

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 3156**

4
5 (By Delegates D. Poling, Caputo, Manypenny and Walker)

6 (Originating in the Committee on the Judiciary)

7
8 [February 21, 2014]

9
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 establishing a privilege to prevent a labor
13 organization or its agent from being compelled to disclose
14 certain communications or information obtained from an
15 employee while the labor organization or agent is acting in a
16 representative capacity concerning an employee grievance;
17 providing limitations and exceptions.

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

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

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

23 **§21-1A-9. Labor organizations may not be compelled to disclose**

24 **communication; exceptions.**

1 (a) For purposes of this section, "employee" means an
2 individual represented by a labor organization, regardless of
3 whether the individual is a member of the labor organization, and
4 shall include public employees subject to chapter six-c of this
5 code.

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

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

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

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

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

23 (A) The employee's employment; or

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

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

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

11 (d) A labor organization or its agent may disclose a
12 communication or information described in subsection (b) of this
13 section:

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

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

22 (B) Prevent, mitigate or rectify substantial injury to the
23 financial interests or property of another that is reasonably
24 certain to result or has resulted from the employee's commission of
25 a crime, fraud or any act in violation of a collective bargaining

1 agreement or contractual agreement in furtherance of which the
2 employee has used the services of the labor organization or its
3 agent;

4 (C) Secure legal advice about the compliance of the labor
5 organization or its agent with a court order or other law or the
6 terms of a collective bargaining agreement or contractual
7 agreement;

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

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

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

20 (3) In any court, administrative, arbitration or other
21 proceeding against:

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

24 (B) The labor organization, any affiliated or subordinate body
25 of the labor organization, or any agent of the labor organization

1 or its affiliated or subordinate body;

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

4 (5) If the employee is deceased or has been adjudicated
5 incompetent by a court of competent jurisdiction and the labor
6 organization has obtained the written or oral consent of the
7 personal representative of the employee's estate or of the
8 employee's guardian;

9 (6) When required by court order; or

10 (7) To the extent that the employee waives the confidentiality
11 of the communication or information.

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

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