

1 State of Arkansas *As Engrossed: S2/13/23 S2/22/23*

2 94th General Assembly

A Bill

3 Regular Session, 2023

SENATE BILL 121

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5 By: Senator M. Johnson

6 *By: Representative Gazaway*

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For An Act To Be Entitled

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AN ACT TO AMEND THE ARKANSAS STATE CAPITOL AND

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HISTORICAL MONUMENT PROTECTION ACT; TO DECLARE AN

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EMERGENCY; AND FOR OTHER PURPOSES.

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Subtitle

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TO AMEND THE ARKANSAS STATE CAPITOL AND

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HISTORICAL MONUMENT PROTECTION ACT; AND

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TO DECLARE AN EMERGENCY.

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

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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:

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

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

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(3)(A)(i) If a waiver is not granted by the Arkansas History

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Commission to remove a historical monument or memorial and the historical

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monument or memorial is removed or has been removed without a waiver, a

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citizen may bring an action in a court of competent jurisdiction to enjoin

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the removal of the historical monument or memorial without a waiver.

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(ii) The court of competent jurisdiction shall:

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(a) Enjoin the removal of the historical



1 monument or memorial; or

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

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

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

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

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

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

18 (A) In writing; and

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

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

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

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

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

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

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

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

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

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18 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the
19 General Assembly of the State of Arkansas that the State Capitol, monuments,
20 veterans' cemeteries, and other historical monuments require additional
21 protection; that the historical monuments have an irreplaceable value to the
22 people of Arkansas who wish to preserve these venerated treasures; and that
23 this act is immediately necessary because there is a continuing and imminent
24 threat to historical monuments, and the preservation of these historical
25 monuments protects the public peace. Therefore, an emergency is declared to
26 exist, and this act being immediately necessary for the preservation of the
27 public peace, health, and safety shall become effective on:

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

29 (2) If the bill is neither approved nor vetoed by the Governor,
30 the expiration of the period of time during which the Governor may veto the
31 bill; or

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

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35 /s/M. Johnson
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