



2017

Survey of Legislation: 2017 Arkansas General Assembly

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TITLE 2

AGRICULTURE

A. DICAMBA FINES

Act 778 created penalties under The State Plant Board regarding the misuse of dicamba.¹ Dicamba is an herbicide, which can be sprayed on soybeans and cotton that have been genetically modified to tolerate it.² Although the herbicide has been around for decades, it is now being used more widely on dicamba-tolerant crops. Last year, farmers suffered widespread damage due to dicamba drift, which occurs when the herbicide is carried to another property owner's land. Arkansas farmers filed more than 1,000 complaints last year, and researchers estimate at least 3 million acres of crops were injured.³ Previously, under ARK. CODE ANN. § 2-16-203(b)(1)(A), the State Plant Board could not assess a civil penalty of more than one thousand dollars (\$1,000) for violations.⁴ Act 778 amended the statute to allow a civil penalty greater than one thousand dollars (\$1,000), but not more than twenty-five thousand dollars (\$25,000), if the Plant Board finds a violation to be egregious.⁵ The Act further explained that a violation is egregious "if significant off-target crop damage occurred as a result of the application of dicamba" or dicamba-like herbicide, or new herbicide technology released in the future.⁶

Act 501 also amended ARK. CODE ANN. § 2-16-203 to alter the distribution of moneys collected through civil penalty assessments.⁷ For civil penalties above \$1,000, the first \$1,000 of the penalty should be allocated to scholarships through the Arkansas State Plant Board Scholarship Program.⁸ Sixty percent of the remainder of the penalty should also be allocated to the Arkansas State Plant Board Scholarship Program, while the remaining forty

1. 2017 Ark. Acts 778 (codified as ARK. CODE ANN. § 2-16-203, 203(b)(1)(A) (West, Westlaw through 2018)).

2. Dan Charles, *Arkansas Defies Monsanto, Moves to Ban Rogue Weedkiller*, NPR (September 22, 2017), <https://www.npr.org/sections/thesalt/2017/09/22/552803465/arkansas-defies-monsanto-moves-to-ban-rogue-weedkiller>.

3. *Id.*

4. ARK. CODE ANN. § 2-16-203(b)(1)(A).

5. 2017 Ark. Acts 501 at sec. 1.

6. ARK. CODE ANN. § 2-16-203(b)(1)(A)(ii)(b).

7. ARK. CODE ANN. § 2-16-203(c) (West, Westlaw through 2018).

8. *Id.*

percent should be allocated to the University of Arkansas Fund to be used by the University of Arkansas Cooperative Extension Service.⁹

B. LIVESTOCK AND POULTRY COMMISSION POWERS AND DUTIES

Act 1011 amended ARK. CODE ANN. § 2-33-102 *et seq.* concerning the Arkansas Livestock and Poultry Commission and the control of certain contagious diseases.¹⁰ This Act focused on a shift in granting the commission the authority to promulgate its own regulations to fulfill its purpose. A repeal of the procedures, dictated by statute, which could be handled through administrative regulations, and general cleaning up of “archaic” language. Additionally, the Act reflected a move from the imposition of misdemeanors against violators in favor of administrative penalties.¹¹

The Act made some changes to the general governing structure and procedure that the commission follows. The Act changed the quorum requirements for meetings from at least four members to a majority of the membership of the commission.¹² Additionally, where the law previously required an affirmative vote of four members to proceed with business, the Act now requires an affirmative vote of a majority of members present for any action of the commission.¹³ Act 1011 provides that if a vacancy opens on the commission due to death, resignation, removal, or other cause, the Governor shall appoint a replacement for the remainder of the term.¹⁴ The Governor may only remove a commission member during his or her term for cause, after notice and a hearing.¹⁵

Act 1011 also made changes to the law regarding Livestock and Poultry Commission Officials. The first instance concerned the Executive Director of the Livestock and Poultry Commission. First, the Act changed the description from “Executive” to “Deputy Director,” and instead of the Deputy Director being appointed by the Governor, the Deputy Director will now be appointed by the Secretary of the Arkansas Agriculture Department.¹⁶ Under previous law, the Deputy Director would have been responsible for administering the fiscal provisions of the commission in compliance

9. *Id.*

10. 2017 Ark. Acts 1011 (codified as ARK. CODE ANN. §§ 2-33-102(a), 103 to -107, 111, 113, 115; ARK. CODE ANN. §§ 2-32-501 to -505; ARK. CODE ANN. §§ 2-34-206, 208(f), 210(a), 212(a)(2)(B), 214; ARK. CODE ANN. §§ 2-40-103, 106, 109-110; ARK. CODE ANN. §§ 2-40-206, 209(b), 210(d); ARK. CODE ANN. §§ 2-40-402, 508, 802, 808, 819(a)(1), 1303 (West, Westlaw through 2018)).

11. 2017 Ark. Acts 1011 at sec. 41.

12. ARK. CODE ANN. § 2-33-103(b)(2) (West, Westlaw through 2018).

13. *Id.* § 2-33-103(c).

14. *Id.* § 2-33-103(d).

15. ARK. CODE ANN. § 2-33-103(e) (West, Westlaw through 2018).

16. ARK. CODE ANN. § 2-33-104 (West, Westlaw through 2018).

with relevant accounting and purchasing laws;¹⁷ employing and establishing the salaries of veterinarians, animal pathologists, bacteriologists, laboratory technicians, livestock, poultry, egg-grading inspectors, and additional personnel deemed necessary by the commission;¹⁸ and serving as the custodian of commission property and disbursing agent of commission funds.¹⁹ Act 1011 also amended the procedure for appointing the State Veterinarian, changing the appointer from the Executive Director to the Secretary of the Arkansas Agriculture Department.²⁰ Additionally, Act 1011 removed the requirement that the Executive Director or other employees be bonded by corporate security companies.²¹

Act 1011 amended ARK. CODE ANN. § 2-33-107 to grant the Livestock and Poultry Commission the power to “promulgate rules governing the handling, sale, and use of vaccines, antigens, and other biological products used for reportable diseases and emergencies affecting livestock and poultry[.]”²² Under the amended law, the Commission will also have the power to make modifications and adjustments in disease and pest control, as well as eradication activities and programs, as it deems necessary.²³ With a majority vote of the commission, the commission may obtain health records of livestock and poultry to effectively administer and enforce rules, regulations, and laws relating to disease or pest control and eradication programs.²⁴ The commission will also be able to promulgate administrative rules prescribing the method and manner for testing and vaccination of livestock or poultry within the state.²⁵ However, the authority to prescribe these rules should not interfere with a farmer’s vaccination of his or her own product.²⁶ The Act also exempted materials, data, and information received by the Arkansas Livestock and Poultry Commission’s Veterinary Diagnostic Laboratory from the Freedom of Information Act.²⁷

An additional subchapter was added to the commission’s authorizing statute, governing the commission’s authority to impose administrative penalties.²⁸ After the Act, the commission may impose administrative penalties, not exceeding five thousand dollars (\$5,000), to be conducted under the

17. 2017 Ark. Acts 1011 at sec. 3.

18. *Id.*

19. *Id.*

20. ARK. CODE ANN. § 2-33-105 (West, Westlaw through 2018).

21. 2017 Ark. Acts 1011 at secs. 5, 3, 4.

22. ARK. CODE ANN. § 2-33-107(a) (West, Westlaw through 2018).

23. *Id.*

24. *Id.* § 2-33-107(b).

25. *Id.*

26. *Id.*

27. ARK. CODE ANN. § 2-33-111(c) (West, Westlaw through 2018).

28. ARK. CODE ANN. § 2-32-501 (West, Westlaw through 2018).

Administrative Procedure Act.²⁹ The commission may also issue subpoenas for witnesses to testify before the commission.³⁰

C. FERAL HOG ERADICATION TASK FORCE

Act 1010 created the Feral Hog Eradication Task Force to create a plan for the eradication of feral hogs in Arkansas.³¹ This plan will take a long-term, cooperative approach, and should treat the following principles as four core tenants to steer policy and guide the actions of the partnership:

1. Developing a multi-partner alliance to identify and address feral hog issues;
2. Increasing public understanding of the damage and harm caused by feral hogs;
3. Ensuring that sound regulatory mechanisms and enforcement capabilities exist to control illegal transport and release of feral hogs; and
4. Increasing resources for landowners and land managers to control feral hogs.³²

Further, the Task Force will be responsible for developing and implementing effective outreach tools to disseminate information defining the problem and issues associated with feral hogs to the public; resolving statutory ambiguity regarding feral hogs; appropriating, identifying, and pursuing funding mechanisms to aid the program; and strengthening existing possession and transport laws to increase penalties for transport and release of feral hogs.³³ The Task Force will work to identify endangered and sensitive species, as well as critical, sensitive, or significant habitats that have been damaged or are threatened by negative impacts caused by feral hogs.³⁴ Finally, the Task Force should develop plans to remediate feral hog damage and remove feral hogs from damaged areas.³⁵

The Act dictates that the Task Force should be composed of the following individuals:

1. The Director of the Arkansas State Game and Fish Commission;
2. The Secretary of the Arkansas Agriculture Department;

29. *Id.*

30. *Id.*

31. 2017 Ark. Acts 1010.

32. *Id.* at sec. 2(c).

33. *Id.*

34. *Id.*

35. *Id.*

3. The Deputy Director of the Arkansas Livestock and Poultry Commission;
4. The Executive Director of the Arkansas Natural Resources Commission;
5. The Director of the Department of Arkansas Heritage;
6. The Director of the Rural Services Division of the Arkansas Economic Development Commission;
7. The Director of the Department of Parks and Tourism;
8. The University of Arkansas System Division of Agriculture Vice-President for Agriculture or his or her designee; and
9. One representative from each of the following groups:
 - a. Arkansas Association of Counties;
 - b. Arkansas Association of Conservation Districts;
 - c. Arkansas Farm Bureau Federation;
 - d. Arkansas Forestry Association;
 - e. Arkansas Pork Producers Association;
 - f. Nature Conservancy; and
 - g. Arkansas Dog Hunters Association.³⁶

The Task Force may also add advisory members.³⁷ The Act provides that the Task Force should report to the co-chairs of the Legislative Council on its progress on or before December 31, 2017.

36. 2017 Ark. Acts 1011 at sec. 1(b).

37. *Id.* at sec. 1(c).

TITLE 5

CRIMINAL JUSTICE

A. CRIMINAL JUSTICE EFFICIENCY AND SAFETY

During the 91st General Assembly, the legislature approved a comprehensive strategy to improve recidivism rates and address high incidence of mental illness.³⁸ First, as part of this comprehensive strategy, Act 423 authorizes the creation of crisis stabilization units.³⁹ The idea is that when law enforcement encounter a person who demonstrates substantial likelihood of committing bodily harm against himself or herself, or against another person, and who is an individual with a behavioral health impairment, mental disability, mental illness, or other permanent or temporary behavioral health or mental impairment, law enforcement can divert that person to a crisis stabilization center for treatment from medical professionals instead of sending him or her to jail.⁴⁰ The Act defines behavioral health impairment, crisis stabilization unit, and substantial likelihood of bodily harm, among other terms and phrases.⁴¹ Act 423 also provides for a crisis intervention protocol and training for law enforcement agents, and it offers guidelines for determining when someone should be directed to a crisis stabilization unit.⁴²

Furthermore, Act 423 creates two types of bodies to help facilitate the implementation of the provisions of the act and monitor the outcomes. At the local level, Act 423 provides for the establishment of criminal justice coordinating committees (“CJCCs”).⁴³ CJCCs are to be composed of local

38. 2017 Ark. Acts 423.

39. ARK. CODE ANN. § 20-47-801 *et seq.* (West, Westlaw through 2018).

40. ARK. CODE ANN. § 12-9-119 (West, Westlaw through 2018).

41. ARK. CODE ANN. § 20-47-803 (West, Westlaw through 2018) (“‘Behavioral health impairment’ means a substantial impairment of emotional processes, the ability to exercise conscious control of one’s actions, or the ability to perceive reality or to reason . . . [it] may include a temporary behavioral health or mental impairment that results when an individual is under the influence of alcohol or a controlled substance”

“‘Crisis stabilization unit’ means a public or private facility operated by or used by a behavioral health crisis intervention team in the administration of behavioral health crisis intervention protocol[.]”).

“‘Substantial likelihood of bodily harm’ means[] [t]hat an individual: Has threatened or attempted to commit suicide or to inflict serious bodily harm against himself or herself; Has inflicted, attempted to inflict, or threatened to inflict serious bodily harm on another person . . . and There is substantial likelihood that serious bodily harm will occur unless the individual is provided psychiatric emergency services and treatment[.]”).

42. 2017 Ark. Acts 423.

43. ARK. CODE ANN. § 12-6-601 (West, Westlaw through 2018).

judges, correction officials, prosecuting attorneys, law enforcement officials, county elected officials, and medical and mental health professionals.⁴⁴ The legislature “encourages” the formation of CJCCs to ensure that resources are being spent efficiently and effectively.⁴⁵ At the state level, Act 423 provides for the establishment of the Interagency Task Force for the Implementation of Criminal Justice Prevention initiatives.⁴⁶ The task force consists of 17 members, some of whom are appointed by the Governor, some of whom are appointed by the Speaker of the House, and others who are department heads or their designees.⁴⁷ Over the next two years, the task force’s mandate is to track the implementation of the initiatives created by Act 423 and compile reports based on the outcomes of the new programs.⁴⁸

Just months after Act 423 passed, Governor Asa Hutchinson announced plans to open crisis stabilization units in Craighead, Pulaski, Sebastian, and Washington Counties.⁴⁹ Governor Hutchinson has already earmarked more than six million dollars to get each of the four new sixteen-bed facilities up and running.⁵⁰

B. MENTAL HEALTH SPECIALTY COURTS

Crisis stabilization units are primarily in place to help people receive the treatment they need before they harm themselves or someone else, or otherwise commit a crime. As part of its comprehensive plan to address recidivism and incidence of mental illness, the legislature also enacted Act 506 to provide a framework for setting up mental health courts to treat people who suffer from mental illness or impairment and who have *already* been charged with a crime.⁵¹ The goal is to help participants avoid incarceration by completing a rehabilitative treatment program instead.⁵² Though Craighead and Crittenden Counties established a mental health court under other statutory authority prior to the enactment of Act 506, legislators want-

44. *Id.*

45. *Id.*

46. ARK. CODE ANN. § 10-3-2802 (West, Westlaw through 2018).

47. *Id.*

48. *Id.*

49. Lindsey Millar, *Hutchinson Selects Sites of Crisis Stabilization Units*, ARKANSAS BLOG (Aug. 10, 2017), <https://www.arktimes.com/ArkansasBlog/archives/2017/08/10/hutchinson-selects-sites-of-crisis-stabilization-units>.

50. *Id.*

51. 2017 Ark. Acts 506 at sec.1 (emphasis added) (codified at ARK. CODE ANN. § 16-100-101 *et seq.*) (West 2017).

52. ARK. CODE ANN. § 16-100-202 (West, Westlaw through 2018).

ed to provide more structure and guidance for the implementation of future mental health courts.⁵³

Mental health courts are designed to promote a non-adversarial approach to each participant's case.⁵⁴ Each participant meets with a team comprised of the mental health court judge, the prosecuting attorney, the public defender (or other defense counsel), medical professionals, and mental health professionals to develop a treatment plan for the participant.⁵⁵ The structure of mental health courts is intended to strike a balance between promoting public safety, protecting the participant's due process rights, providing the participant the treatment he or she needs, and preventing the participant from being incarcerated.⁵⁶ Participants must comply with the terms and conditions of the mental health court program, including following the treatment plan for at least six months.⁵⁷ If the participant complies with the mental health court program, he or she will have his or her case dismissed and the record sealed.⁵⁸ On the other hand, if the participant fails to comply with the program, he or she will be adjudicated in the regular court system.⁵⁹

Legislators expect the comprehensive plan set forth in Acts 423 and 506 to result in lower recidivism rates, decreased costs of housing prisoners at county jail facilities, and participants who are happier and healthier based on the treatment they receive.

FIREARMS

A. POSSESSION OF A CONCEALED HANDGUN – ADVANCED CONCEALED CARRY LICENSE

Act 562, dubbed the “campus carry bill” and considered one of the more controversial pieces of legislation of the 2017 Regular Session, provides for an advanced concealed carry license.⁶⁰ The bill was originally drafted to allow faculty and staff with concealed carry permits to carry firearms on college campuses, but after several amendments, it broadened in

53. PLAN FOR THE 2ND JUDICIAL CIRCUIT PURSUANT TO ADMINISTRATIVE ORDER No. 14 (2018).

54. ARK. CODE ANN. § 16-100-101 (West, Westlaw through 2018).

55. 2017 Ark. Acts 506.

56. *Id.*

57. ARK. CODE ANN. § 16-100-207 (West, Westlaw through 2018).

58. ARK. CODE ANN. § 16-100-208 (West, Westlaw through 2018).

59. *Id.* § 16-100-207.

60. 2017 Ark. Acts 562 (codified at ARK. CODE ANN. § 5-73-122, 306; 322 (West, Westlaw through 2018)).

application.⁶¹ Act 562 comes on the heels of a 2013 legislative act that allowed college campuses across the state to decide whether to allow faculty and staff to carry firearms on campus.⁶² However, every college and university that considered the issue in 2013 opted not to allow faculty and staff to carry.⁶³ Act 562 allows private colleges to preclude their faculty and staff from carrying on campus only if they expressly adopt a policy disallowing employees to carry and post notices to that effect; public universities, however, generally must allow anyone with an advanced concealed carry permit to carry a concealed handgun on campus.⁶⁴

To obtain an advanced concealed carry license, a person must participate in a special training course designed by the Arkansas State Police.⁶⁵ The training cannot be more than eight hours, it must be offered by all concealed carry training instructors, and it cannot cost more than a nominal amount.⁶⁶ Furthermore, the training does not have to be renewed, and four hours of the training can be waived by the Director of the Arkansas State Police based on training the licensee acquired within the last 10 years.⁶⁷

B. POSSESSION OF A CONCEALED HANDGUN BY A LICENSEE – PROHIBITED PLACES

Even if a person obtained an advanced concealed carry license under what has now been codified as Section 5-73-322(g), Act 562 prohibits that person from carrying a firearm into a courtroom or an administrative hearing conducted by a state agency, a public school serving grades k-12, or a facility operated by the Department of Corrections.⁶⁸ Shortly after Act 562 was passed, the legislature enacted Act 859, which added to the list of places into which someone with an advanced concealed carry license is prohibited from

61. *General Assembly Helps Law Enforcement Respond to People with Mental Health Issues*, SENATE WEEKLY SESSION UPDATES (March 16, 2017), http://www.arkansas.gov/senate/newsroom/index.php?do:newsDetail=1&news_id=651.

62. 2013 Ark. Acts 226.

63. *See, e.g.* Tyler Kingkade, *Arkansas Colleges Reject Concealed Carry On Campus Under Loosened Gun Law*, HUFFINGTON POST (June 24, 2013), https://www.huffingtonpost.com/2013/06/24/arkansas-concealed-carry-on-campus-colleges_n_3492425.html; *Arkansas Guns On Campus Unanimously Rejected—Again*, GUNSENSE (Sept. 29, 2014), <http://readwrite.typepad.com/gunsense/2014/09/arkansas-guns-on-campus-nra.html>.

64. ARK. CODE ANN. § 5-73-322 (There are a few exceptions; for example, someone with an advanced concealed carry permit may not carry a concealed weapon into “an official meeting . . . [that] is being conducted in accordance with documented grievance and disciplinary procedures.”).

65. *Id.* § 5-73-322(g).

66. *Id.*

67. *Id.*

68. *Id.* § 5-73-122.

carry a firearm.⁶⁹ For example, someone with an advanced concealed carry permit is not allowed to carry a firearm into designated “firearm-sensitive areas” such as the Arkansas State Hospital, the University of Arkansas for Medical Sciences, or a collegiate athletic event.⁷⁰ Moreover, Act 859 reiterated that private businesses that wish to ban concealed firearms from their premises are permitted to do so as long as they post signs and communicate the prohibition verbally or in writing.⁷¹

PANHANDLING

A. AMENDING THE OFFENSE OF LOITERING

A federal district court judge declared a previous version of ARK. CODE ANN. § 5-71-213(a)(3) unconstitutional for overbreadth.⁷² The previous version of the statute stated that a “person commits the offense of loitering if he or she[] [l]ingers or remains in a public place or on the premises of another for the purpose of begging[.]”⁷³ The General Assembly amended the statute,⁷⁴ attempting to address the district judge’s determination that “[b]anning begging in all places at all times, by all people, in all ways” is a content-based regulation of speech that cannot satisfy strict scrutiny.⁷⁵

Act 847 amended subsection (a)(3), which now reads that the offense of loitering includes people lingering or remaining “on a sidewalk, roadway, or public right-of-way, in a public parking lot or public transportation vehicle or facility, or on private property, for the purpose of asking for anything as charity or a gift” in a harassing manner, in a way that is likely to cause alarm, or in a way that creates a traffic hazard.⁷⁶ Act 847 also adds to the circumstances that may be considered in determining whether someone is loitering.⁷⁷ A person may be suspected of loitering if he or she takes flight at the sight of law enforcement, refuses to identify him or herself, conceals

69. 2017 Ark. Acts 859 at sec. 2 (codified at ARK. CODE ANN. § 5-73-122) (West, Westlaw through 2018).

70. *Id.*

71. ARK. CODE ANN. §§ 5-73-306 (17)-(18) (West, Westlaw through 2018).

72. *Rodgers v. Bryant*, No. 4:16-CV-00775-BRW, 2016 U.S. Dist. LEXIS 183757, at *5 (E. D. Ark. 2016) (hereinafter *Rodgers I*).

73. 2017 Ark. Acts 847 at sec. 1.

74. 2017 Ark. Acts 847.

75. *Rodgers I*, 2016 U.S. Dist. LEXIS 183757, at *5.

76. 2017 Ark. Acts 847 at sec. 1 (codified at ARK. CODE ANN. § 5-71-213 (West, Westlaw through 2018)).

77. ARK. CODE ANN. § 5-71-213(a)(3).

him or herself or an object, or acts “in a harassing or threatening manner . . . to the other person after sunset or before sunrise.”⁷⁸

The same federal district judge that determined the previous version of ARK. CODE ANN. § 5-71-213(a)(3) was unconstitutional in *Rodgers I*, granted the plaintiffs in *Rodgers II* a preliminary injunction against the enforcement of the revised version of the statute.⁷⁹ The district judge found that because the revised version of the statute enacted by Act 847 continued to be a content-based restriction on speech, it was still subject to strict scrutiny.⁸⁰ Furthermore, the district judge found that the state’s interest in public safety and motor vehicle safety, even if compelling, was not narrowly tailored because other forms of speech on the roadside that are equally likely to create a traffic impediment are not restricted in the same manner as panhandling.⁸¹ There is no word yet as to whether the Arkansas State Police will appeal the decision to the Eighth Circuit, but for now the law enforcement officers in Arkansas are enjoined from enforcing Act 847.⁸²

TITLE 6

EDUCATION

A. PERSONAL AND FAMILY FINANCE STANDARDS

Act 480, the Personal Finance and Job Readiness Act, amended ARK. CODE ANN. § 6-16-135 to require curriculum focusing on personal and family finance standards.⁸³ Under the previous version of the law, the Department of Education was required to develop personal and family finance course content guidelines and recommended textbooks for use in personal finance courses.⁸⁴

The amended version specifies the following standards be included:

- 1) Income, including taxes;

78. *Id.*

79. *Rodgers v. Bryant*, No. 4:17-CV-00501-BRW, 2017 U.S. Dist. Lexis 218067, *16 (E.D. Ark. 2017) (hereinafter *Rodgers II*).

80. *Id.* at *8-9.

81. *Id.* at *9.

82. *Id.* at *16.

83. 2017 Ark. Acts 480 (codified at ARK. CODE ANN § 6-16-135 (West, Westlaw through 2018)).

84. 2017 Ark. Acts 480 at sec. 1.

- 2) Money management, including: household budgeting, banking practices (such as savings account and checking account maintenance), insurance, charitable giving, and long-term financial planning;
- 3) Spending and credit, including: basic consumer finance, identity fraud and theft, home ownership, debt management, credit management, bankruptcy, and consumer protection;
- 4) Savings and investing, including: methods, retirement planning, risk and return, and the regulation of savings and investment; and
- 5) Preparing for employment, including: decision making and employment choices, job seeking skills (such as resume building and interviewing skills), understanding paychecks (including I-9 forms, W-4 forms, and income tax deductions), employment benefits, soft job skills (such as communication), time management, meeting basic employer expectations, the differences between salaried and hourly employment, and overtime.⁸⁵

Act 480 requires high school students to earn one credit during grades ten through twelve that includes these standards, beginning with the entering ninth grade class of the 2017-2018 school year.⁸⁶

B. ALTERNATIVE METHODS OF INSTRUCTION

Act 862 allows Public School Districts and Open-Enrollment Public Charter Schools to develop a plan for the use of an Alternative Method of Instruction (“ALI”) to be used on days when school is cancelled due to exceptional or emergency circumstances.⁸⁷

Act 862 amended ARK. CODE ANN. § 6-10-127, the statute allowing school districts to make up missed school days by adding time to the school year. Under the new language, up to ten days of student attendance may be obtained for public school districts through the use of an approved alternative instruction plan.⁸⁸ These alternative methods of instruction may include virtual learning.⁸⁹

Schools seeking to take advantage of Act 862 must demonstrate that the school district’s alternative instruction plan will not negatively impact teaching and learning in the public school district.⁹⁰

85. ARK. CODE ANN. § 6-16-135(b).

86. *Id.* § 6-16-135(c).

87. 2017 Ark. Acts 862 (codified at ARK. CODE ANN. § 6-10-127 (West, Westlaw through 2018)).

88. ARK. CODE ANN. § 6-10-127(b).

89. *Id.*

90. *Id.*

C. UNITED STATES CIVICS TEST FOR HIGH SCHOOL DIPLOMA

Act 478 requires high school students to pass a portion of the Naturalization Test used by the United States Citizenship and Immigration Services before a student may receive a high school diploma.⁹¹ A student must answer at least sixty of the one hundred test questions correctly, and may retake the test as many times as necessary to accurately answer the sixty questions.⁹² The Act delegates further determinations of the method and manner of administration of the test to the State Board of Education.⁹³ The Act reiterates the test should be identical to the civics portion of the naturalization test.⁹⁴

Notably, the legislature provided for certain students to be exempted from this requirement.⁹⁵ Students with individualized education programs, students attending school in the Corrections School System under § 12-29-301 *et seq.*, and students over the age of eighteen who are seeking a high school equivalency diploma are not subject to the civics testing requirement in order to receive a high school diploma.⁹⁶

TITLE 14

ECONOMIC DEVELOPMENT

A. IMPLEMENTATION OF AMENDMENT 97 ECONOMIC DEVELOPMENT TAX

Amendment 97, which was approved by the voters in November 2016, implemented three major changes to the Arkansas Constitution.⁹⁷ First, Amendment 97 added an exception to article 12, section 5, authorizing counties and municipalities to “obtain or appropriate money for a corporation, association, institution, or individual to: [f]inance economic development projects; or [p]rovide economic development services.”⁹⁸ Before Amendment 97, the general rule under article 12, section 5 prohibited coun-

91. 2017 Ark. Acts 478 (codified at ARK. CODE ANN. § 6-16-149 (West, Westlaw through 2018)).

92. ARK. CODE ANN. § 6-16-149(a).

93. *Id.* § 6-16-149(b).

94. *Id.*

95. *Id.*

96. *Id.* § 6-16-149(c).

97. ARK. CONST. amend. 97; S.J. Res 16, 90th General Assembly (Ark. 2015).

98. *Id.*

ties and municipalities from appropriating money or loaning its credit to any corporation, association, institution, or individual.⁹⁹ Amendment 97 also defined economic development project¹⁰⁰ and economic development services.¹⁰¹ Act 685 of 2017 expanded on the exception to article 12, section 5 by providing a number of requirements that counties and municipalities must satisfy in order to enter into contracts for economic development projects or contracts for economic development services.¹⁰² Act 685 also incorporated the definitions of economic development project and economic development services from Amendment 97 into section 14-176-102.¹⁰³

Second, Amendment 97 authorized the General Assembly to provide for additional types of taxes to retire bonds issued to finance economic development projects under Amendment 62.¹⁰⁴ Before Amendment 97, counties and municipalities could issue bonds secured by property taxes to finance economic development projects.¹⁰⁵ During the 2017 legislative session, under the authority of Amendment 97, the General Assembly passed Act 533, giving counties and municipalities the power to issue bonds secured by sales and use taxes to finance economic development projects.¹⁰⁶

Finally, Amendment 97 eliminated a cap on the amount of bonds that may be issued by the state to finance large economic development projects under Amendment 82.¹⁰⁷ Before Amendment 97, bonds issued under Amendment 82 were limited in principal amount to not more than five percent (5%) of the state's general revenues.¹⁰⁸ Act 685 amended Section 15-4-3207, which is the implementing legislation for Amendment 82, by deleting language concerning the five percent (5%) cap.¹⁰⁹ The impetus behind the constitutional and statutory scheme established by Amendment 97, Act 685, and Act 533 was to enable the state and local governments to take advantage

99. *Id.*

100. *Id.* (“Economic development projects” include “land, buildings, furnishings, equipment, facilities, infrastructure, and improvements that are required or suitable for the development, retention, or expansion of” various types of facilities.”).

101. *Id.* (“Economic development services” includes “[p]lanning, marketing, and strategic advice and counsel regarding job recruitment, job development, job retention, and job expansion; [s]upervision and operation of industrial parks or other such properties; and [n]egotiation of contracts for the sale or lease of industrial parks or other such properties[.]”).

102. 2017 Ark. Acts 685 (codified at ARK. CODE ANN. § 14-176-101 *et seq.* (West, Westlaw through 2018)).

103. ARK. CODE ANN §§ 14-176-102(3)–(4).

104. ARK. CONST. amend. 97; S.J. Res 16, 90th General Assembly (Ark. 2015).

105. ARK. CONST. amend. 62.

106. 2017 Ark. Acts 533 at sec. 13 (codified at ARK. CODE ANN. § 14-164-327 (a)(1) (West, Westlaw through 2018)).

107. ARK. CONST. amend. 97; S.J. Res 16, 90th General Assembly (Ark. 2015).

108. *Id.*

109. 2017 Ark. Acts 685 at sec. 3 (codified at ARK. CODE ANN. § 15-4-3207 (West, Westlaw through 2018)).

of opportunities to promote economic growth and effectively compete for large economic development projects.¹¹⁰

TITLE 15

PUBLIC FINANCE

A. LOCAL FARM AND FOOD PRODUCTS PROCUREMENT GOALS

Act 617, an Act to Create The Local Food, Farms, and Jobs Act, was enacted to create, strengthen and expand local farm and food economies throughout the state.¹¹¹ The Act is also intended to support and encourage the procurement of local farm or food products as a significant portion of all food products purchased by the state of Arkansas.¹¹²

The Act sets procurement goals for local food products purchased by state agencies, defining “local farm or food products” as those grown in Arkansas or packaged and processed in Arkansas, or both.¹¹³ In the 2018 fiscal year, state agencies should ensure that ten percent of the agency’s budget for the purchase of food products is spent on local farm or food products.¹¹⁴ Additionally, when awarding a contract for the purchase of food products, the agency should award the contract to a provider of local farm or food products when the provider of local farm or food products submits a bid that does not exceed the lowest bid by more than ten percent, and the lowest bidder is not a provider of local farm and food products.¹¹⁵

The Act also sets out guidelines for agencies to build their procurement of local farm and food products by identifying the percentage of funds spent on local farm or food products for the 2017 fiscal year. It also establishes a system for tracking and reporting the purchases of local farm or food products each fiscal year.¹¹⁶

Agencies should submit a report by October 1 of each year to the Bureau of Legislative Research, reporting both the dollar value of the contracts and the percentage of total contracts the agency awarded to providers of

110. ARK. CONST. amend. 97; S.J. Res 16, 90th General Assembly (Ark. 2015).

111. 2017 Ark. Acts 617 (codified at ARK. CODE ANN. §§ 15-4-3801 to -3806 (West, Westlaw through 2018)).

112. ARK. CODE ANN. § 15-4-3902 (West, Westlaw through 2018).

113. *Id.* § 15-4-3803(3).

114. *Id.* § 15-4-3804(a).

115. *Id.* § 15-4-3804(b).

116. *Id.* § 15-4-3804(c).

local farm or food products the previous fiscal year.¹¹⁷ Further, the bureau will prepare a report by December 31 of each year, reporting the information received from agencies and making the report available to the Governor and the co-chairs of the Legislative Council or the co-chairs of the Joint Budget Committee if in session.¹¹⁸

The Act encourages the Arkansas Agriculture Department to promote, create, and expand local farm and food economies by maintaining a list of local farm or food products and providers, facilitating compliance for other agencies.¹¹⁹ Additionally pursuant to the Act, the Department of Agriculture will establish a program coordinator position responsible for developing partnerships among vendors, agencies, and providers of local farm and food products supporting the goals of the Act.¹²⁰

B. PUBLIC-PRIVATE PARTNERSHIPS

Act 813 created The Partnership for Public Facilities and Infrastructure Act.¹²¹ The Act was established because legislators recognized a public need for timely acquisition and installation of public infrastructure and government facilities within the state of Arkansas that exceeded the capacity of existing methods and resources of procurement or funding by the state.¹²² The general assembly recognized that public-private partnerships promote timely and cost-efficient development of public infrastructure and governmental facilities, and provide alternative and innovative funding sources to governmental entities.¹²³

Under Act 813, public entities responsible for development of an infrastructure project may issue a request for proposals from private entities for the development of a qualifying project.¹²⁴ A qualifying project is one for which there is a public need or benefit, and the proposals or bids are anticipated to result in the timely development of it.¹²⁵ Once the responsible public entity identifies a qualified respondent, parties should enter into an interim agreement in order to agree on the methods and desire to proceed with the development of the project.¹²⁶ Once an agreement is reached, parties should then negotiate and enter into a comprehensive agreement to govern

117. ARK. CODE ANN. § 15-4-3805.

118. *Id.*

119. *Id.* § 15-4-3806(a).

120. *Id.* § 15-4-3806(b).

121. 2017 Ark. Acts 813 (codified at ARK. CODE ANN. §§ 22-10-101 to -505 (West, Westlaw through 2018)).

122. ARK. CODE ANN. § 22-10-102.

123. *Id.*

124. *Id.* § 22-10-201.

125. *Id.* § 22-10-204.

126. *Id.* § 22-10-302.

the development of the project.¹²⁷ Parties may finance a qualifying project by utilizing any funding sources available to them under applicable law. However, bonds issued by a responsible public entity under the Act must state plainly on the face of the bonds that the bonds are issued under the subchapter, and are the sole obligations of the responsible public entity and not of the state of Arkansas.¹²⁸

The Act delegates the administration of established public-private partnerships to the Arkansas Economic Development Commission.¹²⁹ The Commission is to review each proposed qualifying project for compliance within the Act and, upon compliance, assign the qualifying project to the responsible public entity, and assist in the interim and comprehensive agreement negotiations.¹³⁰ The Commission should also ensure the responsible entity conducts a public hearing before the execution of a comprehensive agreement, and after ensuring compliance by the responsible entity, if it authorizes the execution of the comprehensive agreement.¹³¹

Additionally, the Arkansas Economic Development Commission is responsible for promulgating rules pertaining to definitions and guidelines for this process, which should include criteria for selecting qualifying projects and proposals, timelines for selecting a qualified respondent, and guidelines for negotiating a comprehensive agreement and allowing accelerated selection for projects determined to be a priority by the Governor or funded in whole or substantial part by dedicated revenues.¹³² Guidelines for selecting a qualifying project should be promulgated in conjunction with the Arkansas Development Finance Authority.¹³³

Finally, accounts relating to the implementation of qualifying projects under this Act will be audited by the Arkansas Economic Development Commission, the Arkansas Development Finance Authority, and the Chief Fiscal Officer of the State.¹³⁴ The Arkansas Economic Development Commission is responsible for monitoring and reporting qualifying projects' progress in satisfying the conditions under the Act, as well as requiring proof of compliance with reporting and auditing requirements of the United States Securities and Exchange Commissions and other relevant regulatory agencies.¹³⁵

127. ARK. CODE ANN. § 22-10-303 (West, Westlaw through 2018).

128. ARK. CODE ANN. § 22-10-304 (West, Westlaw through 2018).

129. ARK. CODE ANN. § 22-10-501 (West, Westlaw through 2018).

130. *Id.*

131. *Id.*

132. ARK. CODE ANN. § 22-10-503 (West, Westlaw through 2018).

133. *Id.*

134. ARK. CODE ANN. § 22-10-403 (West, Westlaw through 2018).

135. *Id.*

TITLE 21

ATTENDANCE AND LEAVE

A. MATERNITY LEAVE FOR STATE EMPLOYEES

Act 182 amends the Uniform Attendance and Leave Policy Act¹³⁶ to allow an employee to use catastrophic leave¹³⁷ for maternity leave.¹³⁸ The Act provides that all state agencies shall participate in a catastrophic leave bank, and the following governmental entities may voluntarily participate in the program or establish its own catastrophic leave bank for employees: The General Assembly, The Bureau of Legislative Research, The Arkansas Legislative Audit, The Arkansas State Highway and Transportation Department, The Arkansas State Game and Fish Commission, the Arkansas State Supreme Court, The Court of Appeals, The Administrative Office of the Courts, A constitutional office, and institutions of Higher Education.¹³⁹

The Act also changed the previous law's allowance that an employee is eligible for catastrophic leave after being employed by the state for more than two years – under Act 182, that will be changed to one year.

Maternity leave may be granted to female employees under Act 182 after the birth of the employee's biological child, or the placement of an adoptive child in the home of the employee.¹⁴⁰ An employee using catastrophic leave for maternity purposes is not required to first exhaust sick or annual leave, but will not continue to accrue leave while on leave.¹⁴¹

Under the new amended law, an employee is eligible for up to four consecutive weeks with full pay within the first twelve weeks after the birth or adoption of a child.¹⁴² After four weeks, maternity leave will be treated as any other leave for sickness or disability.¹⁴³

136. See ARK. CODE ANN. § 21-4-203 *et seq.* (1975).

137. As defined in ARK. CODE ANN. § 21-4-214 (1991).

138. 2017 Ark. Acts 182 (codified at at ARK. CODE ANN. § 21-4-203(5), 209, 214 (West, Westlaw through 2018)).

139. ARK. CODE ANN. § 21-4-214(a).

140. *Id.* § 21-4-214(d).

141. *Id.*

142. *Id.* § 21-4-214(e).

143. *Id.*

TITLE 23

HEALTH INSURANCE

A. REDUCTION IN INCOME ELIGIBILITY FOR ARKANSAS WORKS

Act 6 of the First Extraordinary Session amended the Arkansas Works Act of 2016 to reduce income eligibility limits and to impose work requirements on program recipients.¹⁴⁴

The Act amended the income eligibility requirement for the Medicaid Expansion from 138 percent of the federal poverty level (\$16,400 for an individual or \$33,600 for a family of four) to 100 percent of the federal poverty line (\$11,880 for an individual or \$24,300 for a family of four).¹⁴⁵ Additionally, the Act imposed a work requirement on non-disabled program recipients.¹⁴⁶

Act 6 also commissioned a report by the Department of Human Services, the State Insurance Department, and the Department of Workforce Services analyzing small employer health insurance coverage.¹⁴⁷ The study should make recommendations on strengthening employer-sponsored insurance that will help small-business employers offer more affordable health insurance coverage for employees.¹⁴⁸

Finally, Act 6 amended the current law to enable the Department of Human Services flexibility to determine whether Arkansas is an “assessment state” or a “determination state.” An assessment state is a state with a federally facilitated marketplace that can elect to have the federally facilitated marketplace to make assessments of Medicaid eligibility and then transfer the amount of an individual to the state Medicaid agency for a final determination. A determination state is a state that requires the eligibility determination made by the federally facilitated marketplace to be accepted by the state

144. 2018 Ark. Acts 6, 1st Extraordinary Sess. (codified at ARK. CODE ANN. § 23-61-2003(10), 104(b); ARK. CODE ANN. § 20-77-2102 (West, Westlaw through 2018)).

145. Amanda Hoelzeman, *Arkansas Works 2.0 Brings Even More Changes for Low-Income Arkansans*, ARKANSAS ADVOCATES FOR CHILDREN & FAMILIES, (April 26, 2017) <http://www.aradvocates.org/arkansas-works-2-0-brings-even-poor-changes-for-low-income-arkansans/>; David Ramsey, *Governor’s Proposed Cuts to Medicaid Eligibility Will Increase Costs for Working Poor; Likely to Increase Uninsured Rate*, ARKANSAS TIMES, (May 2, 2017) <https://www.arktimes.com/ArkansasBlog/archives/2017/05/02/governors-proposed-cuts-to-medicaid-eligibility-will-increase-costs-for-working-poor-likely-to-increase-uninsured-rate>.

146. 2018 Ark. Acts 6 at sec. 2(a).

147. *Id.* at sec. 3.

148. *Id.*

Medicaid agency for the purposes of Medicaid eligibility determinations by the federally facilitated marketplace.¹⁴⁹

TITLE 26

TASK FORCES

A. ARKANSAS TAX REFORM AND RELIEF LEGISLATION TASK FORCE

Acts 78 and 79 are identical tax relief measures.¹⁵⁰ The bills reduce income tax rates for low-income individuals that will take effect in 2019.¹⁵¹ For example, individuals making less than \$4,300 will not owe any state income taxes.¹⁵² When the provisions take effect, it is estimated that Acts 78 and 79 will save more than \$50 million for Arkansans.¹⁵³ Acts 78 and 79 also create the Arkansas Tax Reform and Relief Legislative Task Force, consisting of sixteen members of the General Assembly.¹⁵⁴ The goal of the task force is to modernize and simplify the Arkansas tax code, make Arkansas more economically competitive with other states, and ensure fairness for all individuals and entities subject to tax laws in Arkansas.¹⁵⁵ The task force was required to issue a preliminary report by December 1, 2017, and must release a final report by September 1, 2018.¹⁵⁶

149. ARK. CODE ANN. § 20-77-2102(b).

150. 2017 Ark. Acts 78 (codified at ARK. CODE ANN. § 26-51-201(a) (West, Westlaw through 2018)); 2017 Ark. Acts 79 (codified at ARK. CODE ANN. § 26-51-201(a) (West, Westlaw through 2018)).

151. ARK. CODE ANN. § 26-51-201(a).

152. *Id.*

153. *Legislative Task Force to Work on Changes to State's Tax System*, SENATE WEEKLY SESSION UPDATES (May 18, 2017) http://www.arkansas.gov/senate/newsroom/index.php?do:newsDetail=1&news_id=660.

154. 2017 Ark. Acts 78 at sec. 3; 2017 Ark. Acts 79 at sec. 3.

155. *Id.*

156. *Id.*

ARTICLE 19 OF THE ARKANSAS CONSTITUTION

ETHICS

A. GIFTS FROM LOBBYISTS

Act 312 and Act 207 added a number of goods and services that are *not* considered prohibited gifts from lobbyists under Article 19 of the Arkansas Constitution.¹⁵⁷ For example, Act 207 stated that the “use of one or more rooms or facilities owned . . . by a state agency . . . for the purpose of conducting a meeting of a specific governmental body” is not a gift.¹⁵⁸ Furthermore, under Act 312, “nonalcoholic beverages provided to attendees at a meeting of a civic, social, or cultural organization” and “food and nonalcoholic beverages provided to participants in a bona fide panel, seminar, or speaking engagement at which the audience is a civic, social, or cultural organization or group” are not prohibited gifts from lobbyists.¹⁵⁹

Act 312 limited the definition of “lobbyist” by excluding recognized political parties.¹⁶⁰ To be considered a “recognized political party,” the organization had to have garnered at least three percent of the vote for its candidate for governor or nominees for presidential electors in the last general election.¹⁶¹ Alternatively, an organization can become a recognized political party if it is formed by the petition process under section 7-7-205.¹⁶²

B. LOANS FROM LOBBYISTS

Act 1108 amended Article 19 of the Arkansas Constitution by adding “any advance or loan” to the definition of a prohibited gift from a lobbyist.¹⁶³ Act 1108 further explained that an advance or loan includes “a sum of money that is borrowed with the expectation that it be paid back, regardless of whether interest is charged.”¹⁶⁴ An “advance or loan” does not include

157. 2017 Ark. Acts 312 (Note that Acts 207, 312, and 1108 were each passed by the legislature concerning gifts to lobbyists, but some of their provisions were conflicting. The provisions of these acts were reconciled and renumbered during the First Extraordinary Session of 2017); *See* 2017 Ark. Acts 9; 2017 Ark Acts 2.

158. 2017 Ark. Acts 207 at sec. 1.

159. 2017 Ark. Acts 312 at sec. 1.

160. *Id.*

161. *Id.*

162. *Id.*

163. 2017 Ark. Acts 1108 at sec. 1.

164. *Id.* at sec. 2.

money borrowed from a financial institution or other business that regularly extends credit to its customers.¹⁶⁵

AMENDMENT 98 OF THE ARKANSAS CONSTITUTION

MEDICAL MARIJUANA

A. ARKANSAS MEDICAL MARIJUANA AMENDMENT OF 2016

In November 2016, Arkansans approved a constitutional amendment legalizing marijuana for medicinal purposes.¹⁶⁶ The ballot initiative, codified as Amendment 98, contained 23 sections.¹⁶⁷ Section 23 gave the General Assembly the authority to amend certain provisions of Amendment 98, as long as the amendments are “germane to this section and consistent with its policy and purposes.”¹⁶⁸ Using the power delegated to it by the language in the amendment, the General Assembly passed twenty-three bills intending to amend Amendment 98.¹⁶⁹ Because many of the provisions in the bills were duplicative or contained conflicting provisions, the General Assembly passed legislation during the First Extraordinary Session of 2017 to reconcile some of the differences.¹⁷⁰ For example, section 2 of Act 1023 was repealed because it was determined the provision was unnecessary in light of other acts.¹⁷¹ Section 2 required the Department of Health and the Alcoholic Beverage Control Division of the Department of Finance and Administration to label and test food and beverages combined with “usable marijuana” to ensure that levels of tetrahydrocannabinol (“THC”) did not exceed ten milligrams.¹⁷²

165. *Id.*

166. ARK. CONST. amend 98.

167. *Id.*

168. *Id.*

169. *See, e.g.*, 2017 Ark. Acts 1; 2017 Ark. Acts 8.

170. *Id.*

171. *Id.*

172. 2017 Ark. Acts 8 at sec. 3. (The legislative intent of Act 8 explained that “after further review, the additional requirements imposed on the Department of Health within Acts 2017, No. 1023, § 2, are unnecessary to achieve this purpose as the Alcoholic Beverage Control Division of the Department of Finance and Administration must also meet these requirements for dispensaries and cultivation facilities.” 2017 Ark. Acts 8 at sec. 1).

B. EMPLOYEE PROTECTIONS AND EMPLOYEE SAFETY

Among the many bills passed concerning Amendment 98, Act 593 was one of the more substantively important provisions. Act 593 established protections for both employers and employees.¹⁷³ An employee cannot be discriminated against based on his or her status as a qualifying patient or designated caregiver under Amendment 98.¹⁷⁴ However, employers are permitted to discipline an employee if the employer has a good faith belief that the employee is engaging in the use of marijuana or is under the influence of marijuana during the hours of employment or on the employer's premises.¹⁷⁵ Employers may also exclude qualifying patients from "safety sensitive positions."¹⁷⁶ Furthermore, Act 593 defines employer, employee, good faith belief, under the influence, and safety sensitive position.¹⁷⁷

C. SPECIAL PRIVILEGE TAX

Most of the bills passed by the Legislature concerning Amendment 98 directly amend the constitutional provision. Act 1098, however, established a new statutory scheme to provide for the administration and collection of the Arkansas Medical Marijuana Special Privilege Tax.¹⁷⁸ Cultivation facilities, dispensaries, and any other marijuana-related businesses are required to collect and remit four percent of the gross receipts or gross proceeds from the sale of usable marijuana to the Director of the Department of Finance and Administration.¹⁷⁹

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173. 2017 Ark. Acts 593.

174. *Id.* at sec. 3.

175. *Id.*

176. *Id.*

177. *Id.* at sec. 2.

178. 2017 Ark. Acts 1098.

179. *Id.* at sec. 2.

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