the stock of the company, owner, trustee, partner, or employee, which is distinguishable from the effects of the action on the public generally or a broad segment of the public, shall:
 - (1) Prepare a written statement describing the matter requiring action and stating the potential conflict; and
 - (2)(A) Deliver a copy of the statement to the appropriate official to be filed with the statement of financial interest.
 - (B) The copy of the statement may be delivered in person by the public official, by mail, or by a person authorized by the public official to deliver the copy.
- (b) The obligation to report a potential conflict of interest under this section arises as soon as the legislator is aware of the conflict.
- (c) If the statement of financial interest filed by the legislator makes the conflict readily apparent, then no report need be filed.

§ 406 School District Board Members, Administrators, and Employees

- (a) No school district board member, administrator, or employee shall:
 - (1) Use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others.;
 - (2) 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;
 - (3) Disclose any confidential information gained by reason of his or her position, including without limitation disclosing information acquired by attending an executive session of the board of directors unless the disclosure of that information is otherwise authorized or required by law; or
 - (4) Use information acquired by reason or his or her position for his or her personal gain or benefit.

- (b) A school district board member shall not act in a manner on school grounds or at a school-sponsored event that:
- (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
 - (2) Results in a violation of the criminal laws of this state or the Federal government.
- (c) Any school district 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.
- (d) Nothing in this chapter prohibits school district board members, administrators, or employees from donating services or property to a public educational entity.
- (e) (1) The Commission shall supervise compliance with Chapter 24 of the Arkansas Code by school district board members and investigate citizen complaints alleging violations of this chapter by board members.
- (2) Upon completion of an investigation of a complaint that a board member has violated this chapter, the Commission may assess a penalty under § 7-6-218(b)(4).
- (3) All moneys received by the Commission as payment of fines shall be deposited in the State Treasury as general revenues.
- (f) At the request of the Commission, the appropriate prosecuting attorney shall review contracts or transactions for compliance with the provisions of Chapter 24.

[Note: This Rule, § 406, is based upon Act 883 of 2023 and shall be effective on and after May 1, 2024.]

ARKANSAS STATE LIBRARY



Agency Certification Form
 For Depositing Rules
 At the Arkansas State Library



DIGITAL SERVICES, ARKANSAS STATE LIBRARY
 900 West Capitol Avenue, Suite 100
 Little Rock, AR 72201
 501-682-2550
 aslib-govdocs@ade.arkansas.gov

For Office Use Only		
Classification Number:		
Name of Agency: Arkansas Ethics Commission	Division/Department/Office:	
Contact Person: Graham Sloan	Telephone: 501-324-9600	
Statutory Authority for Promulgating Rules: Ark. Code Ann. § 7-6-217(g)(1)		
Title of Rule: Rules on Conflicts		
Rule Status	Date Adopted by Agency	Effective Date
Amended <input type="checkbox"/> <small>(Use drop down to select different status)</small>	09/22/2023 <small>MM/DD/YYYY</small>	<input checked="" type="radio"/> 10 Days After Filing <input type="radio"/> Other: _____ <small>(if other, specify date)</small>
<input type="checkbox"/> Rule above is proposed and will be replaced by final version <input checked="" type="checkbox"/> Financial and/or Fiscal Impact Statement Attached		
<h2>Certification of Authorized Officer</h2> <p>I hereby certify that the attached rules were adopted in compliance with Act 434 of 1967 as amended.</p> <p>Signature: <u>Jill Regus Baukham</u> Date: <u>11/28/23</u></p> <p>Title: <u>Staff Attorney</u></p>		

**QUESTIONNAIRE FOR FILING PROPOSED RULES WITH
THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT _____
 BOARD/COMMISSION _____
 BOARD/COMMISSION DIRECTOR _____
 CONTACT PERSON _____
 ADDRESS _____
 PHONE NO. _____ EMAIL _____
 NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING _____
 PRESENTER EMAIL(S) _____

INSTRUCTIONS

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, miller-ricer@blr.arkansas.gov, for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, garritym@blr.arkansas.gov, for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

1. What is the official title of this rule?

2. What is the subject of the proposed rule? _____
3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? Yes No

4. Is this rule being filed for permanent promulgation? Yes No

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

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

On what date does the emergency rule expire? _____

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

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

6. Is this rule required to comply with a *state* statute or rule? Yes No

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

7. Are two (2) rules being repealed in accord with Executive Order 23-02? Yes No

If yes, please list the rules being repealed.

If no, please explain.

The Commission respectfully requests that an exemption be granted. It is the position of the Commission that these proposed amendments would not create a new rule, but rather keep existing rules up-to-date and in conformity with the law. If this is considered a new rule, then the Commission respectfully requests the exemption be granted. Moreover, the Commission is seeking to repeal the Rules on Display of Campaign Literature of Vehicle of Candidate or Public Officials on State Capitol Grounds.

8. Is this a new rule? Yes No

Does this repeal an existing rule? Yes No

If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes No

If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s).

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?
Yes No

If yes, please provide the year of the act(s) and act number(s).

11. What is the reason for this proposed rule? Why is it necessary?

12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1).

13. Will a public hearing be held on this proposed rule? Yes No

If yes, please complete the following:

Date: TBD

Time: _____

Place: _____

Please be sure to advise Bureau Staff if this information changes for any reason.

14. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. TBD

15. What is the proposed effective date for this rule? TBD

16. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known.

19. Is the rule expected to be controversial? Yes No

If yes, please explain.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT _____
BOARD/COMMISSION _____
PERSON COMPLETING THIS STATEMENT _____
TELEPHONE NO. _____ **EMAIL** _____

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

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 no, please explain:

(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 reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

(d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

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

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

Total _____

Next Fiscal Year

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

Total _____

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

Current Fiscal Year

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

Total _____

Next Fiscal Year

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

Total _____

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

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

6. What is the total estimated cost by fiscal year to a state, county, or 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.