

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas As Engrossed: H3/2/17 H3/9/17 H3/17/17

2 91st General Assembly

# A Bill

3 Regular Session, 2017

SENATE BILL 373

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5 By: Senator Hester

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## For An Act To Be Entitled

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AN ACT TO EXEMPT ATTORNEY-CLIENT COMMUNICATIONS AND

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ATTORNEY WORK PRODUCT FROM THE FREEDOM OF INFORMATION

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ACT OF 1967; AND FOR OTHER PURPOSES.

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## Subtitle

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TO EXEMPT ATTORNEY-CLIENT COMMUNICATIONS

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AND ATTORNEY WORK PRODUCT FROM THE

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FREEDOM OF INFORMATION ACT OF 1967.

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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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21 *SECTION 1. DO NOT CODIFY. Legislative intent.*

22 *(a) The purpose of this act is to:*

23 *(1) Develop a balance between protecting the transparency in*  
24 *government provided by the Arkansas Freedom of Information Act of 1967, § 25-*  
25 *19-101 et seq., and still provide the privacy necessary for attorneys to*  
26 *efficiently and effectively serve the public; and*

27 *(2) Exempt only the narrow category of attorney-client*  
28 *communications and work product strictly related to pending or threatened*  
29 *litigation.*

30 *(b) It is not the purpose of this act to exempt all communications*  
31 *between attorneys and clients, or all work produced by an attorney.*

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33 *SECTION 2. Arkansas Code § 25-19-105(b), concerning examination and*  
34 *copying of public records, is amended to add an additional subdivision to*  
35 *read as follows:*

36 *(24)(A) A record related to pending or threatened litigation*



1 that, if kept by a private attorney for a nongovernmental entity, would be  
2 privileged from disclosure as an attorney-client communication or attorney  
3 work product record under the Arkansas Rules of Civil Procedure, Arkansas  
4 Rules of Evidence, or Arkansas Rules of Professional Conduct.

5 (B) As used in this subdivision (24):

6 (i) "Threatened litigation" means awareness by a  
7 governmental entity, through an actual written or verbal communication from a  
8 potential claimant, or the claimant's representative, that the claimant will  
9 likely seek legal relief in a court, tribunal, or administrative agency  
10 against the governmental entity or its officials; and

11 (ii) "Written or verbal communication" means an  
12 indication by a person or entity, including an action by an administrative  
13 agency.

14 (C) An exemption under subdivision (b)(24)(A) of this  
15 section shall expire:

16 (i) Ninety (90) days upon the close of litigation  
17 and any associated appeal; or

18 (ii) One (1) year after the date of the threat of  
19 litigation if no litigation is initiated.

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22 /s/Hester  
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