For An Act To Be Entitled
AN ACT TO IMPROVE COMMERCIAL DRIVER SAFETY BY
REQUIREING THE REPORTING OF CERTAIN ALCOHOL OR
DRUG TEST RESULTS FOR AN EMPLOYEE WHO HOLDS A
COMMERCIAL DRIVER’S LICENSE AND BY REQUIRING AN
EMPLOYER TO OBTAIN A REPORT FROM THE COMMERCIAL
DRIVER ALCOHOL AND DRUG TESTING DATABASE; AND FOR
OTHER PURPOSES.

Subtitle
TO IMPROVE COMMERCIAL DRIVER SAFETY BY
REQUIREING THE REPORTING OF CERTAIN
ALCOHOL OR DRUG TEST RESULTS FOR AN
EMPLOYEE WHO HOLDS A COMMERCIAL DRIVER’S
LICENSE AND BY REQUIRING AN EMPLOYER TO
OBTAIN A REPORT FROM THE DATABASE.

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

SECTION 1. Arkansas Code Title 27, Chapter 23 is amended to add an
additional subchapter to read as follows:

SUBCHAPTER 2 — DRUG AND ALCOHOL TESTING

27-23-201. Title.
This subchapter is known and may be cited as the “Commercial Driver Alcohol and Drug Testing Act”.

The definition under 49 C.F.R. § 40.3, as in effect on January 1, 2007, applies to a term that is used in this subchapter if that term is defined under 49 C.F.R. § 40.3, as in effect on January 1, 2007.

(a) This subchapter applies to:
   (1) An Arkansas employer who is required to comply with the drug and alcohol testing provisions under the Federal Motor Carrier Safety Regulations as in effect on January 1, 2007;
   (2) An employee who holds a commercial driver's license and who either:
      (A) Is employed by an Arkansas employer in a safety-sensitive transportation job for which drug and alcohol tests are required under the Federal Motor Carrier Safety Regulations, 49 C.F.R. § 350-399, as in effect on January 1, 2007; or
      (B) Has submitted an application for employment with an Arkansas employer for a safety-sensitive transportation job for which drug and alcohol tests are required under the Federal Motor Carrier Safety Regulations, as in effect on January 1, 2007; and
   (3) A medical review officer who reviews laboratory test results generated by a drug test that an Arkansas employer is required to conduct under the Federal Motor Carrier Safety Regulations, as in effect on January 1, 2007.
(b) This subchapter does not apply to an individual who is exempt from holding a commercial driver's license notwithstanding whether the individual holds a commercial driver's license.

27-23-204. Testing.
An employer shall test an employee for alcohol and drugs if the provisions of this subchapter apply to both the employer and employee under § 27-23-203(a)(1) and (2).
27-23-205. Reporting test results.
   (a) An Arkansas employer shall report to the Office of Driver Services within three (3) business days the results of an alcohol screening test that is performed on an employee who holds a commercial driver’s license if:
   (1) The alcohol screening test is performed pursuant to 49 C.F.R. § 382.303 or § 382.305 as in effect on January 1, 2007; and
   (2) One (1) of the following occur regarding the alcohol screening test:
      (A) A valid positive result; or
      (B) The refusal to provide a specimen for an alcohol screening test.
   (b) A medical review officer shall report within three (3) business days to the Office of Driver Services any of the following occurrences regarding a drug test result of an employee who holds a commercial driver’s license:
      (1) A valid positive result on a drug test for any of the following drugs:
         (A) Marijuana metabolites;
         (B) Cocaine metabolites;
         (C) Amphetamines;
         (D) Opiate metabolites; or
         (E) Phencyclidine (PCP);
      (2) The refusal to provide a specimen for a drug test; or
      (3) The submission of an adulterated specimen, a dilute positive specimen, or a substituted specimen on a drug test performed.

   (a) The Office of Driver Services shall maintain the information provided under this section in a database to be known as the Commercial Driver Alcohol and Drug Testing Database for at least three (3) years.
   (b) Notwithstanding any other provision of law to the contrary, personally identifying information of employees in the Commercial Driver Alcohol and Drug Testing Database is confidential and shall be released by the office only as provided under § 27-23-207.
   (c) The use of one (1) report generated from the Commercial Driver Alcohol and Drug Testing Database to establish noncompliance for the
imposition of a penalty under § 27-23-209 shall not subject the contents of
the entire database to disclosure.

27-23-207. Use of database by employers.
(a) An employer shall submit a request for information from the
Commercial Driver Alcohol and Drug Testing Database for each employee who is
subject to drug and alcohol testing under this subchapter.
(b) The request for information shall be submitted to the Office of
Driver Services by the employer with an authorization that is signed by the
employee.
(c)(1)(A) The fee for the request for information is a nominal fee not
to exceed one dollar ($1.00) per employee per request.
(B) The Office of Driver Services shall determine the
amount of the fee.
(C) The Office of Driver Services shall set the fee prior
to implementation by rule.
(2) The fee shall be assessed to and paid by the employer
requesting the information.
(d) The employer shall maintain a record of the report from the
Commercial Driver Alcohol and Drug Testing Database that results from the
request for information submitted under this section for at least three (3)
years.

27-23-208. Use of database by an employee.
(a) An employee who holds a commercial driver’s license may submit a
request for information from the Commercial Driver Alcohol and Drug Testing
Database for his or her report.
(b) The request for information shall be submitted with a signed
authorization to the Office of Driver Services by the employee who holds a
commercial driver’s license.
(c)(1) The fee for the request for information is one dollar ($1.00)
per request.
(2) The fee shall be submitted with the signed authorization.

27-23-209. Penalties.
(a)(1) The penalty for an employer who knowingly fails to check the
Commercial Driver Alcohol and Drug Testing Database as required under this subchapter is one thousand dollars ($1,000).

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

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

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

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

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

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

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

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


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

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

(1) Adopt rules to administer this subchapter;
(2) Receive and expend any moneys arising from grants, contributions, or reimbursements from the United States Department of Transportation or other entity for performing its duties under this subchapter; and

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

27-23-211. Immunity from civil liability.
The state or any entity required to perform duties under this subchapter shall be immune from civil liability for performing the duties required under this subchapter.

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

/s/ S. Prater, et al

APPROVED: 3/28/2007