

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5677

By Delegate Phillips

[Introduced February 13, 2024; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §6C-2-5 and §6C-2-8 of the Code of West Virginia, 1931, as
 2 amended, relating to the appellate court for appeals of level 3 decisions issued by the
 3 Public Employees Grievance Board.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE PROCEDURE.

§6C-2-5. Enforcement and appeal.

1 (a) The decision of the administrative law judge is final upon the parties and is enforceable
 2 in the circuit court of Kanawha County.

3 (b) A party may appeal the decision of the administrative law judge on the grounds that the
 4 decision:

- 5 (1) Is contrary to law or a lawfully adopted rule or written policy of the employer;
- 6 (2) Exceeds the administrative law judge's statutory authority;
- 7 (3) Is the result of fraud or deceit;
- 8 (4) Is clearly wrong in view of the reliable, probative and substantial evidence on the whole
 9 record; or
- 10 (5) Is arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted
 11 exercise of discretion.

12 (c) A party shall file the appeal in the ~~circuit court of Kanawha County~~ Intermediate Court of
 13 Appeals within 30 days of receipt of the administrative law judge's decision. The decision of the
 14 administrative law judge is not automatically stayed upon the filing of an appeal, but a stay may be
 15 granted by the ~~circuit court~~ Intermediate Court of Appeals upon a separate motion for a stay.

16 (d) The court shall review the entire record that was before the administrative law judge,
 17 and the court may hear oral arguments and require written briefs. The court may reverse, vacate
 18 or modify the decision of the administrative law judge, or may remand the grievance to the
 19 administrative law judge or the chief administrator for further proceedings.

§6C-2-8. Employee organizations may not be compelled to disclose certain

communications; exceptions.

1 (a) Except as otherwise provided in this section, an employee organization or an agent of
2 an employee organization may not be compelled to disclose any communication or information the
3 employee organization or agent received or acquired in confidence from a public employee, while
4 the employee organization or agent was acting in a representative capacity concerning a public
5 employee grievance or an investigation of a potential public employee grievance, regardless of
6 whether the public employee is a member of the employee organization: *Provided*, That the
7 confidentiality established under this section does not apply to written communications between
8 the employee and the employee organization.

9 (b) (1) The confidentiality established under this section applies only to the extent that the
10 communication or information is germane to a grievance or potential grievance of the employee.

11 (2) The confidentiality established under this subsection continues after termination of:

12 (A) The employee's employment; or

13 (B) The representative relationship of the employee organization or its agent with the
14 public employee.

15 (3) The confidentiality established under this subsection protects the communication or
16 information received or acquired by the employee organization or its agent, but does not protect
17 the employee from being compelled to disclose, to the extent provided by law, the facts underlying
18 the communication or information.

19 (c) The protection for confidential communications provided by this section only extends to
20 proceedings under the public employees grievance procedure. Nothing in this section may be
21 construed to extend the confidentiality to circuit court Intermediate Court of Appeals proceedings
22 or other proceedings outside of the public employees grievance procedure.

23 (d) An employee organization or its agent shall disclose to the employer as soon as
24 possible a communication or information described in subsection (a) of this section to the extent
25 the employee organization or its agent reasonably believes:

26 (1) It is necessary to prevent certain death or substantial bodily harm.

27 (2) It is necessary to prevent the employee from committing a crime, fraud or any act that is
28 reasonably certain to result in substantial injury to the financial interests or property of another or
29 to rectify or mitigate any such action after it has occurred;

30 (3) The communication or information constitutes an admission that the employee has
31 committed a crime; or

32 (4) It is necessary to comply with a court order or other law.

33 (e) An employee organization or its agent may disclose a communication or information
34 described in subsection (a) of this section in order to:

35 (1) Secure legal advice about the compliance of the employee organization or its agent
36 with a court order or other law;

37 (2) Establish a claim or defense on behalf of the employee organization or its agent in a
38 controversy between the employee and the employee organization or its agent;

39 (3) Establish a defense to a criminal charge or civil claim against the employee
40 organization or its agent based on conduct in which the employee was involved; or

41 (4) Respond to allegations in any proceeding concerning the performance of professional
42 duties by the employee organization or its agent on behalf of the employee.

43 (f) An employee organization or its agent may disclose a communication or information
44 described in subsection (a) of this section, without regard to whether the disclosure is made within
45 the public employees grievance procedure, in the following circumstances:

46 (1) The employee organization has obtained the express written or oral consent of the
47 employee;

48 (2) The employee has, by other act or conduct, waived the confidentiality of the
49 communication or information; or

50 (3) The employee is deceased or has been adjudicated incompetent by a court of
51 competent jurisdiction and the employee organization has obtained the written or oral consent of

52 the personal representative of the employee's estate or of the employee's guardian.

53 (g) If there is a conflict between the application of this section and any federal or state labor

54 law, the provisions of the federal or other state law shall control.

NOTE: The purpose of this bill is to correct the court for appeals of level 3 decisions. Per SB 275 (2021), effective July 1, 2022, the Intermediate Court of Appeals is the proper appellate court for appeals of level 3 decisions issued by the Public Employees Grievance Board.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.