

By: Bell, Flynn, Miller, White, Schaefer,  
et al.

H.B. No. 2338

Substitute the following for H.B. No. 2338:

By: Darby

C.S.H.B. No. 2338

A BILL TO BE ENTITLED

AN ACT

relating to the Texas Sovereignty Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. (a) This Act may be cited as the Texas  
Sovereignty Act.

(b) The legislature finds that:

(1) The people of the several states comprising the  
United States of America created the federal government to be their  
agent for certain enumerated powers delegated by the states and the  
people to the federal government through the United States  
Constitution.

(2) The Tenth Amendment to the United States  
Constitution confirms the intent and understanding of the people of  
the United States that all powers not delegated to the United States  
by the Constitution, or prohibited by it to the states, are reserved  
to the states respectively, or to the people.

(3) Each power delegated to the federal government by  
the United States Constitution is constitutionally limited to that  
power as it was understood and exercised at the time it was  
delegated. An amendment to the Constitution as ratified by the  
states is required to expand or limit a constitutionally delegated  
power.

(4) The United States Constitution authorizes the  
United States Congress to exercise only those specific powers

1 enumerated in Section 8, Article I, United States Constitution, and  
2 those other powers as may be delegated to Congress through  
3 amendments to the Constitution as ratified by the states.

4 (5) Article VI, United States Constitution, makes  
5 supreme the Constitution and federal laws enacted pursuant to the  
6 Constitution, further requiring that public officials at all levels  
7 and in all branches of government support the Constitution.

8 (6) The power delegated to the United States Congress  
9 to regulate commerce among the several states under Section 8,  
10 Article I, United States Constitution, is limited to federal  
11 regulation of actual commerce between the states and among foreign  
12 nations. Regulation of intrastate commerce is reserved to the  
13 states and to the people of the states. The Commerce Clause of the  
14 Constitution constrains the legislative, executive, and judicial  
15 branches of the federal government.

16 (7) The power delegated to the United States Congress  
17 to make all necessary and proper federal laws under Section 8,  
18 Article I, United States Constitution, allows Congress to enact  
19 only those laws necessary and proper to execute the  
20 constitutionally delegated powers vested in the federal  
21 government, all other powers being reserved to the states and to the  
22 people of the states.

23 (8) The power delegated to the United States Congress  
24 to provide for the general welfare of the United States under  
25 Section 8, Article I, United States Constitution, in the General  
26 Welfare Clause constitutionally constrains Congress when  
27 exercising a delegated power to act in a manner that serves the

1 states and the people of the states well and uniformly.

2 (9) Sections 1 and 2, Article I, Texas Constitution,  
3 provide that this state and the people of this state retain the  
4 sovereign power to regulate the affairs of Texas, subject only to  
5 the United States Constitution.

6 (c) The federal government does not have the power to take  
7 any legislative, executive, or judicial action that violates the  
8 United States Constitution.

9 (d) The contract with the State of Texas has been willfully  
10 violated by the federal government and must be constitutionally  
11 restored.

12 (e) This Act calls on all officials in federal, state, and  
13 local government, in all branches and at all levels, to honor their  
14 oaths to preserve, protect, and defend the United States  
15 Constitution and its ratified amendments against any federal action  
16 that:

17 (1) would unconstitutionally undermine, diminish, or  
18 disregard the balance of powers between the sovereign states and  
19 the federal government established by the United States  
20 Constitution and its ratified amendments; or

21 (2) is outside the scope of the power delegated to the  
22 federal government by the United States Constitution.

23 SECTION 2. Subtitle Z, Title 3, Government Code, is amended  
24 by adding Chapter 393 to read as follows:

25 CHAPTER 393. ENFORCEMENT OF UNITED STATES CONSTITUTION

26 Sec. 393.001. DEFINITIONS. In this chapter:

27 (1) "Committee" means the Joint Legislative Committee

1 on Constitutional Enforcement.

2 (2) "Federal action" includes:

3 (A) a federal law;

4 (B) a federal agency rule, policy, or standard;

5 (C) an executive order of the president of the  
6 United States;

7 (D) an order or decision of a federal court; and

8 (E) the making or enforcing of a treaty.

9 (3) "Unconstitutional federal action" means a federal  
10 action enacted, adopted, or implemented without authority  
11 specifically delegated to the federal government by the people and  
12 the states through the United States Constitution.

13 Sec. 393.002. JOINT LEGISLATIVE COMMITTEE ON  
14 CONSTITUTIONAL ENFORCEMENT. (a) The Joint Legislative Committee  
15 on Constitutional Enforcement is established as a permanent joint  
16 committee of the legislature. The committee is established to  
17 review federal actions that challenge the sovereignty of the state  
18 and of the people for the purpose of determining if the federal  
19 action is unconstitutional.

20 (b) The committee consists of the following 12 members:

21 (1) six members of the house of representatives  
22 appointed by the speaker of the house; and

23 (2) six members of the senate appointed by the  
24 lieutenant governor.

25 (c) Not more than four house members of the committee may be  
26 members of the same political party. Not more than four senate  
27 members of the committee may be members of the same political party.

1       (d) Members of the committee serve two-year terms beginning  
2 with the convening of each regular legislative session.

3       (e) If a vacancy occurs on the committee, the appropriate  
4 appointing officer shall appoint a member of the house or senate, as  
5 appropriate, to serve for the remainder of the unexpired term.

6       (f) The speaker of the house and the lieutenant governor  
7 shall each designate one member of the committee as a joint chair of  
8 the committee.

9       (g) The committee shall meet at the call of either joint  
10 chair.

11       (h) A majority of the members of the committee constitute a  
12 quorum.

13       Sec. 393.003. COMMITTEE REVIEW OF FEDERAL ACTION. (a) The  
14 committee may review any federal action to determine whether the  
15 action is an unconstitutional federal action.

16       (b) When reviewing a federal action, the committee shall  
17 consider the plain reading and reasoning of the text of the United  
18 States Constitution and the understood definitions at the time of  
19 the framing and construction of the Constitution by our forefathers  
20 before making a final declaration of constitutionality, as  
21 demonstrated by:

22               (1) the ratifying debates in the several states;

23               (2) the understanding of the leading participants at  
24 the constitutional convention;

25               (3) the understanding of the doctrine in question by  
26 the constitutions of the several states in existence at the time the  
27 United States Constitution was adopted;

1           (4) the understanding of the United States  
2 Constitution by the first United States Congress;

3           (5) the opinions of the first chief justice of the  
4 United States Supreme Court;

5           (6) the background understanding of the doctrine in  
6 question under the English Constitution of the time; and

7           (7) the statements of support for natural law and  
8 natural rights by the framers and the philosophers admired by the  
9 framers.

10          (c) Not later than the 180th day after the date the  
11 committee holds its first public hearing to review a specific  
12 federal action, the committee shall vote to determine whether the  
13 action is an unconstitutional federal action.

14          (d) The committee may determine that a federal action is an  
15 unconstitutional federal action by majority vote.

16          Sec. 393.004. LEGISLATIVE DETERMINATION. (a) If the  
17 committee determines that a federal action is an unconstitutional  
18 federal action, the committee shall report the determination to the  
19 house of representatives and to the senate during:

20           (1) the current session of the legislature if the  
21 legislature is convened when the committee makes the determination;  
22 or

23           (2) the next regular or special session of the  
24 legislature if the legislature is not convened when the committee  
25 makes the determination.

26          (b) Each house of the legislature shall vote on whether the  
27 federal action is an unconstitutional federal action. If a

1 majority of the members of each house determine that the federal  
2 action is an unconstitutional federal action, the determination  
3 shall be sent to the governor for approval or disapproval as  
4 provided by Section 14, Article IV, Texas Constitution, regarding  
5 bills.

6 (c) A federal action is declared by the state to be an  
7 unconstitutional federal action on the day:

8 (1) the governor approves the vote of the legislature  
9 making the determination; or

10 (2) the determination would become law if presented to  
11 the governor as a bill and not objected to by the governor.

12 (d) The secretary of state shall forward official copies of  
13 the declaration to the president of the United States, to the  
14 speaker of the House of Representatives and the president of the  
15 Senate of the Congress of the United States, and to all members of  
16 the Texas delegation to Congress with the request that the  
17 declaration of unconstitutional federal action be entered in the  
18 Congressional Record.

19 Sec. 393.005. OTHER DETERMINATIONS OF UNCONSTITUTIONAL  
20 FEDERAL ACTS. (a) This chapter does not limit or alter the  
21 authority of the governor, the attorney general, a statewide  
22 elected official, a state or federal court, a judge or justice, a  
23 state or local appointed or elected official, or the governing body  
24 of a political subdivision of this state to issue a verbal or  
25 written opinion determining a federal action to be  
26 unconstitutional.

27 (b) An opinion issued under Subsection (a) may be referred

1 to the committee for review under this chapter.

2 Sec. 393.006. EFFECT OF DECLARED UNCONSTITUTIONAL FEDERAL  
3 ACTION. (a) A federal action declared to be an unconstitutional  
4 federal action under Section 393.004 has no legal effect in this  
5 state and may not be recognized by this state or a political  
6 subdivision of this state as having legal effect.

7 (b) The state and a political subdivision of the state may  
8 not spend public money or resources or incur public debt to  
9 implement or enforce a federal action declared to be an  
10 unconstitutional federal action.

11 (c) A person authorized to enforce the laws of this state  
12 may enforce those laws, including Section 39.03, Penal Code,  
13 against a person who attempts to implement or enforce a federal  
14 action declared to be an unconstitutional federal action.

15 (d) This chapter does not prohibit a public officer who has  
16 taken an oath to defend the United States Constitution from  
17 interposing to stop acts of the federal government which, in the  
18 officer's best understanding and judgment, violate the United  
19 States Constitution.

20 (e) Texas officials in federal, state, and local government  
21 shall honor their oaths to preserve, protect, and defend the United  
22 States Constitution and shall act to constitutionally defend this  
23 state and the people of this state.

24 Sec. 393.007. AUTHORITY OF ATTORNEY GENERAL. (a) The  
25 attorney general may defend the state to prevent the implementation  
26 and enforcement of a federal action declared to be an  
27 unconstitutional federal action.



1       (b) The attorney general may prosecute a person who attempts  
2 to implement or enforce a federal action declared to be an  
3 unconstitutional federal action using Section 39.03, Penal Code, or  
4 another provision of law.

5       (c) The attorney general may appear before a grand jury in  
6 connection with an offense the attorney general is authorized to  
7 prosecute under Subsection (b).

8       (d) The authority to prosecute prescribed by this chapter  
9 does not affect the authority derived from other law to prosecute  
10 the same offenses.

11       SECTION 3. Chapter 37, Civil Practice and Remedies Code, is  
12 amended by adding Section 37.0056 to read as follows:

13       Sec. 37.0056. DECLARATIONS RELATING TO UNCONSTITUTIONAL  
14 ACTS OF THE FEDERAL GOVERNMENT. (a) In this section, "federal  
15 action" and "unconstitutional federal action" have the meanings  
16 assigned by Section 393.001, Government Code.

17       (b) Any court in this state has original jurisdiction of a  
18 proceeding seeking a declaratory judgment that a federal action  
19 effective in this state is an unconstitutional federal action.

20       (c) A person is entitled to declaratory relief if the court  
21 determines that a federal action is an unconstitutional federal  
22 action.

23       (d) In determining whether to grant declaratory relief to a  
24 person under this section, a court:

25               (1) may not rely solely on the decisions of other  
26 courts interpreting the United States Constitution; and

27               (2) must rely on the plain meaning of the text of the

1 United States Constitution and any applicable constitutional  
2 doctrine as understood by the framers of the constitution.

3 (e) Section 37.008 does not apply to relief sought under  
4 this section.

5 SECTION 4. (a) Not later than the 30th day following the  
6 effective date of this Act:

7 (1) the speaker of the house of representatives and  
8 the lieutenant governor shall appoint the initial members of the  
9 Joint Legislative Committee on Constitutional Enforcement  
10 established under Section 393.002, Government Code, as added by  
11 this Act; and

12 (2) the secretary of state shall forward official  
13 copies of this Act to the president of the United States, to the  
14 speaker of the House of Representatives and the president of the  
15 Senate of the Congress of the United States, and to all members of  
16 the Texas delegation to Congress with the request that this Act be  
17 officially entered in the Congressional Record.

18 (b) Not later than the 45th day following the effective date  
19 of this Act, the speaker of the house of representatives and the  
20 lieutenant governor shall forward official copies of this Act to  
21 the presiding officers of the legislatures of the several states.

22 SECTION 5. This Act takes effect immediately if it receives  
23 a vote of two-thirds of all the members elected to each house, as  
24 provided by Section 39, Article III, Texas Constitution. If this  
25 Act does not receive the vote necessary for immediate effect, this  
26 Act takes effect September 1, 2017.