

HB1042/122016/1

BY: House Judiciary Committee

AMENDMENTS TO HOUSE BILL 1042
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, after “Communications” insert “or Information”; strike line 3 in its entirety and substitute “Involving Labor Organizations”; in line 5, strike “in certain proceedings” and substitute “under certain circumstances”; in line 6, strike beginning with “acquired” through “member” and substitute “received or acquired in confidence while acting in a representative capacity concerning an employee grievance”; in the same line, after the semicolon insert “requiring a labor organization or its agent to disclose a communication or information in a certain manner under certain circumstances;”; in line 9, after “circumstances;” insert “defining certain terms; providing for the application and construction of this Act;”; in the same line, strike “privileged” and substitute “certain”; and in line 9, after “communications” insert “or information”.

AMENDMENT NO. 2

On page 1, in line 19, after “(A)” insert “**(1)**”; in the same line, strike beginning with the comma through “MEANS” and substitute “**THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**”

(2) “EMPLOYEE” MEANS AN INDIVIDUAL REPRESENTED BY A LABOR ORGANIZATION REGARDLESS OF WHETHER THE INDIVIDUAL IS A MEMBER OF THE LABOR ORGANIZATION.

(3) “LABOR ORGANIZATION” MEANS;

and in line 22, strike “(C)” and substitute “**(D)**”.

(Over)

AMENDMENT NO. 3

On page 1, in line 22, after “(B)” insert “(1)”.

On pages 1 and 2, strike beginning with the first comma in line 24 on page 1 down through the comma in line 1 on page 2.

On page 2, strike beginning with “AN” in line 1 down through “CAPACITY” in line 4 and substitute “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”; and after line 4, insert:

“(2) PARAGRAPH (1) OF THIS SUBSECTION DOES NOT APPLY TO A CRIMINAL PROCEEDING.

(3) AN EMPLOYEE’S PRIVILEGE UNDER THIS SUBSECTION APPLIES ONLY TO THE EXTENT THAT:

(I) A COMMUNICATION OR INFORMATION IS GERMANE TO A GRIEVANCE OF THE EMPLOYEE; AND

(II) THE GRIEVANCE OF THE EMPLOYEE IS A SUBJECT MATTER OF AN INVESTIGATION, A GRIEVANCE PROCEEDING, OR A CIVIL COURT, ADMINISTRATIVE, ARBITRATION, OR OTHER CIVIL PROCEEDING.

(4) AN EMPLOYEE’S PRIVILEGE UNDER THIS SUBSECTION CONTINUES AFTER TERMINATION OF:

(I) THE EMPLOYEE’S EMPLOYMENT; OR

(II) THE REPRESENTATIVE RELATIONSHIP OF THE LABOR ORGANIZATION OR ITS AGENT WITH THE EMPLOYEE.

(5) AN EMPLOYEE'S PRIVILEGE UNDER THIS SUBSECTION PROTECTS THE COMMUNICATION OR INFORMATION RECEIVED OR ACQUIRED BY THE LABOR ORGANIZATION OR ITS AGENT, BUT DOES NOT PROTECT THE EMPLOYEE FROM BEING COMPELLED TO DISCLOSE, TO THE EXTENT PROVIDED BY LAW, THE FACTS UNDERLYING THE COMMUNICATION OR INFORMATION.

(C) A LABOR ORGANIZATION OR ITS AGENT SHALL DISCLOSE TO THE EMPLOYER AS SOON AS POSSIBLE A COMMUNICATION OR INFORMATION DESCRIBED IN SUBSECTION (B)(1) OF THIS SECTION TO THE EXTENT THE LABOR ORGANIZATION OR ITS AGENT REASONABLY BELIEVES NECESSARY TO PREVENT CERTAIN DEATH OR SUBSTANTIAL BODILY HARM.”.

AMENDMENT NO. 4

On page 2, in line 5, strike “(C)” and substitute “(D)”; strike in their entirety lines 8 through 10, inclusive, and substitute:

“(1) TO THE EXTENT THE LABOR ORGANIZATION OR ITS AGENT REASONABLY BELIEVES NECESSARY TO:

(I) PREVENT THE EMPLOYEE FROM COMMITTING A CRIME, FRAUD, OR ANY ACT IN VIOLATION OF A COLLECTIVE BARGAINING AGREEMENT OR CONTRACTUAL AGREEMENT THAT IS REASONABLY CERTAIN TO RESULT IN SUBSTANTIAL INJURY TO THE FINANCIAL INTERESTS OR PROPERTY OF ANOTHER AND IN FURTHERANCE OF WHICH THE EMPLOYEE HAS USED OR IS USING THE SERVICES OF THE LABOR ORGANIZATION OR ITS AGENT;

(II) PREVENT, MITIGATE, OR RECTIFY SUBSTANTIAL INJURY TO THE FINANCIAL INTERESTS OR PROPERTY OF ANOTHER THAT IS REASONABLY CERTAIN TO RESULT OR HAS RESULTED FROM THE EMPLOYEE'S COMMISSION OF A CRIME, FRAUD, OR ANY ACT IN VIOLATION OF A COLLECTIVE BARGAINING AGREEMENT OR CONTRACTUAL AGREEMENT IN FURTHERANCE OF WHICH THE EMPLOYEE HAS USED THE SERVICES OF THE LABOR ORGANIZATION OR ITS AGENT;

(III) SECURE LEGAL ADVICE ABOUT THE COMPLIANCE OF THE LABOR ORGANIZATION OR ITS AGENT WITH A COURT ORDER OR OTHER LAW OR THE TERMS OF A COLLECTIVE BARGAINING AGREEMENT OR CONTRACTUAL AGREEMENT;

(IV) ESTABLISH A CLAIM OR DEFENSE ON BEHALF OF THE LABOR ORGANIZATION OR ITS AGENT IN A CONTROVERSY BETWEEN THE EMPLOYEE AND THE LABOR ORGANIZATION OR ITS AGENT, TO ESTABLISH A DEFENSE TO A CRIMINAL CHARGE OR CIVIL CLAIM AGAINST THE LABOR ORGANIZATION OR ITS AGENT BASED ON CONDUCT IN WHICH THE EMPLOYEE WAS INVOLVED, OR TO RESPOND TO ALLEGATIONS IN ANY PROCEEDING CONCERNING THE PERFORMANCE OF PROFESSIONAL DUTIES BY THE LABOR ORGANIZATION OR ITS AGENT ON BEHALF OF THE EMPLOYEE; OR

(V) COMPLY WITH A COURT ORDER OR OTHER LAW OR THE TERMS OF A COLLECTIVE BARGAINING AGREEMENT OR CONTRACTUAL AGREEMENT;

(2) TO THE EXTENT THE COMMUNICATION OR INFORMATION CONSTITUTES AN ADMISSION THAT THE EMPLOYEE HAS COMMITTED A CRIME;"

in line 24, strike "OR"; in line 25, after "ORDER" insert "; OR

(7) TO THE EXTENT THAT THE EMPLOYEE WAIVES THE CONFIDENTIALITY OF THE COMMUNICATION OR INFORMATION

AMENDMENT NO. 5

On page 2, in lines 11, 18, 20, and 25, strike “(2)”, “(3)”, “(4)”, and “(5)”, respectively, and substitute “(3)”, “(4)”, “(5)”, and “(6)”, respectively; in lines 19 and 20, in each instance, strike “LABOR ORGANIZATION MEMBER” and substitute “EMPLOYEE”; in lines 23 and 24, in each instance, strike “MEMBER’S” and substitute “EMPLOYEE’S”; in lines 26 and 30, strike “(D)” and “(E)”, respectively, and substitute “(E)” and “(F)”, respectively; and in line 29, strike “(C)(2)” and substitute “(D)(3)”.

AMENDMENT NO. 6

On page 2, after line 32, insert:

“SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any collective bargaining agreement or contractual agreement in effect on the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any communication or information received or acquired by a labor organization or an agent of a labor organization before the effective date of this Act.”

On page 3, in line 1, strike “2.” and substitute “4.”.