

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

As Engrossed: S3/9/23

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.
12
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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 the Freedom
29 of Information Act of 1967, § 25-19-101 et seq., and shall be an absolutely
30 privileged communication.

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

34 (2) If the Legislative Council authorizes the staff of the
35 bureau to provide assistance to state agencies and constitutional officers in
36 preparing legislation, the request, supporting documents, working papers, and

1 drafts in the possession of the bureau are confidential and are not public
2 records under § 25-19-103.

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

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

8 (1) Discloses a confidential communication received while
9 employed as a legislative employee; or

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

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/s/J. Dotson