

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 84th General Assembly  
3 Regular Session, 2003  
4

*As Engrossed: S2/17/03*

# A Bill

Act 298 of 2003  
SENATE BILL 269

5 By: Senators Hill, Luker  
6 *By: Representatives Thyer, Lamoureux, Cleveland, Mahony*  
7

## For An Act To Be Entitled

10 AN ACT TO CLARIFY THE CIRCUMSTANCES UNDER WHICH  
11 THE STATE WAIVES ITS SOVEREIGN IMMUNITY; AND FOR  
12 OTHER PURPOSES.

### Subtitle

15 TO CLARIFY THE CIRCUMSTANCES UNDER WHICH  
16 THE STATE WAIVES ITS SOVEREIGN IMMUNITY.

18  
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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21 SECTION 1. The state does not waive its sovereign immunity when,  
22 through its counsel or otherwise, it enters into negotiations concerning the  
23 possible settlement of pending or threatened claims or litigation, whether  
24 the pending or threatened claims or litigation are governed by Rule 23 of the  
25 Arkansas or Federal Rules of Civil Procedure or otherwise.  
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27 SECTION 2. The state does not waive its sovereign immunity when,  
28 through its counsel or otherwise, it communicates to a court, counsel,  
29 citizens or otherwise with respect to the possibility of settling, on any  
30 terms or conditions, any pending or threatened claims or litigation, whether  
31 the pending or threatened claims or litigation are governed by Rule 23 of the  
32 Arkansas or Federal Rules of Civil Procedure or otherwise.  
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34 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the  
35 General Assembly that in the case of Lake View School District No. 25 of  
36 Phillips County v. Mike Huckabee, et al., 340 Ark. 481 (2000), the Supreme



1 Court held that the state waived its sovereign immunity by offering a  
 2 proposed settlement in a class action case that, if approved by the trial  
 3 court, would have provided for payment by the state of attorneys' fees to  
 4 counsel for the plaintiff class representative; the Supreme Court further  
 5 held that such waiver of immunity survived even though the proposed  
 6 settlement was rejected by the trial court and the Supreme Court. It is  
 7 further found and determined by the General Assembly that the Supreme Court's  
 8 decision has a chilling effect on the ability and willingness of the state  
 9 and its attorneys to discuss, propose, negotiate or communicate with regard  
 10 to potential settlement of class action and other pending or threatened  
 11 claims or litigation. It is further found and determined by the General  
 12 Assembly that such chilling effect will hinder or deter settlement of pending  
 13 or threatened litigation in which the state is involved and is, therefore,  
 14 contrary to sound public policy. Therefore, an emergency is declared to  
 15 exist and this act being immediately necessary for the preservation of the  
 16 public peace, health, and safety shall become effective on:

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

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

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

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 23 /s/ Hill  
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26 **APPROVED: 3/4/2003**  
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