

# HB49 INTRODUCED



1 HB49  
2 C76TQWJ-1  
3 By Representative Ensler  
4 RFD: Public Safety and Homeland Security  
5 First Read: 06-Feb-24  
6 PFD: 12-Jan-24



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SYNOPSIS:

This bill would establish the Red Flag Protective Order Act.

This bill would authorize courts to issue ex parte red flag protective orders and one-year red flag protective orders, which may be authorized if the court finds that the respondent, as defined, poses an immediate and present danger of causing personal injury to self or others.

This bill would provide that upon the issuance of an ex parte or one-year red flag protective order, the court shall order the respondent to surrender to the local law enforcement agency all firearms and ammunition of which the respondent has custody, control, ownership, or possession.

This bill would provide for the renewal or early termination of a one-year red flag protective order under certain conditions.

This bill would also provide criminal penalties for a violation.

Section 111.05 of the Constitution of Alabama of 2022, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3



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29 vote unless: it comes within one of a number of  
30 specified exceptions; it is approved by the affected  
31 entity; or the Legislature appropriates funds, or  
32 provides a local source of revenue, to the entity for  
33 the purpose.

34 The purpose or effect of this bill would be to  
35 require a new or increased expenditure of local funds  
36 within the meaning of the section. However, the bill  
37 does not require approval of a local governmental  
38 entity or enactment by a 2/3 vote to become effective  
39 because it comes within one of the specified exceptions  
40 contained in the section.

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A BILL

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TO BE ENTITLED

45

AN ACT

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47 Relating to public safety; to establish the Red Flag  
48 Protective Order Act; to provide for the issuance of ex parte  
49 red flag protective orders and one-year red flag protective  
50 orders; to require the surrender of all firearms and  
51 ammunition of a person subject to a red flag protective order;  
52 to provide for the renewal or early termination of an order;  
53 to provide criminal penalties for a violation; and in  
54 connection therewith would have as its purpose or effect the  
55 requirement of a new or increased expenditure of local funds  
56 within the meaning of Section 111.05 of the Constitution of



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57 Alabama of 2022.

58 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

59 Section 1. This act shall be known and may be cited as  
60 the Red Flag Protective Order Act.

61 Section 2. The Legislature finds and declares the  
62 following:

63 (1) Over 100,000 people become victims of a gunshot  
64 wound each year and more than 30,000 of those victims lose  
65 their lives.

66 (2) Federal law prohibits any individual subject to  
67 certain domestic violence restraining orders from purchasing  
68 or possessing firearms. Many states have similar laws. About  
69 half of the states also authorize or require a court that is  
70 issuing a domestic violence protective order to require the  
71 abuser to surrender firearms that he or she may already have  
72 in his or her possession. This act is modeled on existing  
73 domestic violence laws that have firearms surrender  
74 provisions.

75 (3) Studies have shown that an individual who engages  
76 in certain dangerous behaviors is significantly more likely to  
77 commit an act of violence toward himself or herself or others  
78 in the near future. These behaviors, which might include other  
79 acts or threats of violence, self-harm, or the abuse of drugs  
80 or alcohol, serve as warning signs that the individual might  
81 soon commit an act of violence.

82 (4) Under federal law, an individual suffering from  
83 mental illness is not prohibited from purchasing or possessing  
84 a firearm unless he or she has been involuntarily committed to



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85 a mental institution, found not guilty of a crime by reason of  
86 insanity, or undergone some other formalized court proceeding  
87 regarding his or her mental illness. Similarly, an individual  
88 who has committed a violent act toward another is not  
89 prohibited from possessing a firearm under federal law until  
90 after he or she has been convicted of a felony or domestic  
91 violence misdemeanor.

92 (5) It is the purpose and intent of the Legislature to  
93 reduce firearm deaths and injuries by providing a formal court  
94 procedure that law enforcement officers, teachers, and family  
95 members may use to obtain a court order that prevents an  
96 individual who poses a significant danger of causing personal  
97 injury to self or others from gaining access to firearms and  
98 ammunition. The Legislature intends for these court orders to  
99 be limited to situations in which the individual poses a  
100 significant danger of causing personal injury to self or  
101 others by owning, purchasing, controlling, possessing, or  
102 receiving a firearm or ammunition.

103 Section 3. The following terms have the following  
104 meanings:

105 (1) EX PARTE RED FLAG PROTECTIVE ORDER. An order issued  
106 by a court, pursuant to Section 5, that prohibits the  
107 respondent from owning, purchasing, controlling, possessing,  
108 or receiving firearms or ammunition until a court-scheduled  
109 hearing for a one-year red flag protective order.

110 (2) FAMILY MEMBER. An individual related by blood,  
111 marriage, or adoption to the respondent, current or former  
112 dating partner of the respondent, and any individual who



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113 resides or has resided with the respondent, or who is acting  
114 or has acted as the respondent's legal guardian.

115 (3) FIREARM. A weapon from which a shot is discharged  
116 by gun powder.

117 (4) ONE-YEAR RED FLAG PROTECTIVE ORDER. An order issued  
118 by a court, pursuant to Section 6, prohibiting the respondent  
119 from owning, purchasing, controlling, possessing, or receiving  
120 firearms or ammunition for a period of one year.

121 (5) PETITIONER. A law enforcement officer, teacher, or  
122 family member of the respondent who files a petition pursuant  
123 to Section 4.

124 (6) RESPONDENT. The individual identified in the  
125 petition filed under Section 5 or Section 6.

126 (7) TEACHER. A teacher, school administrator, school  
127 counselor, college professor, student teacher, safety or  
128 resource officer, or coach of the respondent.

129 Section 4. (a) A petitioner may seek a red flag  
130 protective order by filing a verified petition on a form  
131 approved by the Administrative Office of Courts in the court  
132 of the county where the respondent resides.

133 (b) The petition shall set forth the grounds for the  
134 issuance of the order and shall describe the number, types,  
135 and locations of any firearms or ammunition presently believed  
136 by the petitioner to be possessed or controlled by the  
137 respondent. The petition shall also state whether there is an  
138 existing domestic violence protective order in effect  
139 governing the respondent and whether there is any pending  
140 lawsuit, complaint, petition, or other action between the



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141 parties under the laws of this state. The court administrator  
142 shall verify the terms of any existing order governing the  
143 parties. The court may not delay granting relief because of  
144 the existence of a pending action between the parties or the  
145 necessity of verifying the terms of an existing order. A  
146 petition for a red flag protective order may be granted  
147 whether or not there is a pending action between the parties.

148 (c) If the respondent is alleged to pose an immediate  
149 and present danger of causing personal injury to a family  
150 member, or a family member is alleged to have been the target  
151 of a threat or act of violence by the respondent, the  
152 petitioner shall make a good faith effort to provide notice to  
153 any and all adult family members of the respondent. The notice  
154 must state that the petitioner intends to petition the court  
155 for a red flag protective order, and, if the petitioner is a  
156 law enforcement officer, must also include a referral to  
157 relevant domestic violence or stalking advocacy or counseling  
158 resources, if appropriate. The petitioner shall attest to  
159 having provided the notice in the verified petition. If the  
160 petitioner is unable to provide notice to any or all adult  
161 family members of the respondent, the verified petition shall  
162 describe what good faith efforts were made.

163 (d) All health records and other health information  
164 provided in a petition or considered as evidence in a  
165 proceeding under this act shall be protected from public  
166 disclosure to the extent the information identifies a  
167 respondent or petitioner, except that the information may be  
168 provided to law enforcement agencies as set forth in Section



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169 10. Aggregate statistical data about the numbers of gun  
170 violence protective orders issued, renewed, denied, dissolved,  
171 or terminated shall be available to the public upon request.

172 (e) Upon receipt of the petition, the court shall set a  
173 date for a hearing within 14 calendar days, regardless of  
174 whether the court issues an ex parte red flag protective  
175 order. If the court issues an ex parte red flag protective  
176 order, notice of the hearing shall be served on the respondent  
177 with the ex parte order. Notice of the hearing shall be  
178 personally served on the respondent by a law enforcement  
179 officer.

180 (f) The Administrative Office of Courts shall prescribe  
181 the form of the petitions, orders, and any other documents and  
182 shall adopt any rules of court necessary for the  
183 implementation of this act.

184 Section 5. (a) A petitioner may request that an ex  
185 parte red flag order be issued prior to a hearing for a  
186 one-year red flag protective order, without notice to the  
187 respondent, by including in the petition detailed allegations  
188 based on personal knowledge that the respondent poses an  
189 immediate and present danger of causing personal injury to  
190 self or others through his or her ownership, purchase,  
191 control, possession, or receipt of a firearm or ammunition.

192 (b) The court shall issue or deny an ex parte red flag  
193 protective order on the same day that the petition is  
194 submitted to the court, unless the petition is filed too late  
195 in the day to allow for its effective review, in which the  
196 order shall be issued or denied on the next business day.





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197 (c) Before issuing an ex parte red flag protective  
198 order, the court shall examine under oath the petitioner and  
199 any witnesses the petitioner may produce. The court may also  
200 do either of the following:

201 (1) Ensure that a reasonable search has been conducted  
202 of all available records to determine whether the respondent  
203 owns any firearms or ammunition.

204 (2) Ensure that a reasonable search has been conducted  
205 for criminal history records related to the respondent.

206 (d) In determining whether grounds for an ex parte red  
207 flag protective order exists, the court shall consider all  
208 relevant evidence presented by the petitioner, and may also  
209 consider other relevant evidence, including, but not limited  
210 to, evidence of the occurrence of any of the following events  
211 by the respondent:

212 (1) Unlawful, reckless, or negligent use, display,  
213 storage, possession, or brandishing of a firearm.

214 (2) Act or threat of violence against self or another,  
215 whether or not the violence involved a firearm.

216 (3) Violation of a protective order issued under  
217 Chapter 5 or Chapter 5B of Title 30 of the Code of Alabama  
218 1975, or a similar law in another state.

219 (4) Abuse of controlled substances or alcohol or any  
220 criminal offense that involves controlled substances or  
221 alcohol.

222 (5) The recent acquisition of firearms, ammunition, or  
223 other deadly weapons.

224 (e) The court shall also consider the time that has



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225 elapsed since the occurrence of any event described in  
226 subsection (d).

227 (f) If a court finds reasonable cause to believe that  
228 the respondent poses an immediate and present danger of  
229 causing personal injury to self or others by owning,  
230 purchasing, controlling, possessing, or receiving a firearm or  
231 ammunition, the court shall issue an ex parte red flag  
232 protective order.

233 (g) An ex parte red flag protective order shall include  
234 all of the following:

235 (1) A statement that the respondent may not own,  
236 purchase, control, possess, or receive, or attempt to purchase  
237 or receive, a firearm or ammunition while the order is in  
238 effect.

239 (2) A description of the requirements for  
240 relinquishment of firearms and ammunition under Section 8.

241 (3) A statement of the grounds asserted for the order.

242 (4) A notice of the hearing under subsection (e) of  
243 Section 4 to determine whether to issue a one-year red flag  
244 protective order, including the address of the court and the  
245 date and time for when the hearing is scheduled.

246 (5) A statement that the court may extend the order by  
247 one year at the hearing.

248 (6) A statement that the respondent may seek the advice  
249 of an attorney as to any matter connected with the order, and  
250 that the attorney should be consulted promptly so that the  
251 attorney may assist the individual in any matter connected  
252 with the order.



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253 (h) An ex parte red flag protective order shall be  
254 personally served on the respondent by a law enforcement  
255 officer.

256 (i) In accordance with subsection (e) of Section 4, the  
257 court shall schedule a hearing within 14 calendar days of the  
258 issuance of an ex parte red flag protective order to determine  
259 if a one-year red flag protective order shall be issued;  
260 provided, however, that a respondent may seek an extension of  
261 time before the hearing. The court shall dissolve any ex parte  
262 red flag protective order in effect against the respondent  
263 when the court holds the hearing.

264 Section 6. (a) A petitioner requesting a one-year red  
265 flag protective order shall include in the petition detailed  
266 allegations based on personal knowledge that the respondent  
267 poses a substantial danger of causing personal injury to self  
268 or others through his or her ownership, purchase, control,  
269 possession, or receipt of a firearm or ammunition.

270 (b) Prior to a hearing for a one-year red flag  
271 protective order, the court shall do both of the following:

272 (1) Ensure that a reasonable search has been conducted  
273 of all available records to determine whether the respondent  
274 owns any firearms or ammunition.

275 (2) Ensure that a reasonable search has been conducted  
276 for criminal history records related to the respondent.

277 (c) In determining whether to issue a one-year red  
278 flag protective order under this section, the court shall  
279 consider all relevant evidence presented by the petitioner and  
280 may also consider other relevant evidence, including, but not



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281 limited to, evidence of events identified in subsection (d) of  
282 Section 5.

283 (d) If the court finds by a preponderance of the  
284 evidence at the hearing that the respondent poses a  
285 substantial danger of personal injury to self or others  
286 through his or her ownership, purchase, control, possession,  
287 or receipt of a firearm or ammunition, the court shall issue a  
288 one-year red flag protective order.

289 (e) A one-year red flag protective order issued under  
290 this section shall include all of the following:

291 (1) A statement that the respondent may not own,  
292 possess, control, purchase, or receive, or attempt to purchase  
293 or receive, a firearm or ammunition while the order is in  
294 effect.

295 (2) A description of the requirements for  
296 relinquishment of firearms and ammunition under Section 8.

297 (3) A statement of the grounds supporting the issuance  
298 of the order.

299 (4) The date and time the order expires.

300 (5) The address of the court that issued the order.

301 (6) A statement that the respondent shall have the  
302 right to request one hearing to terminate the order at any  
303 time during its effective period.

304 (7) A statement that the respondent may seek the advice  
305 of an attorney as to any matter connected with the order.

306 (f) If the respondent fails to appear at the hearing  
307 and the court determines that a one-year red flag protective  
308 order shall be issued, the order shall be personally served on



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309 the respondent by a law enforcement officer.

310 Section 7. (a) A respondent subject to a one-year red  
311 flag protective order may submit one written request at any  
312 time during the effective period of the order for a hearing to  
313 terminate the order.

314 (1) Upon receipt of the request for termination, the  
315 court shall set a date for a hearing. Notice of the request  
316 shall be served on the petitioner in accordance with the  
317 Alabama Rules of Civil Procedure. The hearing shall occur no  
318 sooner than 14 calendar days from the date of service of the  
319 request upon the petitioner.

320 (2) The respondent seeking termination of the order  
321 shall have the burden of proving by a preponderance of the  
322 evidence that the respondent does not pose a substantial  
323 danger of causing personal injury to self or others through  
324 his or her ownership, purchase, control, possession, or  
325 receipt of a firearm or ammunition.

326 (3) If the court finds that the respondent has met his  
327 or her burden, the court shall terminate the order.

328 (b) A petitioner may request a renewal of a one-year  
329 red flag protective order at any time within the three months  
330 before the expiration of the order.

331 (1) A court, after notice and a hearing, may renew the  
332 one-year red flag protective order if the court, by a  
333 preponderance of the evidence, finds that the respondent  
334 continues to pose a substantial danger of causing personal  
335 injury to self or another through his or her ownership,  
336 purchase, control, possession, or receipt of a firearm or



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337 ammunition.

338 (2) In determining whether to renew a one-year red flag  
339 protective order, the court shall consider all relevant  
340 evidence presented by the petitioner, and may also consider  
341 other relevant evidence, including, but not limited to,  
342 evidence of the events identified in subsection (d) of Section  
343 5.

344 (3) A one-year red flag protective order renewed under  
345 this subsection shall expire after one year, subject to  
346 termination by further order of the court at a hearing held  
347 under subsection (a) and further renewal by order of the court  
348 under this subsection.

349 Section 8. (a) Upon issuance of an ex parte or one-year  
350 red flag protective order, the court shall order the  
351 respondent to surrender to the local law enforcement agency  
352 all firearms and ammunition of which the respondent has  
353 custody, control, or ownership.

354 (b) A law enforcement officer serving a red flag  
355 protective order shall request that all firearms and  
356 ammunition belonging to or in the custody or control of the  
357 respondent be immediately surrendered and shall take  
358 possession of the firearms and ammunition that are  
359 surrendered. A law enforcement officer serving any red flag  
360 protective order may conduct a lawful search for firearms and  
361 ammunition.

362 (c) At the time of surrender or removal, a law  
363 enforcement officer taking possession of a firearm or  
364 ammunition pursuant to any red flag protective order shall



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365 issue a receipt identifying all firearms and ammunition that  
366 have been surrendered or removed and provide a copy of the  
367 receipt to the respondent. Within 72 hours after serving the  
368 order, the officer who served the order shall file the  
369 original receipt with the court that issued the red flag  
370 protective order, and shall ensure that the law enforcement  
371 agency retains a copy of the receipt.

372 (d) If a petitioner has probable cause to believe a  
373 respondent to a red flag protective order owns, controls, or  
374 possesses a firearm or ammunition that the respondent has  
375 failed to surrender pursuant to this section, or has received  
376 or purchased a firearm or ammunition while subject to the  
377 order, the petitioner may petition the court to issue a  
378 warrant. The petition shall describe the firearm or ammunition  
379 and where the firearm or ammunition is reasonably believed to  
380 be located. The court may issue the warrant upon a finding of  
381 probable cause.

382 (e) A law enforcement agency may charge the respondent  
383 a fee not to exceed the reasonable and actual costs incurred  
384 by the law enforcement agency for storing a firearm or  
385 ammunition surrendered pursuant to this section for the  
386 duration of the red flag protective order and any additional  
387 periods necessary under Section 7.

388 Section 9. (a) As used in this section, "dispose" means  
389 to sell or transfer a firearm or ammunition to a federally  
390 licensed dealer, defined under 18 U.S.C. § 921 et seq., or to  
391 destroy the firearm or ammunition.

392 (b) Thirty days before a one-year red flag protective



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393 order is set to expire, a law enforcement agency holding a  
394 firearm or ammunition that has been surrendered pursuant to  
395 the order shall notify the petitioner that the order is set to  
396 expire. The notice shall advise the petitioner of the  
397 procedures for seeking a renewal of the order pursuant to  
398 Section 7.

399 (c) If a red flag protective order is terminated or  
400 expires and is not renewed, a law enforcement agency holding  
401 any firearm or ammunition that has been surrendered pursuant  
402 to Section 8 shall notify the respondent that he or she may  
403 request the return of the firearm or ammunition. The law  
404 enforcement agency shall return any surrendered firearms or  
405 ammunition requested by a respondent only after confirming,  
406 through a background check, that the respondent is currently  
407 eligible to own or possess firearms and ammunition.

408 (d) A respondent who has surrendered a firearm or  
409 ammunition to a law enforcement agency pursuant to Section 8  
410 and who does not wish to have the firearm or ammunition  
411 returned or who is no longer eligible to own or possess a  
412 firearm or ammunition may sell or transfer title of the  
413 firearm or ammunition to a licensed firearms dealer. The law  
414 enforcement agency shall transfer possession of the firearm or  
415 ammunition to a licensed firearms dealer only after the dealer  
416 has displayed written proof of transfer of the firearm or  
417 ammunition from the respondent to the dealer and the law  
418 enforcement agency has verified the transfer.

419 (e) If an individual other than the respondent claims  
420 title to a firearm or ammunition surrendered pursuant to





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421 Section 8, and the individual is determined by the law  
422 enforcement agency to be the lawful owner of the firearm or  
423 ammunition, the firearm or ammunition shall be returned to him  
424 or her.

425 (f) A law enforcement agency holding a firearm or  
426 ammunition that was surrendered by a respondent pursuant to  
427 Section 8 may dispose of the firearm or ammunition only after  
428 six months from the date of proper notice to the respondent of  
429 the intent to dispose of the firearm or ammunition, unless the  
430 firearm or ammunition has been claimed by the lawful owner. If  
431 the firearm or ammunition remains unclaimed after six months  
432 from the date of notice, then no party shall have the right to  
433 assert ownership of the firearm or ammunition and the law  
434 enforcement agency may dispose of the firearm or ammunition.

435 Section 10. (a) The court shall notify the Alabama  
436 State Law Enforcement Agency (ALEA) no later than one business  
437 day after issuing, renewing, dissolving, or terminating an ex  
438 parte or one-year red flag protective order under this act.

439 (b) The information required to be submitted to ALEA  
440 pursuant to this section shall include identifying information  
441 about the respondent and the date the order was issued,  
442 renewed, dissolved, or terminated. In the case of a one-year  
443 red flag order, the court shall include the date the order is  
444 set to expire. The court shall also indicate whether the  
445 respondent to the one-year red flag protective order was  
446 present in court to be advised of the contents of the order or  
447 if the respondent failed to appear. The respondent's presence  
448 in court shall constitute proof of service of notice of the



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449 terms of the order.

450 (c) Within one business day of service, a law  
451 enforcement officer who serves a red flag protective order or  
452 the clerk of the court shall submit the proof of service and a  
453 copy of the protection order to ALEA for entry into the  
454 appropriate database.

455 (d) The information to be submitted to ALEA under this  
456 section shall be submitted in an electronic format, in a  
457 manner prescribed by ALEA. ALEA shall maintain a searchable  
458 database of this information, available to law enforcement  
459 agencies upon request.

460 (e) Within 30 days of submission of the information  
461 under subsection (d), ALEA shall make information about an ex  
462 parte or one-year red flag protective order issued, renewed,  
463 or terminated pursuant to this act available to the National  
464 Instant Criminal Background Check System for the purposes of  
465 firearm purchaser background checks.

466 Section 11. (a) A person who files a petition for a red  
467 flag protective order, knowing the information in the petition  
468 to be materially false or with an intent to harass the  
469 respondent, is guilty of a Class C misdemeanor.

470 (b) A person who owns, purchases, controls, possesses,  
471 or receives a firearm or ammunition with knowledge that he or  
472 she is prohibited from doing so by a red flag protective order  
473 is guilty of a Class C misdemeanor and shall be prohibited  
474 from owning, purchasing, controlling, possessing, or  
475 receiving, or attempting to purchase or receive, a firearm or  
476 ammunition for a period of five years from the date of



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477 conviction.

478           Section 12. This act shall not affect the ability of a  
479 law enforcement officer to remove firearms or ammunition from  
480 any individual pursuant to other lawful authority.

481           Section 13. This act shall not be construed to impose  
482 criminal or civil liability on any individual who chooses not  
483 to seek a red flag protective order pursuant to this act.

484           Section 14. Although this bill would have as its  
485 purpose or effect the requirement of a new or increased  
486 expenditure of local funds, the bill is excluded from further  
487 requirements and application under Section 111.05 of the  
488 Constitution of Alabama of 2022, because the bill defines a  
489 new crime or amends the definition of an existing crime.

490           Section 15. This act shall become effective October 1,  
491 2024.