

1 INTERIM STUDY PROPOSAL 2019-114

2 State of Arkansas

As Engrossed: S3/6/19

3 92nd General Assembly

# A Bill

4 Regular Session, 2019

SENATE BILL 236

5  
6 By: Senator K. Hammer

7 Filed with: Senate Committee on State Agencies and Governmental Affairs

8 pursuant to A.C.A. §10-3-217.

## 9 For An Act To Be Entitled

10 AN ACT TO AMEND THE PUBLIC EMPLOYEES' POLITICAL  
11 FREEDOM ACT OF 1999; TO DECLARE AN EMERGENCY; AND FOR  
12 OTHER PURPOSES.

## 13 Subtitle

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15 TO AMEND THE PUBLIC EMPLOYEES' POLITICAL  
16 FREEDOM ACT OF 1999 AND TO DECLARE AN  
17 EMERGENCY.  
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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23 SECTION 1. Arkansas Code § 21-1-502(1) and (2), concerning definitions  
24 under the Public Employees' Political Freedom Act of 1999, are amended to  
25 read as follows:

26 (1)(A) "Elected public official" means an individual elected to  
27 serve in a public office, including without limitation the Governor,  
28 Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of  
29 State, Attorney General, Commissioner of State Lands, a member of the Senate,  
30 and a member of the House of Representatives, a state office, a county  
31 office, a local office, or a federal office.

32 (B) "Elected public official" shall include the staff of  
33 an elected public official;

34 (C) "Elected public official" does not mean an individual  
35 appointed to an office, board, or commission under this subchapter;

1           (2)(A) "Public employee" means any person providing services for  
2 the State of Arkansas, a county, a municipal corporation, or any other  
3 political subdivision of this state for which compensation is paid.

4                   (B) The General Assembly recognizes the non-partisan and  
5 confidentiality requirements of legislative staff, and therefore "public  
6 employee" does not mean an employee of the General Assembly, including  
7 without limitation an employee of the Bureau of Legislative Research and an  
8 employee of Arkansas Legislative Audit; and

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10           SECTION 2. Arkansas Code § 21-1-503 is amended to read as follows:

11           21-1-503. ~~Employer~~ Public employer not to penalize public employee's  
12 political activity.

13           (a) A public employee shall not be prohibited from communicating with  
14 an elected public official or a member of the public concerning a matter  
15 related to the public employee's job, except for a matter exempted under §  
16 25-19-105 or prohibited by law from disclosure.

17           (b) A public employee shall not be prohibited from exercising a right  
18 or privilege under the Freedom of Information Act of 1967, § 25-19-101 et  
19 seq.

20           (c)(1) A public employee shall not be restricted or prohibited from  
21 expressing his or her views or opinions related to:

22                   (A) A matter of public concern;

23                   (B) A matter of individual or private concern;

24                   (C) The public employee's job; or

25                   (D) The action of a public official.

26           (2) A reasonable time and place restrictions may be established  
27 and apply to a public employee if the time and place restriction:

28                   (A) Applies during the employee's working hours;

29                   (B) Applies while the public employee is located at the  
30 public employee's place of employment; and

31                   (C) Is provided in writing no less than sixty (60) days in  
32 advance of implementation.

33           ~~(c)(1)~~ (d)(1) It ~~shall be~~ is unlawful for any public employer to  
34 discipline, to threaten to discipline, to reprimand either orally or in  
35 writing, to place any notation in a public employee's personnel file  
36 disciplining or reprimanding the public employee, or to otherwise

1 discriminate against a public employee because the public employee exercised  
 2 the right to communicate with an elected public official, exercised the right  
 3 to communicate with a member of the public, or exercised a right or privilege  
 4 under the Freedom of Information Act of 1967, § 25-19-101 et seq., as granted  
 5 under this subchapter.

6 (2) A public employer ~~shall not be~~ is not prohibited from  
 7 disciplining a public employee who has intentionally made an untrue  
 8 allegation of illegal activity by an elected public official to an elected  
 9 public official concerning a matter related to the *public employee's job*.

10 (3) A public employer is not prohibited from disciplining a  
 11 public employee for disclosing information that is prohibited from disclosure  
 12 by state or federal law.

13 ~~(d)~~(e) Any person ~~willfully violating~~ who negligently violates a  
 14 provision of this subchapter ~~shall be~~ is guilty of a Class A misdemeanor.

15 (f)(1) A public employee may bring a civil action for injunctive  
 16 relief to restrain a violation of this subchapter.

17 (2) If the court finds that this subchapter has been violated,  
 18 the court shall restrain the violation by issuing:

19 (A) A temporary restraining order;

20 (B) After due notice and hearing, a temporary injunction;

21 (C) After a final trial, a permanent injunction; and

22 (D) An award of monetary damages to the public employee in  
 23 the amount of fifty dollars (\$50.00) for each day of the violation.

24 (g)(1) The following shall adopt a policy concerning communications  
 25 with elected public officials:

26 (A) The House of Representatives;

27 (B) The Senate;

28 (C) The Bureau of Legislative Research; and

29 (D) Arkansas Legislative Audit.

30 (2)(A) The policy adopted by the Bureau of Legislative Research  
 31 shall be approved by the Legislative Council, and the policy adopted by  
 32 Arkansas Legislative Audit shall be approved by the Legislative Joint  
 33 Auditing Committee.

34 (B) The policies shall balance the nonpartisan interests  
 35 of legislative staff with the need for employees of the General Assembly to  
 36 communicate with elected public officials about matters of public concern,

1 including without limitation exercising rights under the Freedom of  
2 Information Act of 1967, § 25-19-101 et seq.

3 (C) The policy adopted by Arkansas Legislative Audit shall  
4 also be consistent with auditing standards, including without limitation the  
5 need to maintain independence.

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7 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the  
8 General Assembly of the State of Arkansas that public employees face  
9 restrictions on their right to express their opinions in the workplace; that  
10 these restrictions cause fear in those public employees to use their right of  
11 free speech; and that this act is immediately necessary to ensure the public  
12 employees' freedom of speech is not restricted. Therefore, an emergency is  
13 declared to exist, and this act being immediately necessary for the  
14 preservation of the public peace, health, and safety shall become effective  
15 on:

16 (1) The date of its approval by the Governor;

17 (2) If the bill is neither approved nor vetoed by the Governor,  
18 the expiration of the period of time during which the Governor may veto the  
19 bill; or

20 (3) If the bill is vetoed by the Governor and the veto is  
21 overridden, the date the last house overrides the veto.

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24 /s/K. Hammer

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27 Referred requested by the Arkansas Senate

28 Prepared by: MLD/VJF  
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