

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

State of Arkansas
94th General Assembly
Regular Session, 2023

As Engrossed: S3/9/23
A Bill

SENATE BILL 353

By: Senator J. Dotson
By: Representative Wardlaw

For An Act To Be Entitled

AN ACT TO AMEND ARKANSAS LAW CONCERNING DRAFTING
REQUESTS AND INFORMATION REQUESTS TO LEGISLATIVE
EMPLOYEES; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND ARKANSAS LAW CONCERNING DRAFTING
REQUESTS AND INFORMATION REQUESTS TO
LEGISLATIVE EMPLOYEES.

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

SECTION 1. Arkansas Code § 10-2-129 is amended to read as follows:

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

(a) The General Assembly finds:

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

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

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



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

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

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

(1) "Confidential communication" means:

(A) A drafting request;

(B) An information request;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) A confidential communication shall not be subject to the Freedom of Information Act of 1967, § 25-19-101 et seq., and shall be an absolutely privileged communication.

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

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

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

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

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

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

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

/s/J. Dotson