

House Bill 352

By: Representatives Spencer of the 180th and Gregory of the 34th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1 of Title 50 of the Official Code of Georgia Annotated, relating to
2 general provisions relative to state government, so as to provide a short title; to make
3 legislative findings; to create a Joint Commission on Recommendation to review all Acts of
4 the Congress of the United States of America, regulations promulgated pursuant to such
5 laws, and executive orders of the President of the United States of America; to provide for
6 membership; to provide that the commission shall determine which of the federal statutes,
7 regulations, and presidential executive orders of the United States of America should be
8 enforced and which should be ignored in Georgia; to provide for a vote of nullification by
9 the General Assembly; to provide for related matters; to repeal conflicting laws; and for other
10 purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 This Act shall be known and may be cited as the "Protecting Georgia Sovereignty Act of
14 2013."

15 style="text-align:center">**SECTION 2.**

16 The General Assembly makes the following legislative findings:

17 (1) The Tenth Amendment to the United States Constitution guarantees and reserves to
18 the states and the people all powers not delegated to the federal government elsewhere
19 in the Constitution as they were publicly understood at the time that the amendment was
20 ratified on December 15, 1791, subject only to modification by duly ratified subsequent
21 amendments to the United States Constitution.

22 (2) The Ninth and Tenth Amendments to the United States Constitution reserves to the
23 state and people of Georgia that other than the enumerated powers expressly delegated
24 to the United States under Article I, Section 8 of the United States Constitution, Congress

25 and the federal government will not exercise any purported additional control over or
26 commander rights belonging to the State of Georgia or its people.

27 (3) The United States Constitution, ratified on June 21, 1788, established that the sole
28 and sovereign power to regulate the business and affairs of each state rested in state
29 legislatures and has always been a compelling state concern and central to state
30 sovereignty. Further, the power to regulate commerce among the several states as
31 delegated to the Congress in Article I, Section 8, Clause 3 of the Constitution, as
32 understood at the time of the founding, was meant to empower Congress to regulate the
33 buying and selling of products made by others, associated finance and financial
34 instruments, and navigation and other carriage across state jurisdictional lines. This
35 power to regulate "commerce" does not include agriculture, manufacturing, mining,
36 major crimes, or land use. Nor does it include activities that merely "substantially affect"
37 commerce.

38 (4) At the time the United States Constitution was ratified on June 21, 1788, the
39 Commerce Clause was not meant or understood to authorize Congress or the federal
40 judiciary to regulate the state courts in the matter of state substantive law or state judicial
41 procedure. This meaning and understanding of Article I, Section 8, the Establishment
42 Clause of the First Amendment, and the Tenth Amendment to the United States
43 Constitution, as they pertain to the validity of religious sectarian or foreign law as being
44 controlling or influential precedent, has never been modified by any duly ratified
45 amendment to the United States Constitution. Further, Article I, Section 8, Clause 18 of
46 the Constitution, the "necessary and proper clause," is not a blank check that empowers
47 the federal government to do anything it deems necessary or proper. It is instead a
48 limitation of power under the common-law doctrine of "principals and incidents," which
49 restricts the power of Congress to exercise incidental powers. There are two main
50 conditions required for something to be incidental and therefore "necessary and proper."
51 The law or power exercised must be directly applicable to the main, enumerated power,
52 and "lesser" than the main power.

53 (5) In accordance with Article I, Section 8, Clause 1 of the United States Constitution
54 ratified on June 21, 1788, the "general welfare clause" does not empower the federal
55 government with the ability to do anything it deems good. It is instead a general
56 restriction limiting the exercise of the enumerated powers of Congress set forth in Article
57 I, Section 8 of the Constitution of the United States, requiring that Congress only enact
58 laws which serve all citizens well and equally. When James Madison was asked if this
59 clause was a grant of power, he replied, "If not only the means but the objects are
60 unlimited, the parchment [the Constitution] should be thrown into the fire at once." Thus,
61 this clause is a limitation on the power of the federal government to act in the welfare of

62 all when passing laws in pursuance of the powers delegated to the United States.
63 Likewise, the Commerce Clause was not meant or understood to authorize Congress or
64 the federal judiciary to establish religious sectarian or foreign statutes or case law as
65 controlling or influential precedent.

66 (6) The General Assembly acknowledges that the "Commerce Clause," the "General
67 Welfare Clause," and the "Necessary and Proper Clause" of the United States
68 Constitution were amended and made more specific and limiting at the people's insistence
69 through the creation of the Bill of Rights, i.e., the Second Amendment, the Ninth
70 Amendment, and the Tenth Amendment. All amendments within the Bill of Rights were
71 for the purpose of further restricting federal powers, vesting or retaining the ultimate
72 power and control of the states by the people within the states. Therefore, this body
73 specifically rejects and denies any federal claim of expanded or additional authority
74 which the federal government may from time to time attempt to exert, exercise, or
75 enforce under these clauses. Further, the people of the State of Georgia are aware that
76 the federal government has amended and altered the spirit and the meaning of the
77 Commerce Clause, all without proper legislative authority through amendment.
78 Therefore, this body rejects and denies this unauthorized and excessive abuse of power
79 which has primarily acted as a detriment to states' rights and individual rights.

80 (7) In accordance with the United States Constitution, Congress and the federal
81 government are denied the power to establish laws within the state which are repugnant
82 and obtrusive to the United States Constitution, the state Constitution, state law, and the
83 citizens of the state. The federal government is restrained and confined in authority by
84 the 18 items as set forth in Article I, Section 8 of the United States Constitution.

85 (8) Congress and the federal government are denied the power to bind the states under
86 foreign statutes or case law other than those provisions duly ratified by the Congress as
87 a treaty, so long as the treaty does not violate the state or United States Constitution.

88 (9) Further, no authority has ever been given to the legislative branch, the executive
89 branch, or the judicial branch of the federal government to preempt state legislation.

90 (10) Article VI, Section 2 of the United States Constitution is known as the Supremacy
91 Clause. The people and the State of Georgia recognize this to reflect and be limited to
92 the powers enumerated to the federal government under Article I, Section 8 of the United
93 States Constitution, all other rights and powers reserved to the state and the people in the
94 state under Amendments IX and X. Any act of the federal government which exceeds
95 the authority of the federal government is invalid and, despite the Supremacy Clause, has
96 no priority over state action.

97 (11) Article III, Section 2 of the United States Constitution addresses the Judicial Power
 98 of the United States vested in one supreme court and inferior courts but giving the
 99 supreme court original jurisdiction in all cases in which a state shall be a party.

100 (12) Under the Tenth Amendment, the people and the State of Georgia retain their
 101 exclusive power to regulate the State of Georgia, subject only to the Fourteenth
 102 Amendment's guarantee that the people and State of Georgia shall exercise such
 103 sovereign power in accordance with each citizen's lawful privileges or immunities and
 104 in compliance with the requirements of due process and equal protection of the law.

105 (13) The Ninth Amendment to the United States Constitution secures and reserves to the
 106 people of Georgia, as against the federal government, their natural rights to life, liberty,
 107 and property as entailed by the traditional Anglo-American conception of ordered liberty
 108 and as secured by state law.

109 SECTION 3.

110 Chapter 1 of Title 50 of the Official Code of Georgia Annotated, relating to general
 111 provisions relative to state government, is amended by adding a new Code section to read as
 112 follows:

113 "50-1-10.

114 (a) There is created the Joint Commission on Recommendation, which shall be charged
 115 with recommending and proposing for a vote by a constitutional majority the nullification
 116 in its entirety of a specific federal law or regulation which is deemed to be outside the
 117 scope of the powers delegated by the people to the federal government in the United States
 118 Constitution or at odds with the Georgia Constitution.

119 (b) The commission shall consist of ten members, five members from the Senate to be
 120 appointed by the Senate Committee on Assignments and five members from the House of
 121 Representatives to be appointed by the Speaker of the House of Representatives. The
 122 Senate Committee on Assignments and the Speaker of the House of Representatives shall
 123 each designate one of their respective appointees as co-chairpersons of the commission.
 124 The members of the commission shall be appointed for terms concurrent with their terms
 125 as legislators. In the event a vacancy occurs, the appropriate appointing official shall
 126 appoint a member to fill the vacancy for the unexpired term.

127 (c) The commission shall have the power to review any and all existing federal statutes,
 128 mandates, and executive orders for the purpose of determining the constitutionality thereof
 129 and thereby violating the true meaning and intent as given by its founders and ratifiers, and
 130 such commission may recommend that existing federal statutes, regulations, mandates, and
 131 executive orders put in place prior to the passage of this resolution not be recognized by
 132 this state, to be specifically rejected by this state, and to be considered null and void and

133 of no force and effect to this state. The commission shall respond with its
134 recommendations within 30 days of receiving such federal legislation for consideration.
135 (d) Upon recommendation for nullification, the General Assembly may vote to nullify
136 following such recommendation. The appropriate documentation reflecting the vote shall
137 be documented in the legislative journals of the House of Representatives and the Senate.
138 In the event the General Assembly votes by a constitutional majority to nullify any federal
139 statute, mandate, or executive order on the grounds of constitutionality, neither the state nor
140 its citizens shall recognize or be obligated to live under such statute, mandate, or executive
141 order.
142 (e) Legal actions, where and when required, will be directed to the Supreme Court for
143 adjudication.
144 (f) It shall be the duty of the General Assembly to adopt and enact any and all measures
145 that may become necessary to prevent the wrongful enforcement of any federal laws or
146 regulations duly nullified within the boundaries and limits of this state."

147 **SECTION 4.**

148 The Clerk of the House of Representatives is directed to send a copy of this Act to the
149 President of the United States, the President of the United States Senate, the Speaker and
150 Clerk of the United States House of Representatives, and each member of Georgia's
151 Congressional delegation, with the request that this Act be officially entered into the
152 Congressional Record.

153 **SECTION 5.**

154 All laws and parts of laws in conflict with this Act are repealed.