

SB0797/272814/1

BY: House Judiciary Committee

AMENDMENTS TO SENATE BILL 797
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, after “Communications” insert “or Information”; in line 5, strike beginning with “in” through “proceedings” and substitute “under certain circumstances”; in line 6, after “acquired” insert “in confidence”; in line 7, after “capacity” insert “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 10, after “terms;” insert “providing for the application and construction of this Act;”; in the same line, strike “privileged” and substitute “certain”; and in line 11, after “communications” insert “or information”.

AMENDMENT NO. 2

On page 2, in line 3, strike “EMPLOYEE” and substitute “EMPLOYEE”; in line 9, after “(B)” insert “(1)”; in the same line, strike “(C)” and substitute “(D)”; strike beginning with “, IN” in line 11 down through “PROCEEDING,” in line 12; in line 16, after “ACQUIRED” insert “IN CONFIDENCE”; in line 18, after “CAPACITY” insert “CONCERNING AN EMPLOYEE GRIEVANCE”; and after line 18, 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 :

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

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(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. 3

On page 2, in line 19, strike "(C)" and substitute "(D)"; strike in their entirety lines 22 through 24, 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

(Over)

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;”.

On page 3, in line 9, strike “OR”; in line 10, after “ORDER” insert “; OR”

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

in lines 11 and 15, strike “(D)” and “(E)”, respectively, and substitute “(E)” and “(F)”, respectively; and in line 14, strike “(C)(3)” and substitute “(D)(3)”.

AMENDMENT NO. 4

On page 3, after line 17, 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.”;

and in line 18, strike “2.” and substitute “4.”.