

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
89th General Assembly
Regular Session, 2013

As Engrossed: H3/27/13
A Bill

HOUSE BILL 1954

By: Representative Alexander

For An Act To Be Entitled

AN ACT TO AMEND ARKANSAS LAW CONCERNING INFRINGEMENTS OF THE CONSTITUTIONALLY PROTECTED RIGHTS OF THE STATE OF ARKANSAS OR ITS CITIZENS VIA A FEDERAL ACT DEEMED *TO BE UNCONSTITUTIONAL; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.*

Subtitle

TO AMEND ARKANSAS LAW CONCERNING INFRINGEMENTS OF THE CONSTITUTIONALLY PROTECTED RIGHTS OF THE STATE OF ARKANSAS OR ITS CITIZENS VIA A FEDERAL ACT DEEMED TO BE UNCONSTITUTIONAL; AND TO DECLARE AN EMERGENCY.

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

SECTION 1. Arkansas Code Title 10, Chapter 3, is amended to add an additional subchapter to read as follows:

Subchapter 3. – Balance of Powers Act

10-3-2701. Short title.

This subchapter shall be known and may be cited as the "Balance of Powers Act."

10-3-2702. Legislative findings.

(a) The General Assembly finds:

(1)(A) The Tenth Amendment to the United States Constitution



guarantees and reserves to the states and the people all powers not delegated to the federal government elsewhere in the United States Constitution as they were originally intended and publicly understood at the time that the amendment was ratified on December 15, 1791, and subject only to modifications by duly ratified subsequent amendments to the United States Constitution.

(B) The guarantee of those powers is a matter of compact between the state and people of Arkansas and the United States as of the time that Arkansas was admitted to statehood on June 15, 1836;

(2) In accordance with the compact between the state and people of Arkansas and the United States as of the time that Arkansas was admitted to statehood in 1836, the Tenth Amendment of the United States Constitution reserves to the state and people of Arkansas that other than the enumerated powers expressly delegated to the United States under Article 1, Section 8, of the United States Constitution, Congress and the federal government are prohibited from exercising any purported additional control over or commandeering rights belonging to the State of Arkansas or its people;

(3)(A) The United States Constitution, ratified on June 21, 1788, affirms that the sole and sovereign power to regulate the state business and affairs rests in the state legislature and has always been a compelling state concern and central to state sovereignty and security.

(B) Accordingly, the public meaning and understanding of Article 1, Section 8, of the United States Constitution, the Establishment Clause of the First Amendment of the United States Constitution, and the Tenth Amendment of the United States Constitution is a matter of compact between the state and people of Arkansas and the United States as of the time that Arkansas was admitted to statehood in 1836.

(C)(i) Further, the power to regulate commerce among the several states as delegated to the Congress in Article 1, Section 8, Clause 3, of the United States Constitution, the Commerce Clause, as understood at the time of the founding of the United States, was meant to empower Congress to regulate the buying and selling of products made by others, land, associated finance and financial instruments, and navigation and other carriage, across state jurisdictional lines.

(ii) This power to regulate commerce does not include agriculture, manufacturing, mining, major crimes, or land use, nor

does it include activities that merely substantially affect commerce;

(4)(A) At the time the United States Constitution was ratified, the Commerce Clause was not meant or understood to authorize Congress, the executive branch, or the federal judiciary to regulate the state courts in the matter of state substantive law or state judicial procedure.

(B) This meaning and understanding of Article 1, Section 8, of the United States Constitution, the Establishment Clause of the First Amendment of the United States Constitution, and the Tenth Amendment of the United States Constitution, as they pertain to the validity of religious sectarian or foreign law as being controlling or influential precedent, has never been modified by any duly ratified amendment to the United States Constitution.

(C) Accordingly, the foregoing public meaning and understanding of Article 1, Section 8 of the United States Constitution, and the Tenth Amendment of the United States Constitution is a matter of compact between the state and people of Arkansas and the United States as of the time that Arkansas was admitted to statehood in 1836;

(5)(A) Article 1, Section 8, Clause 18, of the United States Constitution, the Necessary and Proper Clause, is not a blank check that empowers the federal government to do anything it deems necessary or proper.

(B) The Necessary and Proper Clause is instead a limitation of power under the common-law doctrine of principals and incidents, which restricts the power of Congress to exercise incidental powers.

(C) There are two (2) main conditions required for something to be incidental, and therefore, necessary and proper. The law or power exercised shall be:

(i) Directly applicable to the main, enumerated power; and

(ii) Lesser than the main power:

(6)(A) In accordance with Article 1, Section 8, Clause 1, of the United States Constitution, the General Welfare Clause, does not empower the federal government with the ability to do anything it deems good.

(B) It is instead a general restriction limiting the exercise of the enumerated powers of Congress set forth in Article 1, Section 8, of the United States Constitution requiring that Congress only enact laws

that serve all citizens well and equally.

(C) When James Madison was asked if the General Welfare Clause was a grant of power, he replied “[I]f not only the means but the objects are unlimited, the parchment should be thrown into the fire at once.”

(D) Thus, the General Assembly reestablishes that the General Welfare Clause is a limitation on the power of the federal government to act in the welfare of all when passing laws in pursuance of the powers delegated to the United States, showing no favor to any race, creed, color or socio-economic class.

(E) Likewise, the Commerce Clause was not meant or understood to authorize Congress or the federal judiciary to establish religious, sectarian, or foreign statutes or case law as controlling or influential precedent.

(F) Accordingly, the foregoing public meaning and understanding of Article 1, Section 8, of the United States Constitution, the Establishment Clause of the First Amendment of the United States Constitution and the Tenth Amendment of the United States Constitution is a matter of compact between the state and people of Arkansas and the United States as of the time that Arkansas was admitted to statehood in 1836;

(7)(A) The General Assembly acknowledges that the Commerce Clause, the General Welfare Clause, and the Necessary and Proper Clause of the United States Constitution were amended, and made more specific and limiting at the peoples’ insistence through the adoption of the Second Amendment of the United States Constitution, the Ninth Amendment of the United States Constitution, and the Tenth Amendment of the United States Constitution.

(B) All amendments within the Bill of Rights were for the purpose of further restricting federal powers, vesting and retaining the ultimate power and control of the states by the people within the states.

(C) The General Assembly specifically rejects and denies any federal claim of expanded or additional authority that the federal government may from time to time attempt to exert, exercise, or enforce under these clauses, as these actions totally disrupt and degrade the emphasis the Founding Fathers of the United States placed on the balance of powers; and

(8)(A) The General Assembly and the citizens of the State of Arkansas are aware that the federal government has amended and altered the

spirit and the meaning of the Commerce Clause, all without proper legislative authority through amendment.

(B) The General Assembly rejects and denies this unauthorized and excessive abuse of power that has primarily acted as a detriment to states' rights and individual rights and constituted a deliberate attempt to negatively alter the balance of powers.

(b)(1) In accordance with the United States Constitution, Congress and the federal government is denied the power to establish or affect laws within the state that are repugnant and obtrusive to the United States Constitution, the Arkansas Constitution, state law, and the citizens of the state.

(2) The federal government is restrained and confined in authority by the eighteen (18) items as set forth in Article 1, Section 8, of the United States Constitution.

(3) Congress and the federal government are hereby denied the power to bind the states under foreign statute, court order or opinion, or executive order, other than those provisions duly ratified by the Congress as a treaty, so long as the treaty does not violate the Arkansas Constitution or the United States Constitution.

(4) No authority has ever been given to the legislative branch, the executive branch, or the judicial branch of the federal government to preempt state legislation or to destroy the balance of powers set forth in the United States Constitution.

(c) This subchapter serves as a notice and demand to the United States Government to cease and desist all activities outside the scope of its designated constitutionally enumerated powers that attempt to diminish the balance of powers as established by the United States Constitution.

10-3-2703. Joint Legislative Committee on Neutralization of Federal Laws.

(a) The Joint Legislative Committee on Neutralization of Federal Laws is created.

(b) The committee shall consist of fourteen (14) members as follows:

(1) The President Pro Tempore of the Senate or his or her designee, who shall serve as a cochair of the committee;

(2) Six (6) members of the Senate appointed by the President Pro Tempore of the Senate;

(3) The Speaker of the House of Representatives or his or her designee, who shall serve as a cochair of the committee; and

(4) Six (6) members of the House of Representatives appointed by the Speaker of the House of Representatives.

(c) No more than four (4) members of the Senate and no more than four (4) members of the House of Representatives may be from the same political party.

(d) Members shall serve two-year terms beginning and ending on the convening of the regular session of the General Assembly each odd-numbered year.

(e) A majority of the members of the committee constitute a quorum for the transaction of business.

(f) The committee shall meet on the call of either cochair of the committee.

(g)(1) The committee shall function during the interim between regular sessions, fiscal sessions, or special sessions of the General Assembly, while the General Assembly is in session, and while the General Assembly is in recess.

(2)(A) If the committee meets at a time when the General Assembly is not in session, the members of the committee are entitled to per diem and mileage reimbursement at the rate for attending meetings of the Legislative Council.

(B) The per diem or mileage reimbursement shall be paid from funds appropriated for the payment of per diem and mileage for attendance at meetings of interim committees of the General Assembly.

10-3-2704. Powers and duties.

(a) The Joint Legislative Committee on Neutralization of Federal Laws may review all new and existing federal statutes, regulations, mandates, and executive orders for the purpose of determining their constitutionality.

(b) The committee, by a simple majority, may recommend to the General Assembly the neutralization in its entirety of a specific federal law, regulation, mandate, or executive order that is:

(1) Beyond the scope and power assigned to the federal government under Article 1 of the United States Constitution; or

(2) In direct violation of the Arkansas Constitution.

(c)(1) Upon the committee's recommendation for neutralization, the General Assembly shall vote on whether to neutralize the federal statute, regulation, mandate, or executive order at a regular session.

(2) Until the vote of the General Assembly, the federal statute, regulation, mandate, or executive order in question is of no effect upon the citizens of the State of Arkansas.

(3) The appropriate documentation reflecting the vote of the General Assembly shall be documented in the journals of the respective chambers.

(d) If the General Assembly votes by simple majority to neutralize a federal statute, regulation, mandate, or executive order on the grounds of constitutionality, neither the state nor its citizens shall recognize or be obligated to comply with the statute, regulation, mandate, or executive order.

(e) The committee shall communicate the intentions of this subchapter to the legislatures of the several states to assure that Arkansas continues in the same esteem and friendship as currently exists and to be friendly to the peace, happiness, and prosperity of all the states.

10-3-2705. Jurisdiction for cause of action.

(a) The General Assembly finds:

(1) Under the Tenth Amendment of the United States Constitution, the people and State of Arkansas retain their exclusive power to regulate the State of Arkansas, subject only to the guarantee of the Fourteenth Amendment of the United States Constitution that the people and State of Arkansas shall exercise sovereign power in accordance with each citizen's lawful privileges or immunities and in compliance with the requirements of due process and equal protection of the law;

(2) The Ninth Amendment of the United States Constitution secures and reserves to the people of Arkansas, as against the federal government, their natural rights to life, liberty, and property as entailed by the traditional Anglo-American conception of ordered liberty and as secured by state law, including without limitation their rights as they were understood and secured by the law at the time that the amendment was ratified on December 15, 1791, as well as their rights as they were understood and secured by the law in the State of Arkansas at the time the Arkansas

Constitution was adopted on October 13, 1874; and

(3) The guarantee of those rights is a matter of compact between the state and people of Arkansas and the United States as of the time that Arkansas was admitted to statehood in 1836.

(b) It is the duty of the General Assembly to adopt and enact all measures that may become necessary to prevent the wrongful enforcement of any federal laws, regulations, mandates, and executive orders duly neutralized within the boundaries and limits of Arkansas.

(c)(1) In accordance with Article 3, Section 2, of the United States Constitution, in any cause of action between Arkansas and the federal government regarding state neutralization of a federal state, regulation, mandate, or executive order, the proper jurisdiction for these disputes shall lie with the Supreme Court of the United States.

(2) In the event of improper adjudication by the Supreme Court of the United States, the interest of the citizens of the State of Arkansas shall be maintained and retained through referendum.

SECTION 2. NOT TO BE CODIFIED. A certified copy of this act shall be sent to:

(1) The President of the United States;

(2) The President of the United States Senate;

(3) The Speaker and Clerk of the United States House of Representatives; and

(4) Each member of the Arkansas Congressional delegation, with the request that this act be officially entered into the Congressional Record.

SECTION 3. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that this act is necessary to prevent unconstitutional encroachments by the federal government upon the rights of the citizens of the State of Arkansas and that this act should become effective as soon as possible to stop such encroachments at the earliest opportunity. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/Alexander