

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

State of Arkansas  
94th General Assembly  
Regular Session, 2023

As Engrossed: S2/13/23 S2/22/23  
**A Bill**

SENATE BILL 121

By: Senator M. Johnson  
By: Representative Gazaway

### For An Act To Be Entitled

AN ACT TO AMEND THE ARKANSAS STATE CAPITOL AND  
HISTORICAL MONUMENT PROTECTION ACT; TO DECLARE AN  
EMERGENCY; AND FOR OTHER PURPOSES.

### Subtitle

TO AMEND THE ARKANSAS STATE CAPITOL AND  
HISTORICAL MONUMENT PROTECTION ACT; AND  
TO DECLARE AN EMERGENCY.

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

SECTION 1. Arkansas Code § 22-3-2102, concerning definitions under the Arkansas State Capitol and Historical Monument Protection Act, is amended to add an additional subdivision to read as follows:

(6) "Temporary" means sixty (60) days or less.

SECTION 2. Arkansas Code § 22-3-2104(f), concerning the preservation of historical monuments, is amended to add additional subdivisions to read as follows:

(3)(A)(i) If a waiver is not granted by the Arkansas History Commission to remove a historical monument or memorial and the historical monument or memorial is removed or has been removed without a waiver, a citizen may bring an action in a court of competent jurisdiction to enjoin the removal of the historical monument or memorial without a waiver.

(ii) The court of competent jurisdiction shall:

(a) Enjoin the removal of the historical



monument or memorial; or

(b) Order the governmental entity having title to, or custody of, the removed historical monument or memorial to restore the historical monument or memorial to its original condition and location.

(B) Subdivision (f)(3)(A) of this section applies to a historical monument or memorial:

(i) Removed without a waiver after April 28, 2021;  
or

(ii) Partially removed by a public entity in the last five (5) years and any portion removed is still in the possession of the public entity.

(4) A grant of a waiver or denial of a waiver under this subchapter is binding on the entity, and the entity is not authorized to petition for the grant of a waiver absent a substantial change in circumstances justifying the waiver.

(5) The decision of the Arkansas History Commission either granting or denying a waiver under this subchapter shall be:

(A) In writing; and

(B) Maintained as a permanent record of the Arkansas History Commission.

SECTION 3. Arkansas Code § 22-3-2105, concerning applicability under the Arkansas State Capitol and Historical Monument Protection Act, is amended to add additional subsections to read as follows:

(f)(1)(A) In any action to enforce the rights granted by this subchapter, or in any appeal from an action under subsection (b) of this section, the court of competent jurisdiction may assess against the defendant reasonable attorney's fees and other litigation expenses reasonably incurred by a plaintiff who has obtained a ruling in favor of the plaintiff, unless the court of competent jurisdiction finds that the position of the defendant was substantially justified.

(B) For the purposes of this section, a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time it was initiated.

(2) If the defendant has substantially prevailed in the action, the court of competent jurisdiction may assess expenses against the plaintiff

only upon a finding that the action was initiated primarily for frivolous or dilatory purposes.

(g)(1) Notwithstanding subdivision (f)(1) of this section, the court of competent jurisdiction shall not assess reasonable attorney's fees or other litigation expenses reasonably incurred by a plaintiff against the State of Arkansas or a department, agency, or institution of the state.

(2)(A) A plaintiff who substantially prevails in an action under this section against the State of Arkansas or a department, agency, or institution of the state may file a claim with the Arkansas State Claims Commission to recover reasonable attorney's fees and other litigation expenses reasonably incurred.

(B) A claim for reasonable attorney's fees and litigation expenses reasonably incurred in an action against the State of Arkansas or a department, agency, or institution of the state shall be filed with the Arkansas State Claims Commission under § 19-10-201 et seq. within sixty (60) days of the final disposition of an action under this section.

SECTION 4. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the State Capitol, monuments, veterans' cemeteries, and other historical monuments require additional protection; that the historical monuments have an irreplaceable value to the people of Arkansas who wish to preserve these venerated treasures; and that this act is immediately necessary because there is a continuing and imminent threat to historical monuments, and the preservation of these historical monuments protects the public peace. 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/M. Johnson*