

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

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

HOUSE BILL 1643

By: Representative Eubanks

By: Senator Rapert

For An Act To Be Entitled

AN ACT ALLOWING AN ELECTED STATE OFFICIAL TO OBTAIN REIMBURSEMENT FOR LEGAL FEES AND COSTS INCURRED IN DEFENSE OF ACTIONS UNDERTAKEN IN HIS OR HER OFFICIAL CAPACITY; AMENDING ARKANSAS CONSTITUTION, ARTICLE 19, § 30(B)(2)(B), AS AUTHORIZED BY ARKANSAS CONSTITUTION, ARTICLE 19, § 30(D)(1)(A); AMENDING PORTIONS OF ARKANSAS LAW RESULTING FROM INITIATED ACT 1 OF 1988, INITIATED ACT 1 OF 1990, AND INITIATED ACT 1 OF 1996; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO ALLOW AN ELECTED STATE OFFICIAL TO OBTAIN REIMBURSEMENT FOR LEGAL FEES AND COSTS; TO AMEND A PROVISION OF THE ARKANSAS CONSTITUTION AND PORTIONS OF LAW RESULTING FROM INITIATED ACTS; AND TO DECLARE AN EMERGENCY.

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

SECTION 1. Pursuant to the authority granted by Arkansas Constitution, Article 19, § 30(d)(1)(A), Arkansas Constitution, Article 19, § 30(b)(2)(B), concerning gifts from lobbyists, is amended to add an additional subdivision to read as follows:

(xv) Reimbursement for the legal fees and costs



incurred by a person elected or appointed to an office under subdivisions (a)(1)-(8) of this section when:

(a) The person elected or appointed to an office under subdivisions (a)(1)-(8) of this section:

(1) Is sued in his or her personal capacity in a claim filed in:

(A) The Arkansas State Claims Commission;

(B) A state court; or

(C) A federal court;

(2) Has been sued for actions undertaken in his or her official capacity as a person elected or appointed to an office under subdivisions (a)(1)-(8) of this section;

(3) Requests in writing representation by the Attorney General under § 25-16-702 and the representation is denied by the Attorney General in writing; and

(4) Retains legal counsel at his or her own expense or counsel is appointed or hired by the Governor to represent the person elected or appointed to an office under subdivisions (a)(1)-(8) of this section and the person elected or appointed to an office under subdivisions (a)(1)-(8) of this section pays for the services at his or her own expense; and

(b) Either:

(1) The person elected or appointed to an office under subdivisions (a)(1)-(8) of this section substantially prevails on the merits of the action before the court or the Arkansas State Claims Commission; or

(2) The suit against the person elected or appointed to an office under subdivisions (a)(1)-(8) of this section is dismissed:

(A) By the court or the Arkansas State Claims Commission with or without prejudice; or

(B) Upon motion by the plaintiff;

SECTION 2. Arkansas Code § 7-6-201, concerning definitions applicable to campaign financing and resulting from Initiated Act 1 of 1990 and

Initiated Act 1 of 1996, is amended to add an additional subdivision to read as follows:

(19) "Elected state official" means a person holding an elective office of state government as:

- (A) Governor;
- (B) Lieutenant Governor;
- (C) Secretary of State;
- (D) Treasurer of State;
- (E) Auditor of State;
- (F) Attorney General;
- (G) Commissioner of State Lands; or
- (H) A member of the General Assembly.

SECTION 3. Arkansas Code § 7-6-203, concerning the use of campaign funds as personal income and resulting from Initiated Act 1 of 1990 and Initiated Act 1 of 1996, is amended to add an additional subsection to read as follows:

(j) It shall not be considered a taking of campaign funds as personal income if an elected state official uses campaign funds or carryover funds to reimburse himself or herself for legal fees and costs incurred when:

(1) The elected state official:

(A) Is sued in his or her personal capacity in a claim filed in:

- (i) The Arkansas State Claims Commission;
- (ii) A state court; or
- (iii) A federal court;

(B) Has been sued for actions undertaken in his or her official capacity as an elected state official;

(C) Requests in writing representation by the Attorney General under § 25-16-702 and the representation is denied by the Attorney General in writing; and

(D) Retains legal counsel at his or her own expense or counsel is appointed or hired by the Governor to represent the elected state official and the elected state official pays for the services at his or her own expense; and

(2) Either:

(A) The elected state official substantially prevails on the merits of the action before the court or the Arkansas State Claims Commission; or

(B) The suit against the elected state official is dismissed:

(i) By the court or the Arkansas State Claims Commission with or without prejudice; or

(ii) Upon motion by the plaintiff.

SECTION 4. Arkansas Code § 21-8-402(5)(B), concerning the definition of a gift and resulting from Initiated Act 1 of 1988, is amended to add an additional subdivision to read as follows:

(xvii) Reimbursement for the legal fees and costs incurred by an elected state official when:

(a) The elected state official:

(1) Is sued in his or her personal capacity in a claim filed in:

(A) The Arkansas State Claims Commission;

(B) A state court; or

(C) A federal court;

(2) Has been sued for actions undertaken in his or her official capacity as an elected state official;

(3) Requests in writing representation by the Attorney General under § 25-16-702 and the representation is denied by the Attorney General in writing; and

(4) Retains legal counsel at his or her own expense or counsel is appointed or hired by the Governor to represent the elected state official and the elected state official pays for the services at his or her own expense; and

(b) Either:

(1) The elected state official substantially prevails on the merits of the action before the court or the Arkansas State Claims Commission; or

(2) The suit against the elected state official is dismissed:

(A) By the court or the Arkansas State Claims Commission with or without prejudice; or

(B) Upon motion by the plaintiff;

SECTION 5. Arkansas Code § 21-8-402, concerning definitions applicable to certain laws regarding disclosure by lobbyists and state and local officials and resulting from Initiated Act 1 of 1988, is amended to add an additional subdivision to read as follows:

(22) "Elected state official" means a person holding an elective office of state government as:

(A) Governor;

(B) Lieutenant Governor;

(C) Secretary of State;

(D) Treasurer of State;

(E) Auditor of State;

(F) Attorney General;

(G) Commissioner of State Lands; or

(H) A member of the General Assembly.

SECTION 6. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that elected state officials are threatened by lawsuits for the performance of their elected duties; that legal representation by the Attorney General is not always available for elected state officials; that the legal fees incurred by elected state officials who have to provide his or her own legal representation place a burden on those elected state officials; that it is in the interest of the public peace, health, and safety of the State of Arkansas for elected state officials to be able to defend their actions undertaken on behalf of the state; and that this act is immediately necessary because requiring an elected state official to provide their own legal representation with no option for reimbursement threatens the public peace, health, and safety of the citizens of Arkansas by limiting the ability of an elected state official to defend actions undertaken in his or her official capacity for the benefit of the State of Arkansas. 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.