

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

As Engrossed: H3/27/13

A Bill

HOUSE BILL 1954

5 By: Representative Alexander
6

For An Act To Be Entitled

8 AN ACT TO AMEND ARKANSAS LAW CONCERNING INFRINGEMENTS
9 OF THE CONSTITUTIONALLY PROTECTED RIGHTS OF THE STATE
10 OF ARKANSAS OR ITS CITIZENS VIA A FEDERAL ACT DEEMED
11 *TO BE UNCONSTITUTIONAL; TO DECLARE AN EMERGENCY; AND*
12 *FOR OTHER PURPOSES.*
13
14

Subtitle

15 *TO AMEND ARKANSAS LAW CONCERNING*
16 *INFRINGEMENTS OF THE CONSTITUTIONALLY*
17 *PROTECTED RIGHTS OF THE STATE OF ARKANSAS*
18 *OR ITS CITIZENS VIA A FEDERAL ACT DEEMED*
19 *TO BE UNCONSTITUTIONAL; AND TO DECLARE AN*
20 *EMERGENCY.*
21
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23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 *SECTION 1. Arkansas Code Title 10, Chapter 3, is amended to add an*
27 *additional subchapter to read as follows:*

28 *Subchapter 3. – Balance of Powers Act*
29

30 *10-3-2701. Short title.*

31 *This subchapter shall be known and may be cited as the "Balance of*
32 *Powers Act."*
33

34 *10-3-2702. Legislative findings.*

35 *(a) The General Assembly finds:*

36 *(1)(A) The Tenth Amendment to the United States Constitution*



1 guarantees and reserves to the states and the people all powers not delegated
2 to the federal government elsewhere in the United States Constitution as they
3 were originally intended and publicly understood at the time that the
4 amendment was ratified on December 15, 1791, and subject only to
5 modifications by duly ratified subsequent amendments to the United States
6 Constitution.

7 (B) The guarantee of those powers is a matter of compact
8 between the state and people of Arkansas and the United States as of the time
9 that Arkansas was admitted to statehood on June 15, 1836;

10 (2) In accordance with the compact between the state and people
11 of Arkansas and the United States as of the time that Arkansas was admitted
12 to statehood in 1836, the Tenth Amendment of the United States Constitution
13 reserves to the state and people of Arkansas that other than the enumerated
14 powers expressly delegated to the United States under Article 1, Section 8,
15 of the United States Constitution, Congress and the federal government are
16 prohibited from exercising any purported additional control over or
17 commandeering rights belonging to the State of Arkansas or its people;

18 (3)(A) The United States Constitution, ratified on June 21,
19 1788, affirms that the sole and sovereign power to regulate the state
20 business and affairs rests in the state legislature and has always been a
21 compelling state concern and central to state sovereignty and security.

22 (B) Accordingly, the public meaning and understanding of
23 Article 1, Section 8, of the United States Constitution, the Establishment
24 Clause of the First Amendment of the United States Constitution, and the
25 Tenth Amendment of the United States Constitution is a matter of compact
26 between the state and people of Arkansas and the United States as of the time
27 that Arkansas was admitted to statehood in 1836.

28 (C)(i) Further, the power to regulate commerce among the
29 several states as delegated to the Congress in Article 1, Section 8, Clause
30 3, of the United States Constitution, the Commerce Clause, as understood at
31 the time of the founding of the United States, was meant to empower Congress
32 to regulate the buying and selling of products made by others, land,
33 associated finance and financial instruments, and navigation and other
34 carriage, across state jurisdictional lines.

35 (ii) This power to regulate commerce does not
36 include agriculture, manufacturing, mining, major crimes, or land use, nor

1 does it include activities that merely substantially affect commerce;

2 (4)(A) At the time the United States Constitution was ratified,
3 the Commerce Clause was not meant or understood to authorize Congress, the
4 executive branch, or the federal judiciary to regulate the state courts in
5 the matter of state substantive law or state judicial procedure.

6 (B) This meaning and understanding of Article 1, Section
7 8, of the United States Constitution, the Establishment Clause of the First
8 Amendment of the United States Constitution, and the Tenth Amendment of the
9 United States Constitution, as they pertain to the validity of religious
10 sectarian or foreign law as being controlling or influential precedent, has
11 never been modified by any duly ratified amendment to the United States
12 Constitution.

13 (C) Accordingly, the foregoing public meaning and
14 understanding of Article 1, Section 8 of the United States Constitution, and
15 the Tenth Amendment of the United States Constitution is a matter of compact
16 between the state and people of Arkansas and the United States as of the time
17 that Arkansas was admitted to statehood in 1836;

18 (5)(A) Article 1, Section 8, Clause 18, of the United States
19 Constitution, the Necessary and Proper Clause, is not a blank check that
20 empowers the federal government to do anything it deems necessary or proper.

21 (B) The Necessary and Proper Clause is instead a
22 limitation of power under the common-law doctrine of principals and
23 incidents, which restricts the power of Congress to exercise incidental
24 powers.

25 (C) There are two (2) main conditions required for
26 something to be incidental, and therefore, necessary and proper. The law or
27 power exercised shall be:

28 (i) Directly applicable to the main, enumerated
29 power; and

30 (ii) Lesser than the main power:

31 (6)(A) In accordance with Article 1, Section 8, Clause 1, of the
32 United States Constitution, the General Welfare Clause, does not empower the
33 federal government with the ability to do anything it deems good.

34 (B) It is instead a general restriction limiting the
35 exercise of the enumerated powers of Congress set forth in Article 1, Section
36 8, of the United States Constitution requiring that Congress only enact laws

1 that serve all citizens well and equally.

2 (C) When James Madison was asked if the General Welfare
3 Clause was a grant of power, he replied “[I]f not only the means but the
4 objects are unlimited, the parchment should be thrown into the fire at once.”

5 (D) Thus, the General Assembly reestablishes that the
6 General Welfare Clause is a limitation on the power of the federal government
7 to act in the welfare of all when passing laws in pursuance of the powers
8 delegated to the United States, showing no favor to any race, creed, color or
9 socio-economic class.

10 (E) Likewise, the Commerce Clause was not meant or
11 understood to authorize Congress or the federal judiciary to establish
12 religious, sectarian, or foreign statutes or case law as controlling or
13 influential precedent.

14 (F) Accordingly, the foregoing public meaning and
15 understanding of Article 1, Section 8, of the United States Constitution, the
16 Establishment Clause of the First Amendment of the United States Constitution
17 and the Tenth Amendment of the United States Constitution is a matter of
18 compact between the state and people of Arkansas and the United States as of
19 the time that Arkansas was admitted to statehood in 1836;

20 (7)(A) The General Assembly acknowledges that the Commerce
21 Clause, the General Welfare Clause, and the Necessary and Proper Clause of
22 the United States Constitution were amended, and made more specific and
23 limiting at the peoples’ insistence through the adoption of the Second
24 Amendment of the United States Constitution, the Ninth Amendment of the
25 United States Constitution, and the Tenth Amendment of the United States
26 Constitution.

27 (B) All amendments within the Bill of Rights were for the
28 purpose of further restricting federal powers, vesting and retaining the
29 ultimate power and control of the states by the people within the states.

30 (C) The General Assembly specifically rejects and denies
31 any federal claim of expanded or additional authority that the federal
32 government may from time to time attempt to exert, exercise, or enforce under
33 these clauses, as these actions totally disrupt and degrade the emphasis the
34 Founding Fathers of the United States placed on the balance of powers; and

35 (8)(A) The General Assembly and the citizens of the State of
36 Arkansas are aware that the federal government has amended and altered the

1 spirit and the meaning of the Commerce Clause, all without proper legislative
2 authority through amendment.

3 (B) The General Assembly rejects and denies this
4 unauthorized and excessive abuse of power that has primarily acted as a
5 detriment to states' rights and individual rights and constituted a deliberate
6 attempt to negatively alter the balance of powers.

7 (b)(1) In accordance with the United States Constitution, Congress and
8 the federal government is denied the power to establish or affect laws within
9 the state that are repugnant and obtrusive to the United States Constitution,
10 the Arkansas Constitution, state law, and the citizens of the state.

11 (2) The federal government is restrained and confined in
12 authority by the eighteen (18) items as set forth in Article 1, Section 8, of
13 the United States Constitution.

14 (3) Congress and the federal government are hereby denied the
15 power to bind the states under foreign statute, court order or opinion, or
16 executive order, other than those provisions duly ratified by the Congress as
17 a treaty, so long as the treaty does not violate the Arkansas Constitution or
18 the United States Constitution.

19 (4) No authority has ever been given to the legislative branch,
20 the executive branch, or the judicial branch of the federal government to
21 preempt state legislation or to destroy the balance of powers set forth in
22 the United States Constitution.

23 (c) This subchapter serves as a notice and demand to the United States
24 Government to cease and desist all activities outside the scope of its
25 designated constitutionally enumerated powers that attempt to diminish the
26 balance of powers as established by the United States Constitution.

27
28 10-3-2703. Joint Legislative Committee on Neutralization of Federal
29 Laws.

30 (a) The Joint Legislative Committee on Neutralization of Federal Laws
31 is created.

32 (b) The committee shall consist of fourteen (14) members as follows:

33 (1) The President Pro Tempore of the Senate or his or her
34 designee, who shall serve as a cochair of the committee;

35 (2) Six (6) members of the Senate appointed by the President Pro
36 Tempore of the Senate;

1 (3) The Speaker of the House of Representatives or his or her
2 designee, who shall serve as a cochair of the committee; and

3 (4) Six (6) members of the House of Representatives appointed by
4 the Speaker of the House of Representatives.

5 (c) No more than four (4) members of the Senate and no more than four
6 (4) members of the House of Representatives may be from the same political
7 party.

8 (d) Members shall serve two-year terms beginning and ending on the
9 convening of the regular session of the General Assembly each odd-numbered
10 year.

11 (e) A majority of the members of the committee constitute a quorum for
12 the transaction of business.

13 (f) The committee shall meet on the call of either cochair of the
14 committee.

15 (g)(1) The committee shall function during the interim between regular
16 sessions, fiscal sessions, or special sessions of the General Assembly, while
17 the General Assembly is in session, and while the General Assembly is in
18 recess.

19 (2)(A) If the committee meets at a time when the General
20 Assembly is not in session, the members of the committee are entitled to per
21 diem and mileage reimbursement at the rate for attending meetings of the
22 Legislative Council.

23 (B) The per diem or mileage reimbursement shall be paid
24 from funds appropriated for the payment of per diem and mileage for
25 attendance at meetings of interim committees of the General Assembly.

26
27 10-3-2704. Powers and duties.

28 (a) The Joint Legislative Committee on Neutralization of Federal Laws
29 may review all new and existing federal statutes, regulations, mandates, and
30 executive orders for the purpose of determining their constitutionality.

31 (b) The committee, by a simple majority, may recommend to the General
32 Assembly the neutralization in its entirety of a specific federal law,
33 regulation, mandate, or executive order that is:

34 (1) Beyond the scope and power assigned to the federal
35 government under Article 1 of the United States Constitution; or

36 (2) In direct violation of the Arkansas Constitution.

1 (c)(1) Upon the committee's recommendation for neutralization, the
2 General Assembly shall vote on whether to neutralize the federal statute,
3 regulation, mandate, or executive order at a regular session.

4 (2) Until the vote of the General Assembly, the federal statute,
5 regulation, mandate, or executive order in question is of no effect upon the
6 citizens of the State of Arkansas.

7 (3) The appropriate documentation reflecting the vote of the
8 General Assembly shall be documented in the journals of the respective
9 chambers.

10 (d) If the General Assembly votes by simple majority to neutralize a
11 federal statute, regulation, mandate, or executive order on the grounds of
12 constitutionality, neither the state nor its citizens shall recognize or be
13 obligated to comply with the statute, regulation, mandate, or executive
14 order.

15 (e) The committee shall communicate the intentions of this subchapter
16 to the legislatures of the several states to assure that Arkansas continues
17 in the same esteem and friendship as currently exists and to be friendly to
18 the peace, happiness, and prosperity of all the states.

19
20 10-3-2705. Jurisdiction for cause of action.

21 (a) The General Assembly finds:

22 (1) Under the Tenth Amendment of the United States Constitution,
23 the people and State of Arkansas retain their exclusive power to regulate the
24 State of Arkansas, subject only to the guarantee of the Fourteenth Amendment
25 of the United States Constitution that the people and State of Arkansas shall
26 exercise sovereign power in accordance with each citizen's lawful privileges
27 or immunities and in compliance with the requirements of due process and
28 equal protection of the law;

29 (2) The Ninth Amendment of the United States Constitution
30 secures and reserves to the people of Arkansas, as against the federal
31 government, their natural rights to life, liberty, and property as entailed
32 by the traditional Anglo-American conception of ordered liberty and as
33 secured by state law, including without limitation their rights as they were
34 understood and secured by the law at the time that the amendment was ratified
35 on December 15, 1791, as well as their rights as they were understood and
36 secured by the law in the State of Arkansas at the time the Arkansas

1 Constitution was adopted on October 13, 1874; and

2 (3) The guarantee of those rights is a matter of compact between
3 the state and people of Arkansas and the United States as of the time that
4 Arkansas was admitted to statehood in 1836.

5 (b) It is the duty of the General Assembly to adopt and enact all
6 measures that may become necessary to prevent the wrongful enforcement of any
7 federal laws, regulations, mandates, and executive orders duly neutralized
8 within the boundaries and limits of Arkansas.

9 (c)(1) In accordance with Article 3, Section 2, of the United States
10 Constitution, in any cause of action between Arkansas and the federal
11 government regarding state neutralization of a federal state, regulation,
12 mandate, or executive order, the proper jurisdiction for these disputes shall
13 lie with the Supreme Court of the United States.

14 (2) In the event of improper adjudication by the Supreme Court
15 of the United States, the interest of the citizens of the State of Arkansas
16 shall be maintained and retained through referendum.

17
18 SECTION 2. NOT TO BE CODIFIED. A certified copy of this act shall be
19 sent to:

20 (1) The President of the United States;

21 (2) The President of the United States Senate;

22 (3) The Speaker and Clerk of the United States House of
23 Representatives; and

24 (4) Each member of the Arkansas Congressional delegation, with
25 the request that this act be officially entered into the Congressional
26 Record.

27
28 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
29 General Assembly of the State of Arkansas that this act is necessary to
30 prevent unconstitutional encroachments by the federal government upon the
31 rights of the citizens of the State of Arkansas and that this act should
32 become effective as soon as possible to stop such encroachments at the
33 earliest opportunity. Therefore, an emergency is declared to exist, and this
34 act being immediately necessary for the preservation of the public peace,
35 health, and safety shall become effective on:

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

