

Stricken language would be deleted from and underlined language would be added to present law.
Act 608 of the Regular Session

State of Arkansas
93rd General Assembly
Regular Session, 2021

As Engrossed: H3/15/21
A Bill

HOUSE BILL 1637

By: Representatives Vaught, Barker, Beaty Jr., Bentley, M. Berry, Brooks, Brown, Bryant, Carr, Cavanaugh, C. Cooper, Cozart, Dotson, Evans, Gonzales, M. Gray, Haak, Hollowell, Lowery, Lundstrum, McCollum, McNair, Miller, Milligan, Payton, Ray, Richmond, B. Smith, Speaks, Wardlaw, Wing, Womack, *Underwood*

By: Senators T. Garner, B. Ballinger, Beckham, Bledsoe, B. Davis, Flippo, Irvin, M. Johnson, D. Sullivan, *Rapert, Hill*

For An Act To Be Entitled

AN ACT TO ALLOW REVIEW OF PRESIDENTIAL EXECUTIVE ORDERS; TO ALLOW THE ATTORNEY GENERAL TO REVIEW PRESIDENTIAL EXECUTIVE ORDERS; TO ADDRESS IMPLEMENTATION OF A PRESIDENTIAL EXECUTIVE ORDER UNDER REVIEW; AND FOR OTHER PURPOSES.

Subtitle

TO ALLOW REVIEW OF PRESIDENTIAL EXECUTIVE ORDERS; TO ALLOW THE ATTORNEY GENERAL TO REVIEW PRESIDENTIAL EXECUTIVE ORDERS; AND TO ADDRESS IMPLEMENTATION OF A PRESIDENTIAL EXECUTIVE ORDER UNDER REVIEW.

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

SECTION 1. DO NOT CODIFY. Scope.

(a)(1) The Tenth Amendment to the United States Constitution guarantees to the states and their people all powers not granted to the United States Government elsewhere in the United States Constitution and reserves to the State of Arkansas and its people certain powers as those powers were understood at the time that Arkansas was admitted into statehood



in 1836.

(2) The guaranty of those powers is a matter of contract between the State of Arkansas and its people and the United States as of the time that the compact with the United States was agreed upon and adopted by Arkansas and the United States in 1836.

(b)(1) The Ninth Amendment to the United States Constitution guarantees to the people rights not granted in the United States Constitution and reserves to the people of Arkansas certain rights as they were understood at the time that Arkansas was admitted into statehood in 1836.

(2) The guaranty of those rights is a matter of contract between the State of Arkansas and its people and the United States as of the time that the compact with the United States was agreed upon and adopted by Arkansas and the United States in 1836.

(c) The regulation of intrastate commerce is vested in the states under the Ninth and Tenth Amendments to the United States Constitution.

(d) The Second Amendment to the United States Constitution reserves the right to keep and bear arms to the people as that right was understood at the time that Arkansas was admitted into statehood in 1836, and the guaranty of the right is a matter of contract between the State of Arkansas and its people and the United States as of the time that the compact with the United States was agreed upon and adopted by Arkansas and the United States in 1836.

(e)(1) Arkansas Constitution, Article 2, § 5, clearly secures to Arkansas citizens and prohibits government interference with the right of individual Arkansas citizens to keep and bear arms.

(2) This constitutional protection is unchanged from the 1836 Arkansas Constitution, which was approved by the United States Congress and the people of Arkansas, and the right exists as it was understood at the time that the compact with the United States was agreed upon and adopted by Arkansas and the United States in 1836.

SECTION 2. Arkansas Code Title 25, Chapter 1, is amended to add an additional subchapter to read as follows:

Subchapter 6 – Review of Presidential Executive Orders

25-1-601. Legislative intent.

The General Assembly finds that:

- (1) It is the duty of the General Assembly to make determinations regarding the use of state personnel and state resources;
- (2) Making determinations about how state personnel and state resources shall be used is a function of the General Assembly;
- (3) The citizens of Arkansas have elected the members of the General Assembly to exercise the ability to make political determinations regarding the resources of the state; and
- (4) A determination or action taken under this subchapter is not a judicial determination or action.

25-1-602. Review of presidential executive orders.

(a)(1) The General Assembly may take whatever actions it deems necessary concerning presidential executive orders that may affect the State of Arkansas, its officials, or its financial resources.

(2)(A) During the interim between legislative sessions, the Legislative Council may schedule a meeting to review an executive order issued by the President of the United States that has not been affirmed by a vote of the United States Congress and signed into law as prescribed by the United States Constitution.

(B) During legislative sessions, the Joint Budget Committee may schedule a meeting to review an executive order issued by the President of the United States that has not been affirmed by a vote of the United States Congress and signed into law as prescribed by the United States Constitution.

(3)(A) The Legislative Council or Joint Budget Committee shall refer an executive order issued by the President of the United States that has not been affirmed by a vote of the United States Congress and signed into law as prescribed by the United States Constitution that is under review by the General Assembly to the appropriate standing committees of the General Assembly that would address the subject matter of the executive order under review.

(B) The standing committees of the General Assembly meeting jointly may request the Attorney General to review the presidential executive order under review by the standing committees and prepare an opinion to be delivered to the designated standing committees stating:

- (i) A brief description of the issues involved;

(ii) The Attorney General's opinion of whether the presidential executive order is:

(a) Constitutional under the United States Constitution; or

(b) In conflict with the Arkansas Constitution;

(iii) The Attorney General's opinion of whether the state should seek an exemption from the application of the presidential executive order;

(iv) The Attorney General's opinion of whether the state should seek to have the order declared to be an unconstitutional exercise of legislative authority by the President of the United States; and

(v) Other information that will enable the designated standing committee to determine the action that may be deemed necessary to protect the interests of the General Assembly and the State of Arkansas.

(4) The standing committees shall make a recommendation to the Legislative Council during the interim between legislative sessions, or the Joint Budget Committee during legislative sessions, including:

(A) Whether state resources and personnel are required to implement the presidential executive order; and

(B) Identifying other action deemed necessary to protect the General Assembly's and the state's interests in litigation regarding the presidential executive order.

(5)(A) During the interim between legislative sessions, the Legislative Council shall, and during legislative sessions, the Joint Budget Committee shall:

(i) Call a meeting to discuss the report of the standing committees' review of a presidential executive order; and

(ii) Determine:

(a) Whether state resources and personnel are required to implement the presidential executive order; and

(b) Whether to take other action deemed necessary to protect the General Assembly's and the state's interests in litigation regarding the presidential executive order.

(B) All determinations of action shall be made by motion

and must receive a majority vote.

(b) Notwithstanding any other provision of law, the state, a political subdivision, or any entity that receives an appropriation of funds from the General Assembly shall not implement a presidential executive order using state resources and personnel if:

(1) The Legislative Council or the Joint Budget Committee issues a political determination that the presidential executive order is unconstitutional and the presidential executive order restricts a person's rights and relates to:

(A) Pandemics or other health emergencies;

(B) The regulation of natural resources, including coal and oil;

(C) The regulation of the agriculture industry;

(D) The use of land;

(E) The regulation of the financial sector as it relates to environmental, social, or governance standards; or

(F) The regulation of the constitutional right to bear arms;

(2) The Legislative Council, or the Joint Budget Committee if the General Assembly is in regular, fiscal, or special session, affirmatively votes to report the determination to the Governor; and

(3) The Governor directs the state, the political subdivision, or the entity that receives an appropriation of funds from the General Assembly to not implement the presidential executive order.

/s/Vaught

APPROVED: BECAME LAW ON 4/8/21 WITHOUT THE GOVERNOR'S SIGNATURE.