

# SENATE BILL 797

D3

(2lr2138)

## ENROLLED BILL

— Judicial Proceedings/Judiciary —

Introduced by Senators Frosh and ~~Gladden~~, Gladden, Forehand, Ramirez, Raskin, Stone, and Zirkin

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

\_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

\_\_\_\_\_  
President.

### CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Courts and Judicial Proceedings – Witnesses – Privileged Communications *or***  
3 **Information Between Labor Organization and Member Involving Labor**  
4 **Organizations**

5 FOR the purpose of prohibiting a labor organization or an agent of a labor  
6 organization from being compelled to disclose ~~in certain proceedings~~ under  
7 certain circumstances certain communications or information ~~acquired from a~~  
8 ~~member~~ received or acquired in confidence while acting in a representative  
9 capacity concerning an employee grievance; requiring a labor organization or its  
10 agent to disclose a communication or information in a certain manner under  
11 certain circumstances; providing certain exceptions; prohibiting a certain  
12 inference from being drawn from a certain refusal; providing that the provisions  
13 of federal or State labor law control under certain circumstances; defining

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#### EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

*Italics indicate opposite chamber/conference committee amendments.*



1 certain terms: *providing for the application and construction of this Act*; and  
 2 generally relating to ~~privileged~~ *certain* communications *or information*.

3 BY adding to

4 Article – Courts and Judicial Proceedings

5 Section 9–124

6 Annotated Code of Maryland

7 (2006 Replacement Volume and 2011 Supplement)

8 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
 9 MARYLAND, That the Laws of Maryland read as follows:

10 **Article – Courts and Judicial Proceedings**

11 **9–124.**

12 (A) (1) **IN THIS SECTION, ~~“LABOR”~~ THE FOLLOWING WORDS HAVE THE**  
 13 **MEANINGS INDICATED.**

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

17 (3) **“LABOR ORGANIZATION” MEANS AN ORGANIZATION THAT**  
 18 **REPRESENTS OR SEEKS TO REPRESENT WORKERS FOR THE PURPOSES OF**  
 19 **COLLECTIVE BARGAINING.**

20 (B) (1) **EXCEPT AS PROVIDED IN SUBSECTION (C) OR ~~(D)~~ (D) OF THIS**  
 21 **SECTION, A LABOR ORGANIZATION OR AN AGENT OF A LABOR ORGANIZATION**  
 22 **MAY NOT BE COMPELLED TO DISCLOSE, ~~IN ANY COURT, ADMINISTRATIVE,~~**  
 23 **~~ARBITRATION, OR OTHER PROCEEDING,~~ ANY COMMUNICATION OR**  
 24 **~~INFORMATION AN AGENT OF THE LABOR ORGANIZATION ACQUIRED FROM A~~**  
 25 **~~MEMBER OF THE LABOR ORGANIZATION IN THE COURSE OF THE AGENT’S~~**  
 26 **~~PROFESSIONAL DUTIES OR WHILE ACTING IN THE AGENT’S REPRESENTATIVE~~**  
 27 **~~CAPACITY~~ THE LABOR ORGANIZATION OR AGENT RECEIVED OR ACQUIRED IN**  
 28 **CONFIDENCE FROM A MEMBER OF THE LABOR ORGANIZATION AN EMPLOYEE**  
 29 **WHILE THE LABOR ORGANIZATION OR AGENT WAS ACTING IN A**  
 30 **REPRESENTATIVE CAPACITY CONCERNING AN EMPLOYEE GRIEVANCE.**

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

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

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

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

6                    (4) AN EMPLOYEE'S PRIVILEGE UNDER THIS SUBSECTION  
7 CONTINUES AFTER TERMINATION OF:

8                    (I) THE EMPLOYEE'S EMPLOYMENT; OR

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

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

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

21                    ~~(C)~~ (D)     A LABOR ORGANIZATION OR ITS AGENT MAY DISCLOSE A  
22 COMMUNICATION OR INFORMATION DESCRIBED IN SUBSECTION (B) OF THIS  
23 SECTION:

24                    ~~(1) TO THE EXTENT NECESSARY TO PREVENT THE COMMISSION~~  
25 ~~OF A CRIME THAT IS LIKELY TO RESULT IN A CLEAR, IMMINENT RISK OF~~  
26 ~~SERIOUS PHYSICAL INJURY TO OR DEATH OF ANOTHER INDIVIDUAL;~~

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

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

1                    (II) PREVENT, MITIGATE, OR RECTIFY SUBSTANTIAL INJURY  
 2 TO THE 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                    (III) SECURE LEGAL ADVICE ABOUT THE COMPLIANCE OF  
 9 THE LABOR ORGANIZATION OR ITS AGENT WITH A COURT ORDER OR OTHER LAW  
 10 OR THE TERMS OF A COLLECTIVE BARGAINING AGREEMENT OR CONTRACTUAL  
 11 AGREEMENT;

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

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

23                    (2) TO THE EXTENT THE COMMUNICATION OR INFORMATION  
 24 CONSTITUTES AN ADMISSION THAT THE ~~LABOR ORGANIZATION MEMBER~~  
 25 EMPLOYEE HAS COMMITTED A CRIME;

26                    ~~(2)~~ (3)        IN ANY COURT, ADMINISTRATIVE, ARBITRATION, OR  
 27 OTHER PROCEEDING AGAINST:

28                    (I)        THE AGENT OF THE LABOR ORGANIZATION IN THE  
 29 AGENT'S PERSONAL OR OFFICIAL REPRESENTATIVE CAPACITY; OR

30                    (II)       THE LABOR ORGANIZATION, ANY AFFILIATED OR  
 31 SUBORDINATE BODY OF THE LABOR ORGANIZATION, OR ANY AGENT OF THE  
 32 LABOR ORGANIZATION OR ITS AFFILIATED OR SUBORDINATE BODY;

33                    ~~(3)~~ (4)        IF THE LABOR ORGANIZATION HAS OBTAINED THE  
 34 WRITTEN OR ORAL CONSENT OF THE ~~LABOR ORGANIZATION MEMBER~~  
 35 EMPLOYEE;

1           ~~(4)~~ (5)       IF THE ~~LABOR ORGANIZATION MEMBER~~ EMPLOYEE IS  
 2 DECEASED OR HAS BEEN ADJUDICATED INCOMPETENT BY A COURT OF  
 3 COMPETENT JURISDICTION AND THE LABOR ORGANIZATION HAS OBTAINED THE  
 4 WRITTEN OR ORAL CONSENT OF THE PERSONAL REPRESENTATIVE OF THE  
 5 ~~MEMBER'S~~ EMPLOYEE'S ESTATE OR OF THE ~~MEMBER'S~~ EMPLOYEE'S GUARDIAN;  
 6 ~~OR~~

7           ~~(5)~~ (6)       WHEN REQUIRED BY COURT ORDER; OR

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

10          ~~(D)~~ (E)       AN ADVERSE INFERENCE MAY NOT BE DRAWN BASED ON THE  
 11 REFUSAL OF A LABOR ORGANIZATION OR AN AGENT OF A LABOR ORGANIZATION  
 12 TO DISCLOSE A COMMUNICATION OR ANY INFORMATION UNDER SUBSECTION  
 13 ~~(C)(2)~~ ~~(C)(3)~~ (D)(3) OF THIS SECTION.

14          ~~(E)~~ (F)       IN THE EVENT OF A CONFLICT BETWEEN THE APPLICATION OF  
 15 THIS SECTION AND ANY FEDERAL OR STATE LABOR LAW, THE PROVISIONS OF  
 16 THE FEDERAL OR STATE LAW SHALL CONTROL.

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

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

26          SECTION ~~2~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take  
 27 effect October 1, 2012.