

An Act

ENROLLED HOUSE
BILL NO. 1236

By: McCall, McBride, Roberts
(Dustin), Russ, Worthen,
Lepak, Gann, Hilbert, West
(Josh), Cornwell, Lowe
(Dick), West (Rick), Grego,
May, Patzkowsky, Talley,
Newton, Williams, Lawson,
Mize, Hill, Hardin (David),
Steagall, Fetgatter,
Vancuren, Boatman,
Hasenbeck, Martinez,
Phillips, McEntire, Boles,
Hardin (Tommy), Sneed,
Johns, Osburn, Marti,
Strom, Caldwell (Chad),
Burns, Wallace, Culver,
Smith, Echols, Roberts
(Sean) and Pfeiffer of the
House

and

Treat, Daniels, Bullard,
Quinn, Stephens,
Standridge, Pemberton,
Rogers, Newhouse, Haste,
Weaver, David, Leewright,
Thompson, Montgomery, Hall,
Murdock, Allen, Howard,
Jech, Pederson and
Bergstrom of the Senate

An Act relating to the Attorney General; amending 74
O.S. 2011, Section 18b, as last amended by Section 1,
Chapter 444, O.S.L. 2019 (74 O.S. Supp. 2020, Section
18b), which relates to duties of the Attorney
General; requiring Attorney General to evaluate
certain actions of the federal government;
establishing the State Reserved Powers Protection

Unit of the Office of the Attorney General; stating duties of Unit; requiring Attorney General to take certain actions under certain circumstances; providing for review of Presidential executive orders and federal actions; prohibiting implementation of unconstitutional actions; providing for codification; providing an effective date; and declaring an emergency.

SUBJECT: Attorney General

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 74 O.S. 2011, Section 18b, as last amended by Section 1, Chapter 444, O.S.L. 2019 (74 O.S. Supp. 2020, Section 18b), is amended to read as follows:

Section 18b. A. The duties of the Attorney General as the chief law officer of the state shall be:

1. To appear for the state and prosecute and defend all actions and proceedings, civil or criminal, in the Supreme Court and Court of Criminal Appeals in which the state is interested as a party;

2. To appear for the state and prosecute and defend all actions and proceedings in any of the federal courts in which the state is interested as a party;

3. To initiate or appear in any action in which the interests of the state or the people of the state are at issue, or to appear at the request of the Governor, the Legislature, or either branch thereof, and prosecute and defend in any court or before any commission, board or officers any cause or proceeding, civil or criminal, in which the state may be a party or interested; and when so appearing in any such cause or proceeding, the Attorney General may, if the Attorney General deems it advisable and to the best interest of the state, take and assume control of the prosecution or defense of the state's interest therein;

4. To consult with and advise district attorneys, when requested by them, in all matters pertaining to the duties of their offices, when the district attorneys shall furnish the Attorney

General with a written opinion supported by citation of authorities upon the matter submitted;

5. To give an opinion in writing upon all questions of law submitted to the Attorney General by the Legislature or either branch thereof, or by any state officer, board, commission or department, provided, that the Attorney General shall not furnish opinions to any but district attorneys, the Legislature or either branch thereof, or any other state official, board, commission or department, and to them only upon matters in which they are officially interested;

6. At the request of the Governor, State Auditor and Inspector, State Treasurer, or either branch of the Legislature, to prosecute any official bond or any contract in which the state is interested, upon a breach thereof, and to prosecute or defend for the state all actions, civil or criminal, relating to any matter connected with either of their Departments;

7. Whenever requested by any state officer, board or commission, to prepare proper drafts for contracts, forms and other writing which may be wanted for the use of the state;

8. To prepare drafts of bills and resolutions for individual members of the Legislature upon their written request stating the gist of the bill or resolution desired;

9. To enforce the proper application of monies appropriated by the Legislature and to prosecute breaches of trust in the administration of such funds;

10. To institute actions to recover state monies illegally expended, to recover state property and to prevent the illegal use of any state property, upon the request of the Governor or the Legislature;

11. To pay into the State Treasury, immediately upon its receipt, all monies received by the Attorney General belonging to the state;

12. To settle, compromise and dispose of an action in which the Attorney General represents the interests of the state, so long as the consideration negotiated for such settlement, compromise or disposition is payable to the state or one of its agencies which is

a named party of the action and any monies, any property or other item of value is paid first to the State Treasury;

13. To keep and file copies of all opinions, contracts, forms and letters of the office, and to keep an index of all opinions, contracts and forms according to subject and section of the law construed or applied;

14. To keep a register or docket of all actions, demands and investigations prosecuted, defended or conducted by the Attorney General in behalf of the state. The register or docket shall give the style of the case or investigation, where pending, court number, office number, the gist of the matter, result and the names of the assistants who handled the matter;

15. To keep a complete office file of all cases and investigations handled by the Attorney General on behalf of the state;

16. To report to the Legislature or either branch thereof whenever requested upon any business relating to the duties of the Attorney General's office;

17. To institute civil actions against members of any state board or commission for failure of such members to perform their duties as prescribed by the statutes and the Constitution and to prosecute members of any state board or commission for violation of the criminal laws of this state where such violations have occurred in connection with the performance of such members' official duties;

18. To respond to any request for an opinion of the Attorney General's office, submitted by a member of the Legislature, regardless of subject matter, by written opinion determinative of the law regarding such subject matter;

19. To convene multicounty grand juries in such manner and for such purposes as provided by law; provided, such grand juries are composed of citizens from each of the counties on a pro rata basis by county;

20. To investigate any report by the State Auditor and Inspector filed with the Attorney General pursuant to Section 223 of this title and prosecute all actions, civil or criminal, relating to such reports or any irregularities or derelictions in the management

of public funds or property which are violations of the laws of this state;

21. To represent and protect the collective interests of all utility consumers of this state in rate-related proceedings before the Corporation Commission or in any other state or federal judicial or administrative proceeding;

22. To represent and protect the collective interests of insurance consumers of this state in rate-related proceedings before the Insurance Commissioner or in any other state or federal judicial or administrative proceeding; ~~and~~

23. To investigate and prosecute any criminal action relating to insurance fraud, if in the opinion of the Attorney General a criminal prosecution is warranted, or to refer such matters to the appropriate district attorney; and

24. To monitor and evaluate any action by the federal government including, but not limited to, executive orders by the President of the United States, rules or regulations promulgated by an agency of the federal government or acts of Congress to determine if such actions are in violation of the Tenth Amendment to the Constitution of the United States.

B. Nothing in this section shall be construed as requiring the Attorney General to appear and defend or prosecute in any court any cause or proceeding for or on behalf of the Oklahoma Tax Commission, the Board of Managers of the State Insurance Fund, or the Commissioners of the Land Office.

C. In all appeals from the Corporation Commission to the Supreme Court of Oklahoma in which the state is a party, the Attorney General shall have the right to designate counsel of the Corporation Commission as the Attorney General's legally appointed representative in such appeals, and it shall be the duty of the Corporation Commission counsel to act when so designated and to consult and advise with the Attorney General regarding such appeals prior to taking action therein.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 18q of Title 74, unless there is created a duplication in numbering, reads as follows:

There is hereby created within the Office of the Attorney General a State Reserved Powers Protection Unit to monitor and evaluate any action by the federal government including, but not limited to, executive orders by the President of the United States, rules or regulations promulgated by an agency of the federal government or acts of Congress to determine if such actions are in violation of the Tenth Amendment to the Constitution of the United States. If review by the Unit of any such action by the federal government concludes that the action is an infringement on state authority under the Tenth Amendment, the Attorney General shall determine whether the state should seek an exemption from the application of the action or seek to have the action declared unconstitutional.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 101 of Title 80, unless there is created a duplication in numbering, reads as follows:

A. The Legislature may review any executive order issued by the President of the United States, federal agency rule or federal congressional action to determine the constitutionality of such action. Upon recommendation from the Legislature, the Attorney General, through the State Reserved Powers Protection Unit, shall review such action by the federal government to determine the constitutionality of the action and whether the state should seek an exemption from the application of the action or seek to have the action declared unconstitutional by a court of competent jurisdiction and prevent, prohibit or enjoin enforcement of the unconstitutional order, rule or action.

B. Should the Attorney General decline to pursue action based upon the determination of the Legislature, the Legislature may by a majority vote initiate an action to seek an exemption from the application of the action or seek to have the action declared unconstitutional by a court of competent jurisdiction and prevent, prohibit or enjoin enforcement of the unconstitutional order, rule or action.

C. Notwithstanding any other provision of law, the state, county, political subdivision or any other publicly funded organization shall not implement, adopt or enforce any order, federal agency rule or federal congressional action declared unconstitutional by a court of competent jurisdiction under subsection A or B of this section including, but not limited to:

1. Pandemics or other health emergencies;
2. The regulation of natural resources, including oil and natural gas;
3. The regulation of the agriculture industry;
4. The use of land;
5. The regulation of the financial sector as it relates to environmental, social or governance standards;
6. The regulation of the constitutional right to keep and bear arms;
7. The regulation of education;
8. The regulation of interscholastic, intramural or other extracurricular sports sponsored by an institution of higher education, a school district or a charter school; or
9. Any other powers reserved by the State of Oklahoma or the people of Oklahoma.

SECTION 4. This act shall become effective July 1, 2021.

SECTION 5. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 18th day of May, 2021.

Presiding Officer of the House
of Representatives

Passed the Senate the 20th day of May, 2021.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____