

Senate and House Transcripts related to Senate Bill 590 (Act 1002)

[Transcribed exactly as stated. Grammatical errors are the speaker's.]

Senate Public Health Committee

March 29, 2021 3 p.m.

Committee Members:

Cecile Bledsoe, chair

Scott Flippo, Vice-chair

Bart Hester

David Wallace

Breanne Davis

Kim Hammer

Dan Sullivan

Ben Gilmore

Trent Garner: Thank you, Madam Chair. In the last year during the pandemic, we have seen an unprecedented use of power in the executive branch here in the state of Arkansas. Out of our fear for an unknown virus released on Arkansas by the communist Chinese party, our government has taken dramatic steps and directions that I never thought I would see in my lifetime.

Businesses forced being shut down, not allowed to earn a living. Schools closed as parents had to scramble to take care of their children. Fines and penalties being given out to some businesses that are simply trying to operate that business while other businesses being excluded.

All this was not done by law or legislative process. It was done by the stroke of a pen. Without bringing legislation into -- bringing this law into the legislature to be voted on, the power consolidated in the executive branch was nearly unlimited and decisions were made nearly unilaterally. If you don't -- if you look at the last year in Arkansas and across the United States and understand the dangers that has happened by this consolidation of power in one branch and know what history has led to in other countries, this is a dangerous precedent.

Now we went from two weeks to flatten the curve to get past the summer to get through the winter to getting tested. Now you have to be vaccinated. A year later, and we're still under this control. Most controversial of these moves in Arkansas was the so-called mask mandate. This executive order, which allowed penalties on individuals who did not wear a mask, was a very specific kind of punishment. This wasn't a business, which had a license. This was individuals in the community that could be fined up to a \$500 for failing to follow this. You know, we had -- we could have had plenty of time to discuss this as legislators. We could have come as special session to do this, and we didn't.

Here's why you should support this bill. If you agree with this bill -- if you disagree with the mask mandate, you should support this bill because it not only ends the current mask mandate, it prevents any future mask mandate related to Covid-19 until we're past this crisis. If you support the mask mandate, you should support this bill. Why? Because you look what happened whenever the mask mandate was done by executive order. How many police chiefs and fire -- police departments wrote and said they will not enforce this? I'm an attorney. When this came out, I sat down and read this and had to write a summary for the people to understand because it's so convoluted and misunderstanding.

Think about this: They can write you a fine up to \$500 for the mask mandate. The police can. But yet in that same executive order, they could not detain you. How do you not detain somebody and then turn around and give them a fine? It was a poorly written, sloppily written executive order done by a branch of government that should not be writing laws.

If you support the mask mandate, you should want the legislator to come together, have committee meetings, discuss it, have it heard on the floor, have the debate, have experts sit in this chair, explain what that bill is about and be voted on yes or no. This bill would help that moving forward.

Let me end it with this. I know there was a lot of changes made when Covid-19 hit. I understood it. There was a great amount of fear, uncertainty, unknown. We didn't know what the next year would hold. But now we do. We need to send a clear message today that in the future, we'll be more prepared and that we as legislators will have more of a say in how this process will work and how important it is to be. I don't know about you, but I'll take a dangerous freedom over a comfortable servitude any day of the week. With that, I'll take any questions.

Bledsoe: All right. Any questions from the committee? All right, seeing none, we have one person that is signed up to speak against the bill. And, uh, Laura Shoo, if you would come forward. When you get settled, if you would state your name and where you're from for the record. And you're recognized.

Laura Shoo: Thank you, madam chair, members of the committee, Senator Garner. We appreciate the opportunity to speak on this bill today. As you all know, the public health emergency has been extended by 60 days to allow for rapid response. The Department of Health initially acted in intraverious within its authority under statutory emergency powers and under 20-7-109 and 110 and the rules pertaining to reportable diseases that were approved -- reviewed and approved by the Public Health Committee and by ALC (Arkansas Legislative Council) in 2018.

This bill would take away the flexibility to react quickly, and it conflicts with the new process under Act 403 of 2021. It provides no sunset provision if mitigation efforts were necessary in the future. The governor has stated that the face covering directive will end at midnight on March 31st. This is based on metrics that have been evaluated over a period of time, including the

7-day average of testing positivity, daily testing specimens, and daily hospitalization rates. This bill repeatedly states that it is no longer necessary without any metrics or fact-finding.

It states that it is for all mandatory face covering requirements. It says “including, but without limitations the ones that are imposed by the executive orders and the ADH directives.” There are many private business, including hospitals and restaurants that have announced that they are continuing best practices and will require a mask. This bill would limit their choice and their freedom to do so.

There are also federal mandates that require face coverings, including for public transit passengers and the transportation security administration doesn’t plan to lift that requirement until May 11, 2021. This bill sends the wrong message, and we want to continue to protect each other and respect each other and take it seriously while we get everyone vaccinated. Thank you.

Bledsoe: Thank you. Would you take questions? All right. Any questions from the committee for Mrs. Shoo? All right, Senator Hester.

Hester: Did you say this would limit a private company’s right to require masks from the public when they come in? Like, if I was going to eat at Chili’s tonight, and they wanted to have a mask mandate, this would prevent that?

Shoo: The way this reads on page 2, line 4, it says, “including, without limitations.” It says on the effective date of this act, all mandatory face covering requirements are removed.

Bledsoe: Okay. Any other questions? All right. Anyone else in the room, would you like to speak for the bill? Against the bill? Thank you, Mrs. Shoo. All right, if you want to close for your bill.

Garner: Yes, I’ll just strongly push back. This is all dealing with government executive action, Department of Health, or executive order. By no means does this preclude a private business or company from being able to actually stop people. Like, right now, you can preclude somebody for no shoes, no shirt, no service? That same business will be able to do that for masks. It’s their discretion as a private property owner how they want to do that as long as they don’t run into any type of discrimination laws, such as limiting them for race, gender, or other things. That is completely false. I will strongly push back on that assessment. With that, I am closed.

Bledsoe: Okay. Ladies and gentlemen. All right, I have a motion. Okay, a second. All those in favor, say aye.

Committee: Aye.

Bledsoe: All those opposed?

Committee: No.

Bledsoe: All right, I'm sorry, ladies and gentlemen. I think I heard four no's. So, let's do it again. Let's do it again. Just a minute. All those in favor, say aye.

Committee: Aye.

Bledsoe: All those opposed, no.

Committee: No.

Bledsoe: Okay. Congratulations, your bill passes. All right.

Senate Floor Vote

March 31, 2021

1 p.m.

Garner: Members, for the last year about this time whenever the Covid-19 crisis hit us, unleashed on us from a Wuhan lab and from covering up by the communist Chinese party, things have happened that I've never thought would happen in the state of Arkansas. We've seen dramatic changes to our date of life. We've seen rulings come down that I didn't think I would ever see as a grown adult. Most contentious of this was the executive order put in place by the governor dealing with mandatory mask requirements.

Now, we all know that order sided (?) yesterday. And that was a good move by the governor. I think it's necessary based on the public health data that we have and how things have changed through the success of us handling the virus. But what this bill does is make sure that we don't have that happen again by executive order or by government fiat. Quite simply, this allows any time for related to the Covid-19 mask mandate, we as a General Assembly will have a direct say in how it works.

Now, if you're in here and you agree with the mask mandate, you should want this bill. Why? Because the executive order as it was written was a poorly constructed legal document. It's what happens when the executive branch tries to write legislation. When it came out -- I don't remember if you remember, but there was mass confusion by the population (wondering?) what exactly they had to do as far as following the mandate. I as an attorney looked through it and put a synopsis on my Facebook and social media. And even there was some parts of it that I was confused.

Within that executive order, it said you could get a fine up to \$500 for not following the mask mandate from the law enforcement. Yet in that same order, it said you could not be detained by law enforcement. Now how is law enforcement going to detain you and give you a ticket if they can't detain you to give you the ticket? I don't know if y'all remember, do you remember how many letters came out from police chiefs who said they just can't follow this mandate. That's because it was poorly written, poorly constructed, and poorly done. And it's something that should be gone through the General Assembly.

If you didn't support the mask mandate, you should support this bill because it stops the executive branch from unilaterally issuing an executive order dealing with this one particular subset of issues. And it's just related to Covid-19. So if there's a Covid-2021 tomorrow, it will not affect that.

With that, I'll take any questions from these distinguished body.

Pitsch: Are there any questions? I saw Senator Teague first. Then we'll go to Senator Hammer. Senator Teague, you are recognized.

Teague: Senator Garner, I meant to ask you before you got down there, and I apologize. Does this affect the cities? I think the city of Little Rock kept a mask prohibition and maybe Fayetteville or someplace. Does this affect that?

Garner: I and checking with BLR (Bureau of Legislative Research) says it does not. I know there's differences of opinion. I believe Senator Tucker has a difference of opinion. But my reading of it, and the way I talked to BLR, it does not.

Teague: Thank you.

Garner: I mean, we could run a bill to do that, for sure.

Pitsch: Senator Hammer, you are recognized for questions.

Hammer: Thank you. Thank you, Mr. President. Senator Garner, what I was wondering is with the newly passed legislation where we have some authority over the executive branch as far as taking up issues like this and it running through, you know, appropriate committees where we can terminate these kind of things, what would be -- what are we missing that we need this given the fact that we now have that other bill in place? Would you balance the two, please?

Garner: Excellent question. What stops the governor tomorrow from extending the mask gate again for another 60 days?

Hammer: Would we not have the procedures in place to address that under--

Garner: Eventually, sir. That's where I think the distinction is. Eventually we could come back and do it within that order. I agree with you and that's why I have not run this legislation earlier. I wanted to the first day of session. But I respected your work and the work you did on that bill to put us in the process. This is a subset issue that I don't think we should go back to the mask mandate as contentious as that was. This isn't -- I have a business license, you can pull my business license. This isn't, I'm selling alcohol. This is me as a individual having a fine placed on me by an executive order by one person making that decision.

If this is needed, and it could. We could have a spike next where participates -- which, which desires us to have a mask mandate again. I don't know if I'd be for or against that, but I could see the need. It requires the General Assembly to come to special session or if we're in session to come together and have a say on it. Why is that important? Experts come. They discuss it. We go through the legislative process. We put in place a bill that has the enforcement of law with the end date and is in there. And law enforcement will not laugh it off, like many of them did the executive order, because we have power over them in other different ways as we've seen from some of the debate today. That's the distinction, sir, I think between this and your very good bill which is more of a forward thinking. I think this one for the current crisis keeps us very restrictive in that manner.

Hammer: Okay, thank you for the explanation.

Pitsch: Senator Sullivan, you are recognized for questions.

Sullivan: Thank you. Isn't one of the other differences that this would involve the entire legislature, whereas the bill that Senator Hammer passed may only end up in ALC?

Garner: Yes, sir. And that, I mean, like I said, I think Senator Hammer did great work. I'm not knocking his bill. But I'm not on ALC. I probably won't be for, assuming I run for re-election, for a while because of how it's broken down. I don't have a direct say unless someone doesn't come and I'm alternative in that body. Now, that's an imperfect process that had to be in place because when we're not in session, ALC is the legislator in session. I understand it. This gives every one of us a voice, and more importantly, that is a mechanism to extend or not extend the governor's rule over us in that capacity. It's us giving a blessing to what he did or to not. This is us coming now saying we will put it into force of law created by our Constitution to give us the power to legislate to write laws. That distinction is very important and something that I think was negated too many times this last year.

Pitsch: Senator Eads, you are recognized.

Eads: Does this allow local businesses to still make decisions as far as for their employees and their customers at the local level?

Garner: Once again, I am checking with BLR about this. I think that it does. I know Senator Tucker disagrees, and the Department of Health disagrees. And he'll speak at that language. I can explain why I do not. My intent when I sent this BLR was only to deal with the executive orders in coming out. And there's a language that I think is unclear, which could always be tightened up. But I do not think it does what Senator Tucker does, respectfully. As he explains his position, I think he'll do a great job explaining the counter to that. My -- I'm not trying to mislead you. My take is it does not. There is difference in opinion.

Eads: Thank you.

Pitsch: Are there any other questions? Seeing none, would anybody like to speak against the bill? Senator Tucker, you are recognized to speak against the bill.

Tucker: Thank you, Mr. Chair. And I'm not going to speak to whether we should prohibit the governor, because I think probably every member has their mind made up on that. I'm really just going to speak to the questions raised by Senator Teague and Senator Eads. I do think the way the language in the bill is written, it would prohibit cities and private institutions from putting a mask mandate either in their municipalities or in their private places of business.

The reason is because on page 2 of the bill in section B -- this is on line 3. It says, "All mandatory face covering requirements, including without limitation requirements imposed by the

executive order issued by the governor.” So that to me necessarily implies that it’s addressing face covering requirements in addition to the one imposed by the governor. And the only ones I’m aware of in addition to the one imposed by the governor are ones imposed by cities and private businesses. So, to me, that language -- and I understand, Senator Garner and I have discussed this, and he has a difference of opinion, which I respect. That’s my read of it, is that it, because of that language, it necessarily applies to orders in addition to the governor’s order and that affects cities and private businesses. That’s my read of the bill.

So, appreciate a no vote for that reason. I’d be happy to answer --

Pitsch: Are you willing for a question?

Tucker: Yes, sir.

Pitsch: Senator Blake Johnson for question.

B. Johnson: In that “including without limitations,” that’s on state orders. I mean, that’s how I would read that. If there was another state order and he didn’t lift them yesterday, that would be on another state order, you know, without limitations.

Tucker: I’ll explain why I disagree. On line 3, it says “all mandatory face covering requirements.” If right there it said, “all state-imposed mandatory face covering requirements,” then I would agree with your point, Senator Johnson. But it says “all mandatory face covering requirements” without qualification. And then it says “including without limitation” the one imposed by the governor.

B. Johnson: Okay.

Pitsch: Are there any other questions? Seeing none.

Tucker: Thank you.

Pitsch: Anybody that would like to speak for the bill? Seeing none, Senator Garner, you are allowed to close.

Garner: Yes sir, I’ll be very brief to discuss that point. I wanted to hear the other side. For two reasons I think that this would not include private or cities. One is the language of the rest of the bill, which specifically over and over again addresses the need to do with the executive order. It doesn’t bring up cities. It doesn’t bring up anything else. Typically when you read law, you read the black letter of the law, but you also look at legislative intent and the law as a whole. But even if you read the black letter of law, I think the word mandatory is the key element. Mandatory implies a legislative or an executive branch kind of government structure behind it rather than some other word which would be less precise. With that being said, if it passes this body and I keep hearing this, I am more than happy to make a small amendment on the other side of the

House -- on the other side of the chamber -- to address that. I think it's a easy fix. I know that's an imperfect thing to say. But I think under currently it's good, but I'm always opening to making things more clear in the language of the law. With that, I am closed.

Pitsch: Senator Garner is closed. Is there any objection to rolling the vote? And I would remind members that this has an emergency clause, so 24 votes is required. Is there any objection to rolling the vote? We have an objection to rolling the vote. Madam Secretary, please call the roll.

[Initial votes: 14 yes, 9 no, 10 not voting, 2 present (Failed)]

Yes:

Ballinger, Beckham, Caldwell, Clark, Davis, Flippo, Garner, Gilmore, Hester, M. Johnson, Sample, Stubblefield, Sullivan, Wallace

No:

Bledsoe, Chesterfield, Elliott, Flowers, Hendren, Hickey, Hill, Ingram, Tucker

Present:

Eads, Hammer

Not Voting:

Dismang, English, Irvin, B. Johnson, Leding, Pitsch, Rapert, Rice, Sturch, Teague]

Pitsch: Okay, which Senators would like to change their vote? Let's start over here. I have a yes for Senator Blake Johnson. Anyone else? Seeing none. Over here, I've got a yes for Senator Hill, a yes for Senator Rapert, a yes for Senator Rice. I believe Senator Leding is a no. Do I have anybody else? Senator Pitsch is a yes. Am I missing someone? Senator Irvin is a yes.

Changed votes:

B. Johnson: Yes (previously did not vote)

Hill: Yes (previously no)

Rapert: Yes (previously did not vote)

Rice: Yes (previously did not vote)

Leding: No (previously did not vote)

Pitsch: Yes (previously did not vote) - [put vote over 18 to pass without emergency clause]

Irvin: Yes (previously did not vote)

Final votes: 20 yes, 9 no, 4 not voting, 2 present (Passed without emergency clause)

Yes:

Ballinger, Beckham, Caldwell, Clark, Davis, Flippo, Garner, Gilmore, Hester, Hill, Irvin, B. Johnson, M. Johnson, Pitsch, Rapert, Rice, Sample, Stubblefield, Sullivan, Wallace

No:

Bledsoe, Chesterfield, Elliott, Flowers, Hendren, Hickey, Ingram, Leding, Tucker

Present:

Eads, Hammer

Not voting:

Dismang, English, Sturch, Teague]

Pitsch: Madam Secretary, cast up the ballot. With 20 yeas, 9 nays, 4 no votes, the emergency clause failed but the bill passes. Did I call that correctly? Oh, 4 not voting, excuse me. So the bill passes, the emergency clause fails. Return to the Senate -- transmit to the Senate -- to the House, excuse me.

[5 minutes later]

Pitsch: We're going to go to Senator Garner for motion. You're recognized.

Garner: Yes, sir. So everybody understands, this is SB590, the one I just voted on for the mask requirement. It requires a emergency, which we did not get. So I'm going to make a motion to expunge the vote by which the emergency order failed and ask that it be re-run again. Is that the proper motion on the second part?

Ann Cromwell: [illegible]

Garner: Be re-voted only on the emergency party.

Pitsch: That is a proper motion. All in favor of accepting the motion to expunge the vote on the emergency clause only, please say aye.

Senators: Aye.

Pitsch: Same sign opposed? [silence] Your motion passes. Did we do it there?

Garner: Motion to re-vote SB590, the emergency clause only.

Pitsch: That is a proper motion. Is there any comment on the motion? Seeing none, all in favor of accepting the motion, please say aye.

Senators: Aye.

Pitsch: Same sign opposed? [silence] Motion carries. So we need to have a vote, Madam Secretary. Is there any objection to rolling the vote on that emergency clause only? We need 24 votes. Seeing none, Madam Secretary, please roll the vote.

[Votes: 34 yes, 1 no, 0 present, 0 not voting

Yes: Ballinger, Beckham, Bledsoe, Caldwell, Chesterfield, Clark, Davis, Dismang, Eads, Elliott, English, Flippo, Garner, Gilmore, Hammer, Hendren, Hester, Hickey, Hill, Irvin, B. Johnson, M. Johnson, Leding, Pitsch, Rapert, Rice, Sample, Stubblefield, Sturch, Sullivan, Teauge, Tucker, Wallace

No: Flowers]

Pitsch: Are there any senators that wish to change their vote? I have Senator Chesterfield is no. Sturch is not voting. I've got Senator Tucker with a no vote. Senator Ingram with a no vote. Senator Hendren with a no vote. Senator Elliott is a no vote. We've got Senator Chesterfield as a no. Do we have any other senators wishing to change their vote? Looking around the room. Last chance. Madam Secretary -- Senator Leding is a no. Madam Secretary, I think we've given them enough time. Please cast the ballot.

[Changed votes:

Chesterfield: No (from yes)

Sturch: Not voting (from yes)

Tucker: No (from yes)

Ingram: No (from yes)

Hendren: No (from yes)

Elliott: No (from yes)

Leding: No (from yes)

Final vote: 27 yes, 7 no, 0 present, 1 not voting

Yes: Ballinger, Beckham, Bledsoe, Caldwell, Clark, Davis, Dismang, Eads, English, Flippo, Garner, Gilmore, Hammer, Hester, Hickey, Hill, Irvin, Ingram, B. Johnson, M. Johnson, Pitsch, Rapert, Rice, Sample, Stubblefield, Sturch, Sullivan, Teauge, Wallace

No: Chesterfield, Elliott, Flowers, Hendren, Ingram, Leding, Tucker

Not voting: Sturch]

Pitsch: With 27 yea, 7 nay, 1 no vote -- 1 not voting. So the emergency clause does pass as 24 votes were needed. Transmit to the House.

[House Public Health, Welfare and Labor Committee](#)

April 15, 2021 9:30 a.m.

Ladyman: Rep. Wardlaw, you're recognized to present SB590. Committee, it's SB590.

Wardlaw: Thank you, Mr. Chair. SB590 has an amendment, I think. If staff will get the amendment out to the committee.

Ladyman: Okay. Let's give them a few minutes to look at that. [silence] If you would, please introduce yourself and who you represent.

Cryer: Thank you, Mr. Chairman. My name is Christine Cryer. I'm the chief legal counsel for the Department of Corrections.

Wardlaw: So, Mr. Chair -- committee -- I haven't worked on this bill at all until this morning. But I was contacted this morning by a couple of departments within the state and they asked me to work with Senator Garner to work on an amendment. I will tell you that it's never been easier to work with any member in my life. Senator Garner said get an amendment and I'm good with it. So we worked with some different agencies.

And if you'll turn to the second page of amendment, E1, 2, and 3 exempts these people from being able to have -- these folks will be able to have a mask mandate if they see need for. And I will tell you I brought the Department of Corrections to the table because if you saw the news release yesterday, the Department of Corrections is down to less than 50 cases of Covid-19 within the Department of Corrections. All 50 cases are new inductees to the department, so you have to think back that we send all of our new inductees male and female to two different facilities to find out whether they're adaptable to a single cell or to a group, meaning general population. We don't want to send any of those people out with Covid-19 now that we've worked that through our departments. So we want to be able to require masks in those diagnostic centers to make sure we have no spread when we bring in a new inmate. Senator Garner allowed us to do that in this amendment.

Private businesses, if they want to have a mask mandate, we're allowing them to make the decision on theirself. We don't want to have a perception of big government. So then a state-owned or state-controlled healthcare facility -- so like UAMS. DHS has the human development centers. Those areas, they still have admissions, which means those admissions need to be protected and the people in those facilities need to be protected from those admissions. So they're still allowed to have a mask mandate. With that, I'd be happy to take any questions.

Ladyman: Representative Dotson, you're recognized.

Dotson: Thank you, Mr. Chair. I'm still kind of looking through the amendment, which as I understand it is now the bill or would now become the bill. I guess the first question that pops out to me is Representative Bryant is being added as a co-sponsor, and not you?

Wardlaw: That is correct. The senator had to run to another committee. I was never supposed to run the bill, but he asked me to run it because the amendment is my amendment. If you look at the back, it's on the back.

Dotson: Yeah, I see that.

Wardlaw: Yes, sir. But I will not be running it on the floor. Representative Bryant will be the person. I'm not taking his bill away from him.

Dotson: Okay. Thank you.

Ladyman: Any other questions? Representative Allen, you're recognized.

Allen: Well, if this passes, will this be in conflict with the guidelines of the CDC?

Wardlaw: We don't think so at the current moment because it still allows those people to have masks in those places of congregation like a hospital, human development center, a prison, those sort of places.

Allen: What about public schools?

Wardlaw: Public schools are not exempt in here. But my understanding is those superintendents are making those decisions independently today. And I see Dr. Cloud nodding his head yes that I'm saying that right.

Allen: So does that mean I have to take Dr. Cloud's word?

Wardlaw: Yes. [laughter]

Ladyman: Representative Gray, you're recognized for a question.

M. Gray: Thank you, Mr. Chair. What about DYS? Do they need -- possibly need an exclusion, or should I -- should we --?

Wardlaw: I'm pretty sure they're excluded through the state-owned or controlled healthcare facility because most of their facilities would fit under behavioral health or developmental disabilities.

M. Gray: Okay. Could I ask a follow-up?

Ladyman: Yes, you're recognized for a follow-up.

M. Gray: Could I bring Mark White up and just ask him to make sure?

Wardlaw: Absolutely.

M. Gray: Okay.

Ladyman: Mr. White, if you would, come up and introduce yourself and who you represent.

White: Thank you, Mr. Chairman. Mark White, Department of Human Services. I think in answer to your question, Rep. Gray, it depends on how you define healthcare facility. With DYS, we do have some that provide behavioral health. Others do not. And so I'm not certain if it would apply to that. And I'll just apologize. We first saw the amendment about 5 minutes ago. The other concern which I'm looking at and I don't know is it's not clear to me if this will allow us to continue enforcing CDC guidelines for nursing homes that we regulate. And that's another potential issue, but, again, having just looked at this, I'm not certain yet.

Wardlaw: I will pull it down for this afternoon's meeting, and I will add in the DYS facilities under those 1, 2, and 3 as a fourth one, because I can see where the healthcare definition may not reach all their facilities. Because some of them are foster-type facilities and they probably need added. Because any facility that's bringing in new admissions would need to be protected.

M. Gray: Thank you. And I support the bill fully. I think doing that would be great.

Wardlaw: Would that make the department happy?

White: I think so. I think the only other question is that nursing home issue, but we'll take a look at it and we'll --

Wardlaw: I think it's covered under number 1, the private business.

White: Okay.

Wardlaw: Because nursing homes are all private businesses for the most part.

White: Right.

Wardlaw: And your state-owned ones are covered under number 2. So I think we're covered there. We just need to cover the foster centers. I'll get that amended and we'll bring that back this afternoon with the permission of the chair.

Ladyman: Thank you, Representative. Representative Allen, you're recognized.

Allen: Yeah, thank you. I have a question for Representative Wardlaw, but we need to talk.

Wardlaw: Okay.

Ladyman: Okay, thank you, Representative Wardlaw.

Wardlaw: Thank you, committee. Sorry for the confusion.

[House Public Health, Welfare and Labor Committee](#)

April 15, 2021 2 p.m.

Ladyman: SB590. You're recognized to present the bill.

Wardlaw: It has an amendment. I don't think we adopted the amendment this morning. If we did, then I'd like to expunge --

Ladyman: No, we did not.

Wardlaw: Okay. Thank you.

Ladyman: Okay, the amendment's coming around.

Wardlaw: I will explain the amendment.

Ladyman: Yeah, go ahead. We looked at it this morning, so go ahead.

Wardlaw: Thank you, Mr. Chair. The amendment does what you guys asked me to do this morning. I added in DYS to make sure all facilities that have mass dormitories or admissions can still wear a mask. We're definitely not making everybody happy. We think we got the nursing home portion covered with the private business and with the ability for them to be able to still do it so they can comply with the CDC guidelines if said guidelines are there. So with that, I'd make a motion to adopt the amendment.

Ladyman: I have a motion to adopt the amendment. Any discussion on the motion? Seeing none, all in favor signify by saying aye.

Committee: Aye.

Ladyman: All opposed, nay. [silence] Motion carries. Your amendment's been adopted. You're recognized to present the bill as amended.

Wardlaw: The bill pretty much is the amendment, Mr. Chair. I'd be happy to take any questions. We've pretty well already waded this water this morning.

Ladyman: Any questions from committee? [silence] Seeing none, anyone here to speak against the bill? Please introduce yourself and who you represent.

Shoo: Thank you, Mr. Chair, members of the committee. I'm Laura Shoo. I'm general counsel for the Department of Health. We appreciate the opportunity to review the amendment that became the bill this morning and this afternoon. We do still have some concerns about the bill as it is written. We think there are some unintended consequences with this bill. As you all know, with the approval of ALC, the public health emergency has been extended by 60 days. And that's to

allow for continued legislative efforts to enact executive orders and to provide a rapid response if needed. And the governor also administered his executive order 21-7 on March 31st. The face covering directive was ended at the end of March based on the metrics and the science that have been evaluated over a period of time.

This bill takes away the flexibility to react quickly. It also conflicts with the new legislative review process under Act 403 of 2021 because it provides no sunset provision if mitigation efforts were necessary in the future. The amendment may exempt private businesses like hospitals, groceries, and restaurants that have already announced they are continuing best practices and will require a mask, but it still states that "all mandatory face coverings shall end" by including without limitation the ones issued by the executive orders and the ADH directives.

There are cities, counties, schools, higher education that want mask requirements. Most were planning to re-evaluate every 30 days or over the summer. This is taking away their local control. There are also health science schools with clinical classes that have contact with immunocompromised patients. And while the amendment exempts the ADC, it does not exempt city jails or county detention facilities that may require masks for congregate settings to protect against litigation.

We have a concern about the Department of Health's main office and the 92 local health units which may not fall in the definition of healthcare facility. In Section 2, there's very broad language. Does this affect face masks or face shields for sports? It doesn't refer to Covid or the public health emergency. Is this talking about sports face shields? Or protection for job-related safety reasons. This also refers to only legislation, which infers that it's only during a session, which also conflicts with Act 403 of 2021, which is a new process for directives in public health emergencies during the interim.

It prohibits the use of masks for all time. Are we talking about times with other diseases? What if we need to temporarily use a mask mandate during an outbreak? What if a local area needed it? There have been mumps outbreaks in Northwest Arkansas. We've had Hep A outbreaks in Northeast Arkansas.

The bill sends the wrong message. And while Arkansas has fully vaccinated about 25% of the people 16 and up and about 50% of individuals 65 and older, we want to be able to continue to protect each other and respect each other and take it seriously while we get everybody else vaccinated. And I believe we have Secretary Key here from the Department of Education to answer any specific questions about schools. Thank you.

Ladyman: Any questions from committee? Representative Boyd, you're recognized.

Boyd: Thank you, Mr. Chair. Mrs. Shoo, I mean I didn't see this amendment earlier. Maybe other committee members did, and something you said in your testimony made me look at this. So, on the first page -- do you have a copy of the amendment? Have you seen it?

Shoo: Yes, I have it in front of me.

Boyd: Okay. On C at the very first place it says, "the use of a face mask, face shield, or other face coverings shall not be a condition for entry, education, or services." So, you said something about sports and other things, and I just -- to me, that excludes it. But you're an attorney. I'm just curious why you don't think that that would exclude these other things where it might be necessary. Thank you.

Shoo: We're concerned about the fact that it's so broad. While it talks about state agencies in subsection B, it does say "entry, education, or services" under subsection C. And so it shall not be a condition. So if educators in school districts in local control wanted to use a mask mandate, they would not be able to under this bill.

Ladyman: Representative Dotson, you're recognized for a question.

Dotson: Thank you, Mr. Chair. Did -- I'm assuming you reviewed this this morning, and I think this amendment is identical to the one we saw this morning with the exception that it adds that DYS services exemption in there. Were you able to get with the sponsor of the amendment to address those concerns in between this morning and this afternoon? I know we haven't had a whole lot of time. But did you bring those up?

Shoo: We talked with Representative Wardlaw in the interim.

Wardlaw: They did.

Shoo: And I've also reached out to the Municipal League and Association of Counties to try and get their insight on this also. But we do think this is very broad. It does include a political subdivision of the state. It's my understanding that several cities and several counties and school districts have issued their own mask requirements.

Dotson: Follow up?

Ladyman: Yes, you can have a follow-up.

Dotson: So, I guess, did you support the bill before it was amended?

Shoo: We were going to testify against the bill before it was amended.

Dotson: Okay. Thank you.

Ladyman: Representative Boyd, you're recognized.

Boyd: Thank you, Mr. Chair. Just a quick question. So you believe this would immediately -- once it was approved and signed by the governor or let go into law or whatever that it would end the mandate in Little Rock, Fayetteville, and Rogers immediately?

Shoo: That's my reading of it, but obviously I don't represent the cities or the counties. But that's my reading of it.

Ladyman: Any other questions from committee? [silence] Seeing none, thank you for your comments. We have Christine Cryer signed up to speak against the bill. Please introduce yourself and who you represent.

Cryer: Thank you, Mr. Chairman. My name is Christine Cryer. I am the chief legal counsel for the Department of Corrections. When I signed up to speak against the bill this morning, that was prior to the amendment being made. Now that the Department of Corrections has been added to the bill, we no longer oppose it.

Ladyman: Thank you. Thank you for your comments.

Cryer: Thank you. Thank you.

Ladyman: Okay, no one else is signed up to speak for or against the bill. Anyone in the audience who wants to speak against the bill? For the bill? Against? I don't read. I'm not sign language --. Please introduce yourself and who you represent.

White: Sorry, Mr. Chairman. Mark White, Department of Human Services. This is probably more on the bill. But just a couple of things -- I just wanted to make sure the committee was aware of just so everybody's on the same page and we fully understand the effect of the bill. One, of course, we do appreciate the addition of the DYS exemption. That certainly does help us. Secondly, I just want to make sure everyone understands we do have some federal mandates in some of our programs that we have to enforce CDC guidelines in certain types of facilities. Nursing homes are the most common example of that. But as Representative Wardlaw said, he thinks that that private business exception allows us to continue to do that, and we don't disagree. But I just want to make sure that folks understand that this does not change those federal mandates that we have to enforce on these other types of facilities.

And the other concern that I've heard from our folks that I'll just pass along to you and you can do with it as you will. We -- so far as I know, I don't know that we've gotten a single complaint from any employees about having to wear a mask. I think we have heard complaints and worries from employees about working in an environment without masks. And so I think there is a concern of is this going to create a recruitment issue for us if employees are not wanting to work in an environment where masks are not being used in this present climate. I can't tell you that that's going to happen. I have absolutely no proof whatsoever. But that's just a consideration that was brought to me, and I just wanted to share that with the committee. And that's all I have, Mr. Chairman.

Ladyman: Any questions? [silence] Seeing none, thank you for your comments.
Representative, are you ready to close for your bill?

Wardlaw: Mr. Chair, I'd be closed. I'd make a motion do pass as amended.

Ladyman: I have a motion of do pass as amended. Any discussion on the motion? [silence]
Seeing none, all in favor, signify by saying aye.

Committee: Aye.

Ladyman: All opposed, no?

Committee: No.

Ladyman: Ayes have it. Congratulations, your motion has passed. [silence] Roll call.

Votes: 13 yes, 1 no, 5 not voting

*Yes: Cloud, Wing, Coleman, Boyd, Gonzales, M. Gray, Bentley, Payton, Miller, Dotson, McGee,
Wardlaw, Ladyman*

No: Perry

Not voting: Davis, Penzo, Pilkington, Allen, Eubanks

Ladyman: Congratulations, your bill has passed.

[House Vote](#)

April 20, 2021 1 p.m.

Speaker: Representative Bryant, you're recognized to explain the bill.

Bryant: Thank you, Mr. Speaker. Members, if it's one thing that the pandemic has taught us is what is able to be tolerated easy by society and what is not. I think one of the executive orders that came out of the pandemic was the mask mandate. It created a lot of strife among us. And one of those reasons for strife was, is it a law, is it a regulation, is it a guideline. We had open members of our leadership from sheriffs to police chiefs to mayors say they're not going to enforce it or they are going to enforce it. So what this bill does is says that the rights for this mandate, if enacted in the future, will be upon its people that represents itself, which is the General Assembly of Arkansas. Now it does not affect private entities or state-owned hospitals. They're free to do as they want to protect themselves and their businesses. But as far as the state is concerned, we as the General Assembly will create the law that will be enforced by society. Is any questions?

Speaker: Representative Flowers, for what purpose?

V. Flowers: Question.

Speaker: You're recognized.

V. Flowers: So in my district, it was ground zero. We had the first case. We had some of the highest numbers in the state as it relates to hospitalization, death, and the like. Obviously, the impact was different in different parts of the state. So why would we take local control away from mayors and county judges who might have to respond differently in one part of the state than the other to this or any other pandemic?

Bryant: I think uniformity is the biggest issue, that even though your area you may feel has suffered, there's some members of your society that may say, you know what, I don't feel that my liberty should be restricted to do that. That's the legislature's responsibility. If it comes from the executive office, they might say, well, as a mandate, is it a law. Well, a mandate has the force of a law, but there's a lot of people or a lot of members of the sheriffs or the police that say, you know what, we're going to be just peacemakers on that issue. We're not going to come write tickets, which just, again, just perpetuates the strife among its citizens.

V. Flowers: Follow up?

Speaker: You're recognized.

V. Flowers: I understand the point of uniformity as it relates to commerce. But when it comes to public health and people's lives are on the line, and let's say, as my mayor did, she responded to the guidelines, she responded to the needs in our city and in our county, why would we take

that authority away from our local cities to address the different needs? I mean, why would we do that for an arbitrary need for, I guess, uniformity when, again, lives are at stake and you have health officials at the state level and at the federal level that are providing a way for us to exercise uniformity if that's the concern?

Bryant: It is, but it's still a function of state government. When an emergency gets issued, obviously the governor and the Health Department are going to recommend that. But when it comes to face masks requirements, we are going to write legislation to pass, not rely on executive order that creates too much ambiguity and force. The legislature should be the one that promulgates that.

Speaker: Representative Clowney, for what purpose?

Clowney: Question.

Speaker: You're recognized.

Clowney: Representative Bryant, I understand that the intention of this is to be narrowly tailored to face masks that cover the mouth and nose for Covid. But under my reading of the bill, I'm concerned this is going to apply to things like a chemistry lab at the University of Arkansas. Right? If you're got professors saying you've got to wear a covering that covers your face. Or a welding class at one of our two-year colleges. Can you address that concern?

Bryant: I think with state-owned or state-controlled facilities -- healthcare facilities. That's a safety concern for them to conduct business. I don't think that would be effective of this, of this bill.

Clowney: Follow-up. So, I mean, the University of Arkansas chemistry lab, for instance, I don't think would be considered a healthcare agency, right, that would be covered under that exception. And I guess what I'm looking at is on page 2, line 11, "on a state agency of entity or a state or local official recommends that an individual in the state use a face mask, face shield, or other face covering." Does that not, in your opinion, apply to the sorts of settings that I was talking about?

Bryant: It doesn't, in my opinion.

Clowney: Okay, thank you.

Bryant: Thank you for the good vote.

Speaker: Representative Bryant has explained the bill. Would anyone like to speak against the bill? Would anyone like to speak for the bill? Representative Wardlaw, you're recognized to speak for the bill.

Wardlaw: Thank you, Mr. Speaker. When we put the amendment on in committee, the only people that spoke against this bill was the Department of Health. All day today, I've been getting texts and calls from higher ed. They never said a word in committee. Folks, this process works in the committee process. If they got a problem with a bill, they need to come to the committee and speak against the bills. But they want to express their muscle by texting and calling every member instead of coming into committee where they can be questioned about why they have those viewpoints. They didn't do that. So with that, I'd appreciate a good vote.

Speaker: Representative Wardlaw has spoken for the bill. Would anyone like to speak against the bill? [silence] Would anyone like to speak for the bill? [silence] Senator Bryant is for the bill. The question before the House is passage of Senate Bill 590. Prepare the machine, Mr. Clerk.

Vote: 69 yes, 20 no, 0 present, 11 not voting

[Vote counts](#)

Speaker: Has everyone voted? We're voting on the bill and the emergency clause. Has everyone voted? Cast up the ballot, Mr. Clerk. By a vote of 69 yeas, 20 nays, and 0 present, the bill and emergency clause are passed.

[Senate Public Health, Welfare, and Labor Committee](#)

April 21, 2021 scheduled for 2 p.m., actually began at 6:41 p.m.

Flippo: Senator Garner, we're going to start off with Senate Bill 590. We've got a concurrence for the House amendment?

Garner: Yes, we do, sir. Quick what this bill does. Basically we just exempted a few place, made sure it was clear for private industries, they weren't included. We got rid of it for Covid-19. Just any kind of future mask mandate, they'll have to actually come to the legislator. I think this is good bill. And I'll be closed for my bill.

Flippo: Okay. We do have some people signed up to speak on this bill. First off, we're going to start with Mrs. Karen Walters. Oh.

Sullivan: Motion for immediate consideration.

Flippo: We had a motion by Sen. Sullivan, second by Sen. Davis. It's a non-debatable motion. All in favor?

Committee: Aye.

Flippo: Opposed?

Committee: No.

Flippo: Motion carries. All right, members. Senator Garner, you closed for your bill?

Garner: All right, Senator Garner's closed for his bill. What's the pleasure of the committee? We've got a motion by Senator Davis, a second by Senator Sullivan. All in -- Any discussion on the motion? Thank you, Senator Hammer.

Hammer: Mr. Chair, I want to voice, and I understand we've all been here a long time, but so have people who've been in this room. They've been here since 1:45 [time was currently 7:05 p.m., according to Senate records], some of them sitting here waiting for us. And I know it's the end of the session and everything. I am going to voice my objection to this because it means we will have not heard opposition or input onto this bill. And I'm going to go on record of voicing my opposition. I respect the process, but I am going to voice my opposition that we did not let the people in the audience to at least have what we've allowed other people to have, and that is at least 2 minutes on this bill. And I just want to get that out there on record. Thank you.

Flippo: Thank you, Senator Hammer. All right, members. We've got a motion on the floor. We've got a motion by Senator Davis and a second by Senator Sullivan. All in favor, say aye.

Committee: Aye.

Flippo: Opposed. [silence] Congratulations, Senator.

Garner: Thank you, sir.

[Senate Vote](#) with Amendment

April 22, 2021 1 p.m.

Sturch: Senator Garner, you're recognized to present your amendment.

Garner: My bill, my amendment.

Sturch: You've heard an explanation of the amendment. Senator Chesterfield has a question.

[inaudible]

Garner: It makes a few changes about make sure we exclude private businesses, kind of take away some of the more restrictive languages and kind of excludes a few more people who wanted to be excluded from the House end.

Sturch: Any further questions? Senator Hammer, you're recognized for a question.

Hammer: Clarification from the Chair, please?

Sturch: Yes, sir.

Hammer: This is on the amendment, but then the underlying bill will be discussed after this amendment, correct?

Sturch: Right after. Yes, sir. That's correct. Any other questions about the amendment? Seeing no further questions, you've heard an explanation of the amendment. All in favor of the amendment, say aye.

Senators: Aye.

Sturch: Any opposed? [silence] Amendment is adopted. We'll now take up the underlying bill and its emergency clause, Senate Bill 590. Senator Garner, you're recognized to present your bill.

Garner: Mask mandate. Y'all know the terms with it. You either like it or you don't like it. I'll take any questions.

Sturch: You've heard an explanation of the bill. Senator Hammer has a question.

Hammer: Thank you, Mr. Chair. Senator Garner, two things. One, does this -- is this going to capture schools? Because one of the concerns is that in a lab environment and other environments, it would remove the requirement for that. Could you address that issue, please?

Garner: Yes, sir, it should address schools. It does education as well.

Hammer: I'm sorry?

Garner: Yes, sir. It does address school. It does education within the bill. Correct.

Hammer: And follow up, Mr. Chair?

Sturch: Sure.

Hammer: This has an emergency clause on it, so it would require 24 votes to get the emergency clause or we'll be voting it separate?

Sturch: No, we'll be voting it together as long as it passes.

Garner: Assuming it doesn't pass, then -- if this body determines we don't need to put the emergency clause on there, I would probably respect this body in that decision and make sure we push this past until the summer to make sure everybody who has it now can get the final part of it.

Hammer: Ok, thank you.

Sturch: Any further questions for Senator Garner? Senator Beckham.

Beckham: The way the bill is written, does it prevent chemistry labs and things like that in high schools from requiring face masks?

Garner: No, I don't think so. I think that is related to the Covid -- related to a pandemic if you look at the languages. I think normal utilized mask in all capacities would be fine. I do not think that would be an issue. I just kind of fundamentally disagree with that legal principle.

Beckham: Okay.

Garner: Yes, sir.

Sturch: Any further questions for Senator Garner? Any further questions? Seeing no further questions, is there anyone who would like to speak for or against this bill? Seeing none, Senator Garner, you're recognized to close.

Garner: I'm closed. Thank you.

Sturch: Senator Garner has recognized he's closed for the bill. Is there any objection to rolling the vote on the bill? There is an objection, so Madam Secretary, please call the roll.

[Initial votes: 15 yes, 8 no, 10 not voting, 2 Leave (Failed)]

Yes:

Ballinger, Beckham, Davis, Dismang, English, Flippo, Garner, Hester, Hill, B. Johnson, Pitsch, Rapert, Rice, Sullivan, Wallace

No:

Chesterfield, Elliott, Hammer, Hendren, Hickey, Ingram, Sample, Tucker

Present:

Not Voting:

Bledsoe, Caldwell, Clark, Eads, Gilmore, M. Johnson, Leding, Stubblefield, Sturch, Teague

Leave:

Flowers, Irvin]

Sturch: Are there any senators wishing to vote or change their vote? Senator Clark is aye. Senator Bledsoe is no. Senator Gilmore is aye. Any other senators wishing to vote or change their vote? Senator Stubblefield is aye. Senator Eads is aye. Any other senators wishing to vote or change --? Are there any senators wishing to vote or change their vote? Seeing none, Madam Secretary, please cast up the ballot.

Changed votes:

Clark: Yes (previously did not vote)

Bledsoe: No (previously did not vote)

Gilmore: Yes (previously did not vote)

Stubblefield: Yes (previously did not vote)

Eads: Yes (previously did not vote)

Final votes: 19 yes, 9 no, 5 not voting, 0 present, 2 on leave (Passed without emergency clause)

Yes:

Ballinger, Beckham, Clark, Davis, Dismang, Eads, English, Flippo, Garner, Gilmore, Hester, Hill, B. Johnson, Pitsch, Rapert, Rice, Stubblefield, Sullivan, Wallace

No:

Bledsoe, Chesterfield, Elliott, Hammer, Hendren, Hickey, Ingram, Sample, Tucker

Not voting:

Caldwell, M. Johnson, Leding, Sturch, Teague

Leave:

Flowers, Irvin]

Sturch: With a vote of 19 yeas, 9 nays, 0 present, the bill has passed but the emergency clause has failed.