

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

As Engrossed: S3/15/21

A Bill

SENATE BILL 469

5 By: Senators T. Garner, B. Ballinger, Beckham, Bledsoe, B. Davis, Flippo, Irvin, M. Johnson, D.
6 Sullivan, *Rapert, Hill*

7 By: Representatives Vaught, Barker, Beaty Jr., Bentley, M. Berry, Brooks, Brown, Bryant, Carr,
8 Cavanaugh, C. Cooper, Cozart, Dotson, Evans, Gonzales, M. Gray, Haak, Hollowell, Lowery,
9 Lundstrum, McCollum, McNair, Miller, Milligan, Payton, Ray, Richmond, B. Smith, Speaks, Wardlaw,
10 Wing, Womack, *Underwood*

For An Act To Be Entitled

11
12 AN ACT TO ESTABLISH A PROCESS TO REVIEW PRESIDENTIAL
13 EXECUTIVE ORDERS; TO ALLOW THE ATTORNEY GENERAL TO
14 REVIEW PRESIDENTIAL EXECUTIVE ORDERS; TO ADDRESS
15 IMPLEMENTATION OF A PRESIDENTIAL EXECUTIVE ORDER
16 UNDER REVIEW; AND FOR OTHER PURPOSES.
17
18
19

Subtitle

20
21 TO ESTABLISH A PROCESS TO REVIEW
22 PRESIDENTIAL EXECUTIVE ORDERS; TO ALLOW
23 THE ATTORNEY GENERAL TO REVIEW
24 PRESIDENTIAL EXECUTIVE ORDERS; AND TO
25 ADDRESS IMPLEMENTATION OF A PRESIDENTIAL
26 EXECUTIVE ORDER UNDER REVIEW.
27
28

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

30
31 SECTION 1. DO NOT CODIFY. Scope.

32 (a)(1) The Tenth Amendment to the United States Constitution
33 guarantees to the states and their people all powers not granted to the
34 United States Government elsewhere in the United States Constitution and
35 reserves to the State of Arkansas and its people certain powers as those
36 powers were understood at the time that Arkansas was admitted into statehood



1 in 1836.

2 (2) The guaranty of those powers is a matter of contract between
3 the State of Arkansas and its people and the United States as of the time
4 that the compact with the United States was agreed upon and adopted by
5 Arkansas and the United States in 1836.

6 (b)(1) The Ninth Amendment to the United States Constitution
7 guarantees to the people rights not granted in the United States Constitution
8 and reserves to the people of Arkansas certain rights as they were understood
9 at the time that Arkansas was admitted into statehood in 1836.

10 (2) The guaranty of those rights is a matter of contract between
11 the State of Arkansas and its people and the United States as of the time
12 that the compact with the United States was agreed upon and adopted by
13 Arkansas and the United States in 1836.

14 (c) The regulation of intrastate commerce is vested in the states
15 under the Ninth and Tenth Amendments to the United States Constitution.

16 (d) The Second Amendment to the United States Constitution reserves
17 the right to keep and bear arms to the people as that right was understood at
18 the time that Arkansas was admitted into statehood in 1836, and the guaranty
19 of the right is a matter of contract between the State of Arkansas and its
20 people and the United States as of the time that the compact with the United
21 States was agreed upon and adopted by Arkansas and the United States in 1836.

22 (e)(1) Arkansas Constitution, Article 2, § 5, clearly secures to
23 Arkansas citizens and prohibits government interference with the right of
24 individual Arkansas citizens to keep and bear arms.

25 (2) This constitutional protection is unchanged from the 1836
26 Arkansas Constitution, which was approved by the United States Congress and
27 the people of Arkansas, and the right exists as it was understood at the time
28 that the compact with the United States was agreed upon and adopted by
29 Arkansas and the United States in 1836.

30
31 SECTION 2. Arkansas Code Title 25, Chapter 1, is amended to add an
32 additional subchapter to read as follows:

33 Subchapter 6 – Review of Presidential Executive Orders

34
35 25-1-601. Legislative intent.

36 The General Assembly finds that:

1 (1) It is the duty of the General Assembly to make
2 determinations regarding the use of state personnel and state resources;

3 (2) Making determinations about how state personnel and state
4 resources shall be used is a function of the General Assembly;

5 (3) The citizens of Arkansas have elected the members of the
6 General Assembly to exercise the ability to make political determinations
7 regarding the resources of the state; and

8 (4) A determination or action taken under this subchapter is not
9 a judicial determination or action.

10
11 25-1-602. Review of presidential executive orders.

12 (a)(1) The General Assembly may take whatever actions it deems
13 necessary concerning presidential executive orders that may affect the State
14 of Arkansas, its officials, or its financial resources.

15 (2)(A) During the interim between legislative sessions, the
16 Legislative Council may schedule a meeting to review an executive order
17 issued by the President of the United States that has not been affirmed by a
18 vote of the United States Congress and signed into law as prescribed by the
19 United States Constitution.

20 (B) During legislative sessions, the Joint Budget
21 Committee may schedule a meeting to review an executive order issued by the
22 President of the United States that has not been affirmed by a vote of the
23 United States Congress and signed into law as prescribed by the United States
24 Constitution.

25 (3)(A) The Legislative Council or Joint Budget Committee shall
26 refer an executive order issued by the President of the United States that
27 has not been affirmed by a vote of the United States Congress and signed into
28 law as prescribed by the United States Constitution that is under review by
29 the General Assembly to the appropriate standing committees of the General
30 Assembly that would address the subject matter of the executive order under
31 review.

32 (B) The standing committees of the General Assembly
33 meeting jointly may request the Attorney General to review the presidential
34 executive order under review by the standing committees and prepare an
35 opinion to be delivered to the designated standing committees stating:

36 (i) A brief description of the issues involved;

1 (ii) The Attorney General's opinion of whether the
2 presidential executive order is:

3 (a) Constitutional under the United States
4 Constitution; or

5 (b) In conflict with the Arkansas
6 Constitution;

7 (iii) The Attorney General's opinion of whether the
8 state should seek an exemption from the application of the presidential
9 executive order;

10 (iv) The Attorney General's opinion of whether the
11 state should seek to have the order declared to be an unconstitutional
12 exercise of legislative authority by the President of the United States; and

13 (v) Other information that will enable the
14 designated standing committee to determine the action that may be deemed
15 necessary to protect the interests of the General Assembly and the State of
16 Arkansas.

17 (4) The standing committees shall make a recommendation to the
18 Legislative Council during the interim between legislative sessions, or the
19 Joint Budget Committee during legislative sessions, including:

20 (A) Whether state resources and personnel are required to
21 implement the presidential executive order; and

22 (B) Identifying other action deemed necessary to protect
23 the General Assembly's and the state's interests in litigation regarding the
24 presidential executive order.

25 (5)(A) During the interim between legislative sessions, the
26 Legislative Council shall, and during legislative sessions, the Joint Budget
27 Committee shall:

28 (i) Call a meeting to discuss the report of the
29 standing committees' review of a presidential executive order; and

30 (ii) Determine:

31 (a) Whether state resources and personnel are
32 required to implement the presidential executive order; and

33 (b) Whether to take other action deemed
34 necessary to protect the General Assembly's and the state's interests in
35 litigation regarding the presidential executive order.

36 (B) All determinations of action shall be made by motion

1 and must receive a majority vote.

2 (b) Notwithstanding any other provision of law, the state, a political
3 subdivision, or any entity that receives an appropriation of funds from the
4 General Assembly shall not implement a presidential executive order using
5 state resources and personnel if:

6 (1) The Legislative Council or the Joint Budget Committee issues
7 a political determination that the presidential executive order is
8 unconstitutional and the presidential executive order restricts a person's
9 rights and relates to:

10 (A) Pandemics or other health emergencies;

11 (B) The regulation of natural resources, including coal
12 and oil;

13 (C) The regulation of the agriculture industry;

14 (D) The use of land;

15 (E) The regulation of the financial sector as it relates
16 to environmental, social, or governance standards; or

17 (F) The regulation of the constitutional right to bear
18 arms;

19 (2) The Legislative Council, or the Joint Budget Committee if
20 the General Assembly is in regular, fiscal, or special session, affirmatively
21 votes to report the determination to the Governor; and

22 (3) The Governor directs the state, the political subdivision,
23 or the entity that receives an appropriation of funds from the General
24 Assembly to not implement the presidential executive order.

25
26 */s/T. Garner*
27
28
29
30
31
32
33
34
35
36