

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

# A Bill

HOUSE BILL 1643

5 By: Representative Eubanks  
6 By: Senator Rapert  
7

## For An Act To Be Entitled

9 AN ACT ALLOWING AN ELECTED STATE OFFICIAL TO OBTAIN  
10 REIMBURSEMENT FOR LEGAL FEES AND COSTS INCURRED IN  
11 DEFENSE OF ACTIONS UNDERTAKEN IN HIS OR HER OFFICIAL  
12 CAPACITY; AMENDING ARKANSAS CONSTITUTION, ARTICLE 19,  
13 § 30(B)(2)(B), AS AUTHORIZED BY ARKANSAS  
14 CONSTITUTION, ARTICLE 19, § 30(D)(1)(A); AMENDING  
15 PORTIONS OF ARKANSAS LAW RESULTING FROM INITIATED ACT  
16 1 OF 1988, INITIATED ACT 1 OF 1990, AND INITIATED ACT  
17 1 OF 1996; TO DECLARE AN EMERGENCY; AND FOR OTHER  
18 PURPOSES.  
19

## Subtitle

21 TO ALLOW AN ELECTED STATE OFFICIAL TO  
22 OBTAIN REIMBURSEMENT FOR LEGAL FEES AND  
23 COSTS; TO AMEND A PROVISION OF THE  
24 ARKANSAS CONSTITUTION AND PORTIONS OF LAW  
25 RESULTING FROM INITIATED ACTS; AND TO  
26 DECLARE AN EMERGENCY.  
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30 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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32 SECTION 1. Pursuant to the authority granted by Arkansas Constitution,  
33 Article 19, § 30(d)(1)(A), Arkansas Constitution, Article 19, § 30(b)(2)(B),  
34 concerning gifts from lobbyists, is amended to add an additional subdivision  
35 to read as follows:

36 (xv) Reimbursement for the legal fees and costs



1 incurred by a person elected or appointed to an office under subdivisions  
 2 (a)(1)-(8) of this section when:

3 (a) The person elected or appointed to an  
 4 office under subdivisions (a)(1)-(8) of this section:

5 (1) Is sued in his or her personal  
 6 capacity in a claim filed in:

7 (A) The Arkansas State Claims  
 8 Commission;

9 (B) A state court; or

10 (C) A federal court;

11 (2) Has been sued for actions undertaken  
 12 in his or her official capacity as a person elected or appointed to an office  
 13 under subdivisions (a)(1)-(8) of this section;

14 (3) Requests in writing representation  
 15 by the Attorney General under § 25-16-702 and the representation is denied by  
 16 the Attorney General in writing; and

17 (4) Retains legal counsel at his or her  
 18 own expense or counsel is appointed or hired by the Governor to represent the  
 19 person elected or appointed to an office under subdivisions (a)(1)-(8) of  
 20 this section and the person elected or appointed to an office under  
 21 subdivisions (a)(1)-(8) of this section pays for the services at his or her  
 22 own expense; and

23 (b) Either:

24 (1) The person elected or appointed to  
 25 an office under subdivisions (a)(1)-(8) of this section substantially  
 26 prevails on the merits of the action before the court or the Arkansas State  
 27 Claims Commission; or

28 (2) The suit against the person elected  
 29 or appointed to an office under subdivisions (a)(1)-(8) of this section is  
 30 dismissed:

31 (A) By the court or the Arkansas  
 32 State Claims Commission with or without prejudice; or

33 (B) Upon motion by the plaintiff;  
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35 SECTION 2. Arkansas Code § 7-6-201, concerning definitions applicable  
 36 to campaign financing and resulting from Initiated Act 1 of 1990 and

1 Initiated Act 1 of 1996, is amended to add an additional subdivision to read  
 2 as follows:

3 (19) "Elected state official" means a person holding an elective  
 4 office of state government as:

- 5 (A) Governor;
- 6 (B) Lieutenant Governor;
- 7 (C) Secretary of State;
- 8 (D) Treasurer of State;
- 9 (E) Auditor of State;
- 10 (F) Attorney General;
- 11 (G) Commissioner of State Lands; or
- 12 (H) A member of the General Assembly.

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 14 SECTION 3. Arkansas Code § 7-6-203, concerning the use of campaign  
 15 funds as personal income and resulting from Initiated Act 1 of 1990 and  
 16 Initiated Act 1 of 1996, is amended to add an additional subsection to read  
 17 as follows:

18 (j) It shall not be considered a taking of campaign funds as personal  
 19 income if an elected state official uses campaign funds or carryover funds to  
 20 reimburse himself or herself for legal fees and costs incurred when:

21 (1) The elected state official:

22 (A) Is sued in his or her personal capacity in a claim  
 23 filed in:

- 24 (i) The Arkansas State Claims Commission;
- 25 (ii) A state court; or
- 26 (iii) A federal court;

27 (B) Has been sued for actions undertaken in his or her  
 28 official capacity as an elected state official;

29 (C) Requests in writing representation by the Attorney  
 30 General under § 25-16-702 and the representation is denied by the Attorney  
 31 General in writing; and

32 (D) Retains legal counsel at his or her own expense or  
 33 counsel is appointed or hired by the Governor to represent the elected state  
 34 official and the elected state official pays for the services at his or her  
 35 own expense; and

36 (2) Either:

1                   (A) The elected state official substantially prevails on  
 2 the merits of the action before the court or the Arkansas State Claims  
 3 Commission; or

4                   (B) The suit against the elected state official is  
 5 dismissed:

6                                 (i) By the court or the Arkansas State Claims  
 7 Commission with or without prejudice; or

8                                         (ii) Upon motion by the plaintiff.

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 10           SECTION 4. Arkansas Code § 21-8-402(5)(B), concerning the definition  
 11 of a gift and resulting from Initiated Act 1 of 1988, is amended to add an  
 12 additional subdivision to read as follows:

13                                 (xvii) Reimbursement for the legal fees and costs  
 14 incurred by an elected state official when:

15                                         (a) The elected state official:

16                                                         (1) Is sued in his or her personal  
 17 capacity in a claim filed in:

18                                                                                 (A) The Arkansas State Claims  
 19 Commission;

20                                                                                 (B) A state court; or

21                                                                                 (C) A federal court;

22                                                                                 (2) Has been sued for actions undertaken  
 23 in his or her official capacity as an elected state official;

24                                                                                 (3) Requests in writing representation  
 25 by the Attorney General under § 25-16-702 and the representation is denied by  
 26 the Attorney General in writing; and

27                                                                                 (4) Retains legal counsel at his or her  
 28 own expense or counsel is appointed or hired by the Governor to represent the  
 29 elected state official and the elected state official pays for the services  
 30 at his or her own expense; and

31                                         (b) Either:

32                                                         (1) The elected state official  
 33 substantially prevails on the merits of the action before the court or the  
 34 Arkansas State Claims Commission; or

35                                                                                 (2) The suit against the elected state  
 36 official is dismissed:

1 (A) By the court or the Arkansas  
 2 State Claims Commission with or without prejudice; or

3 (B) Upon motion by the plaintiff;  
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5 SECTION 5. Arkansas Code § 21-8-402, concerning definitions applicable  
 6 to certain laws regarding disclosure by lobbyists and state and local  
 7 officials and resulting from Initiated Act 1 of 1988, is amended to add an  
 8 additional subdivision to read as follows:

9 (22) "Elected state official" means a person holding an elective  
 10 office of state government as:

11 (A) Governor;

12 (B) Lieutenant Governor;

13 (C) Secretary of State;

14 (D) Treasurer of State;

15 (E) Auditor of State;

16 (F) Attorney General;

17 (G) Commissioner of State Lands; or

18 (H) A member of the General Assembly.  
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20 SECTION 6. EMERGENCY CLAUSE. It is found and determined by the  
 21 General Assembly of the State of Arkansas that elected state officials are  
 22 threatened by lawsuits for the performance of their elected duties; that  
 23 legal representation by the Attorney General is not always available for  
 24 elected state officials; that the legal fees incurred by elected state  
 25 officials who have to provide his or her own legal representation place a  
 26 burden on those elected state officials; that it is in the interest of the  
 27 public peace, health, and safety of the State of Arkansas for elected state  
 28 officials to be able to defend their actions undertaken on behalf of the  
 29 state; and that this act is immediately necessary because requiring an  
 30 elected state official to provide their own legal representation with no  
 31 option for reimbursement threatens the public peace, health, and safety of  
 32 the citizens of Arkansas by limiting the ability of an elected state official  
 33 to defend actions undertaken in his or her official capacity for the benefit  
 34 of the State of Arkansas. Therefore, an emergency is declared to exist, and  
 35 this act being immediately necessary for the preservation of the public  
 36 peace, health, and safety shall become effective on:

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

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

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