

1 State of Arkansas  
2 94th General Assembly  
3 Regular Session, 2023  
4

# A Bill

SENATE BILL 353

5 By: Senator J. Dotson  
6 By: Representative Wardlaw  
7

## For An Act To Be Entitled

9 AN ACT TO AMEND ARKANSAS LAW CONCERNING DRAFTING  
10 REQUESTS AND INFORMATION REQUESTS TO LEGISLATIVE  
11 EMPLOYEES; AND FOR OTHER PURPOSES.  
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## Subtitle

15 TO AMEND ARKANSAS LAW CONCERNING DRAFTING  
16 REQUESTS AND INFORMATION REQUESTS TO  
17 LEGISLATIVE EMPLOYEES.  
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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22 SECTION 1. Arkansas Code § 10-2-129 is amended to read as follows:

23 10-2-129. Drafting and information requests to legislative employees –  
24 Privilege regarding confidential communications – Legislative findings and  
25 purpose – Definitions.

26 (a) The General Assembly finds:

27 (1) Arkansas Constitution, Article 5, § 15, provides, in  
28 part, that "for any speech or debate in either house, [the members of the  
29 General Assembly] shall not be questioned in any other place";

30 (2) The common law doctrine of legislative privilege  
31 shields legislators from disclosure of information related to legitimate  
32 legislative actions and the purposes underlying those actions. In re Hubbard,  
33 803 F.3d 1298, 1310 (11th Cir. 2015); and

34 (3) The common law deliberative process privilege also  
35 exists to protect "confidential exchanges of opinions and advice" and applies  
36 to documents and testimony that are "pre-decisional, deliberative, and



1 reflect the subjective intent of the legislators." Corporacion Insular de  
 2 Seguros v. Garcia, 709 F.Supp 288, 295 (D.P.R. 1989).

3 (b) The purpose of this section is to provide for the confidential and  
 4 privileged nature of certain documents and communications resulting from the  
 5 legislative process to implement the protections provided by Arkansas  
 6 Constitution, Article 5, § 15, legislative privilege, and deliberative  
 7 process privilege.

8 ~~(a)~~(c) As used in this section:

9 (1) "Confidential communication" means:

10 (A) A drafting request;

11 (B) An information request;

12 (C) A supporting document for a drafting request or  
 13 information request;

14 (D) The draft or the work product for a drafting request  
 15 or information request; and

16 (E) Any other verbal or written communication regarding a  
 17 drafting request or an information request;

18 ~~(1)~~(2) "Legislative employee" means an employee of the House of  
 19 Representatives, the Senate, the Bureau of Legislative Research, Arkansas  
 20 Legislative Audit, and the Arkansas Code Revision Commission; and

21 ~~(2)~~(3) "Legislator" means a:

22 (A) ~~any member~~ Member of the General Assembly;

23 (B) ~~or a member-elect~~ Member-elect of the General  
 24 Assembly; or

25 (C) Former member of the General Assembly if the  
 26 confidential communication, including without limitation a drafting request  
 27 or information request, was made while the former member of the General  
 28 Assembly was serving in the General Assembly.

29 ~~(b)~~(d)(1) A drafting request or information request made to a  
 30 legislative employee by or on behalf of a legislator is confidential and  
 31 privileged.

32 (2) The identity of the legislator making the request, except to  
 33 the extent necessary to fulfill the request, and the existence of the request  
 34 shall not be revealed to any person who is not a legislative employee without  
 35 the consent of the legislator.

36 ~~(e)~~(e)(1) Any supporting documents submitted or caused to be submitted

1 to a legislative employee by a legislator in connection with a drafting  
 2 request or information request are confidential and privileged.

3 (2) Except to the extent necessary to fulfill the request, the  
 4 document, copies of the document, or the identity of the person, firm, or  
 5 association producing it shall not be provided to any person who is not a  
 6 legislative employee without the consent of the legislator.

7 ~~(d)~~(f) Unless made public by the legislator, a drafting request,  
 8 information request, supporting documents, and the drafts or the work product  
 9 for a drafting request or information request are not public records under §  
 10 25-19-103.

11 (g)(1) A legislator has a privilege to refuse to disclose and to  
 12 prevent a legislative employee from disclosing a confidential communication,  
 13 including without limitation a confidential communication between:

14 (A) The legislator or his or her representative and a  
 15 legislative employee;

16 (B) Two (2) or more legislative employees relating to a  
 17 drafting request or an information request made by the legislator; or

18 (C) Representatives of two (2) or more legislators and a  
 19 legislative employee.

20 (2) The privilege under subdivision (g)(1) of this section:

21 (A) Applies to a former legislative employee if he or she  
 22 received a confidential communication while employed as a legislative  
 23 employee; and

24 (B) Does not apply if the services of the legislative  
 25 employee were sought or obtained to enable or aid anyone to commit or plan to  
 26 commit what the legislator knew or reasonably should have known to be a crime  
 27 or fraud.

28 (h) A confidential communication shall not be subject to discovery  
 29 pursuant to the Arkansas Rules of Civil Procedure or the Freedom of  
 30 Information Act of 1967, § 25-19-101 et. seq., or admissible in any legal  
 31 proceeding and shall be an absolutely privileged communication.

32 ~~(e)-(1)~~(i)(1) The Legislative Council may authorize the staff of the  
 33 bureau to provide assistance to state agencies and constitutional officers in  
 34 preparing legislation.

35 (2) If the Legislative Council authorizes the staff of the  
 36 bureau to provide assistance to state agencies and constitutional officers in

1 preparing legislation, the request, supporting documents, working papers, and  
2 drafts in the possession of the bureau are confidential and are not public  
3 records under § 25-19-103.

4 ~~(f)~~(j) Nothing in this section prohibits a legislative employee from  
5 working on similar or identical drafting requests or information requests  
6 from more than one (1) legislator.

7 (k) A former legislative employee is guilty of a Class B misdemeanor  
8 if the former legislative employee:

9 (1) Knowingly discloses a confidential communication received  
10 while employed as a legislative employee; or

11 (2) Uses a confidential communication received while employed as  
12 a legislative employee for his or her personal gain or benefit.

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