

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

State of Arkansas
95th General Assembly
Regular Session, 2025

A Bill

HOUSE BILL 1754

By: Representative Gonzales

For An Act To Be Entitled

AN ACT TO CREATE THE PRIVATE PROPERTY PROTECTION ACT;
TO PROHIBIT CERTAIN PROPERTY USE RESTRICTIONS BY
GOVERNMENTAL ENTITIES; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE PRIVATE PROPERTY
PROTECTION ACT; AND TO PROHIBIT CERTAIN
PROPERTY USE RESTRICTIONS BY
GOVERNMENTAL ENTITIES.

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

SECTION 1. Arkansas Code Title 18, Chapter 11 is amended to add an additional subchapter to read as follows:

Subchapter 9 – Private Property Protection Act

18-11-901. Title.

This subchapter shall be known and may be cited as the "Private Property Protection Act".

18-11-902. Legislative findings and intent.

(a) The General Assembly finds that:

(1) The General Assembly has the highest interest in vindicating and protecting private property rights; and

(2) The constitutional right to acquire, possess, and protect property under Arkansas Constitution, Article 2, § 2, also embodies the notion of the fundamental right to use property, including the use of



property for financial gain or benefit.

(b) The General Assembly intends for this subchapter to ensure that property use restrictions are limited to those demonstrably necessary and narrowly tailored to fulfill a compelling governmental interest.

18-11-903. Definitions.

As used in this subchapter:

(1) "Compelling governmental interest" means a governmental interest of the highest order;

(2) "Governmental entity" means a unit of state or local government, including without limitation:

(A) A state agency;

(B) A county;

(C) A municipality; or

(D) Other political subdivision of the state;

(3) "Nuisance" means anything that:

(A) Is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property; or

(B) Unlawfully obstructs the free passage or use in the customary manner of a navigable lake, river, bay, stream, canal, or basin or any public park, square, street, or highway;

(4) "Private property" means the following that are owned by a private person or private entity:

(A) Land;

(B) Property that is affixed to land, including without limitation a manufactured home declared an improvement to real property;

(C) Property that is incidental or appurtenant to land; or

(D) Property that is immovable by law; and

(5) "Property use restriction" means a law, ordinance, resolution, regulation, rule, policy, condition, test, permit, or other administrative action enacted by a governmental entity on or after the effective date of this act that restricts the use and enjoyment of private property by the property owner or other person in lawful possession of the private property.

18-11-904. Limitations on property use restrictions – Exceptions.

(a) Except as provided in subsection (b) of this section, a property use restriction related to a planning board, the planning or zoning of property, local regulation of a subdivision, or land use planning shall be limited to restrictions that are demonstrably necessary and narrowly tailored to fulfill a compelling governmental interest that cannot be achieved through less restrictive means.

(b) This section does not apply to:

- (1) Actions that prevent or abate nuisances;
- (2) The enforcement of the terms of a license, permit, or authorization, including requirements imposed by federal law;
- (3) An enforcement action by a governmental entity that is the result of a final, nonappealable judicial determination; or
- (4) A restrictive covenant entered into between private parties, unless the implementation or adoption of the restrictive covenant was required by a governmental entity.

18-11-905. Enforcement.

(a) An owner of private property that is subject to a property use restriction in violation of § 18-11-904 may file an action in a court of competent jurisdiction to challenge the property use restriction.

(b) The plaintiff shall prevail in an action filed under this section unless the governmental entity demonstrates to the court that:

- (1) The property use restriction is demonstrably necessary and narrowly tailored to fulfill a compelling governmental interest;
- (2) The property use restriction is the least restrictive means to achieve the stated purpose of the restriction; and
- (3) Reasonable alternatives could not achieve the stated interest of the governmental entity.

(c) If a plaintiff prevails in an action under subsection (b) of this section, the court shall permanently enjoin further enforcement of the property use restriction and shall award reasonable attorney fees and costs to the plaintiff.

(d) This section does not supersede or preempt an existing cause of action that a person has under the United States Constitution, Arkansas Constitution, a statute, or common law.

18-11-906. Statute of limitation.

The period prescribed for the commencement of an action under § 18-11-905 is five (5) years from the date a person becomes aware of or reasonably may have become aware of the cause of action having accrued.

SECTION 2. DO NOT CODIFY. Severability clause.

If any provision of this act or the application of this act to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end, the provisions of this act are declared severable.