

1 **H. B. 3156**

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3 (By Delegates D. Poling, Caputo, Manypenny and Walker)  
4 [Introduced March 25, 2013; referred to the  
5 Committee on Energy, Industry and Labor, Economic  
6 Development and Small Business then the Judiciary.]  
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10 A BILL to amend the Code of West Virginia, 1931, as amended, be  
11 amended by adding thereto a new section, designated §21-1A-9,  
12 relating to granting a labor organization or an agent of a  
13 labor organization a privilege from being compelled to  
14 disclose any communication or information the labor  
15 organization or agent received or acquired in confidence from  
16 an employee while the labor organization or agent was acting  
17 in a representative capacity concerning an employee grievance;  
18 providing exceptions; and definitions.

19 *Be it enacted by the Legislature of West Virginia:*

20 That the Code of West Virginia, 1931, as amended, be amended  
21 by adding thereto a new section, designated §21-1A-9, to read as  
22 follows:

23 **ARTICLE 1A. LABOR-MANAGEMENT RELATIONS ACT FOR THE PRIVATE SECTOR.**

24 **§21-1A-9. Labor organizations may not be compelled to disclose**

1                   communication; exceptions.

2           (a) The following words have the meanings indicated:

3           (1) "Employee" means an individual represented by a labor  
4 organization regardless of whether the individual is a member of  
5 the labor organization.

6           (2) "Labor organization" means an organization that represents  
7 or seeks to represent workers for the purposes of collective  
8 bargaining.

9           (b) (1) Except as provided in subsection (c) or (d) of this  
10 section, a labor organization or an agent of a labor organization  
11 may not be compelled to disclose any communication or information  
12 the labor organization or agent received or acquired in confidence  
13 from an employee while the labor organization or agent was acting  
14 in a representative capacity concerning an employee grievance:  
15 Provided, That this does not apply to a criminal proceeding.

16           (2) An employee's privilege under this subsection applies only  
17 to the extent that:

18           (A) A communication or information is germane to a grievance  
19 of the employee; and

20           (B) The grievance of the employee is a subject matter of an  
21 investigation, a grievance proceeding, or a civil court,  
22 administrative, arbitration, or other civil proceeding.

23           (3) An employee's privilege under this subsection continues  
24 after termination of:

1       (A) The employee's employment; or

2       (B) The representative relationship of the labor organization  
3 or its agent with the employee.

4       (4) An employee's privilege under this subsection protects the  
5 communication or information received or acquired by the labor  
6 organization or its agent, but does not protect the employee from  
7 being compelled to disclose, to the extent provided by law, the  
8 facts underlying the communication or information.

9       (c) A labor organization or its agent shall disclose to the  
10 employer as soon as possible a communication or information  
11 described in subsection (b) (1) of this section to the extent the  
12 labor organization or its agent reasonably believes necessary to  
13 prevent certain death or substantial bodily harm.

14       (d) A labor organization or its agent may disclose a  
15 communication or information described in subsection (b) of this  
16 section:

17       (1) To the extent the labor organization or its agent  
18 reasonably believes necessary to:

19       (A) Prevent the employee from committing a crime, fraud or any  
20 act in violation of a collective bargaining agreement or  
21 contractual agreement that is reasonably certain to result in  
22 substantial injury to the financial interests or property of  
23 another and in furtherance of which the employee has used or is  
24 using the services of the labor organization or its agent;

1       (B) Prevent, mitigate or rectify substantial injury to the  
2 financial interests or property of another that is reasonably  
3 certain to result or has resulted from the employee's commission of  
4 a crime, fraud or any act in violation of a collective bargaining  
5 agreement or contractual agreement in furtherance of which the  
6 employee has used the services of the labor organization or its  
7 agent;

8       (C) Secure legal advice about the compliance of the labor  
9 organization or its agent with a court order or other law or the  
10 terms of a collective bargaining agreement or contractual  
11 agreement;

12       (D) Establish a claim or defense on behalf of the labor  
13 organization or its agent in a controversy between the employee and  
14 the labor organization or its agent, to establish a defense to a  
15 criminal charge or civil claim against the labor organization or  
16 its agent based on conduct in which the employee was involved, or  
17 to respond to allegations in any proceeding concerning the  
18 performance of professional duties by the labor organization or its  
19 agent on behalf of the employee; or

20       (E) Comply with a court order or other law or the terms of a  
21 collective bargaining agreement or contractual agreement;

22       (2) To the extent the communication or information constitutes  
23 an admission that the employee has committed a crime;

24       (3) In any court, administrative, arbitration or other

1 proceeding against:

2 (A) The agent of the labor organization in the agent's  
3 personal or official representative capacity; or

4 (B) The labor organization, any affiliated or subordinate body  
5 of the labor organization, or any agent of the labor organization  
6 or its affiliated or subordinate body;

7 (4) If the labor organization has obtained the written or oral  
8 consent of the employee;

9 (5) If the employee is deceased or has been adjudicated  
10 incompetent by a court of competent jurisdiction and the labor  
11 organization has obtained the written or oral consent of the  
12 personal representative of the employee's estate or of the  
13 employee's guardian;

14 (6) When required by court order; or

15 (7) To the extent that the employee waives the confidentiality  
16 of the communication or information.

17 (e) An adverse inference may not be drawn based on the refusal  
18 of a labor organization or an agent of a labor organization to  
19 disclose a communication or any information under subsection (d) (3)  
20 of this section.

21 (f) If there is a conflict between the application of this  
22 section and any federal or state labor law, the provisions of the  
23 federal or state law controls.

NOTE: The purpose of this bill is to grant a labor organization or an agent of a labor organization a privilege from being compelled to disclose any communication or information the labor organization or agent received or acquired in confidence from an employee while the labor organization or agent was acting in a representative capacity concerning an employee grievance.

This section is new; therefore, it has been completely underscored.