

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

State of Arkansas
91st General Assembly
Regular Session, 2017

As Engrossed: H3/2/17 H3/9/17 H3/17/17

A Bill

SENATE BILL 373

By: Senator Hester

For An Act To Be Entitled

AN ACT TO EXEMPT ATTORNEY-CLIENT COMMUNICATIONS AND
ATTORNEY WORK PRODUCT FROM THE FREEDOM OF INFORMATION
ACT OF 1967; AND FOR OTHER PURPOSES.

Subtitle

TO EXEMPT ATTORNEY-CLIENT COMMUNICATIONS
AND ATTORNEY WORK PRODUCT FROM THE
FREEDOM OF INFORMATION ACT OF 1967.

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

SECTION 1. DO NOT CODIFY. Legislative intent.

(a) The purpose of this act is to:

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

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

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

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

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



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

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

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

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

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

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

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

/s/Hester