

Chapter 304

(Senate Bill 797)

AN ACT concerning

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

FOR the purpose of prohibiting a labor organization or an agent of a labor organization from being compelled to disclose ~~in certain proceedings~~ under certain circumstances certain communications or information ~~acquired from a member~~ received or acquired in confidence while acting in a representative capacity concerning an employee grievance; requiring a labor organization or its agent to disclose a communication or information in a certain manner under certain circumstances; providing certain exceptions; prohibiting a certain inference from being drawn from a certain refusal; providing that the provisions of federal or State labor law control under certain circumstances; defining certain terms; providing for the application and construction of this Act; and generally relating to ~~privileged~~ certain communications or information.

BY adding to

Article – Courts and Judicial Proceedings
Section 9–124
Annotated Code of Maryland
(2006 Replacement Volume and 2011 Supplement)

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

Article – Courts and Judicial Proceedings

9–124.

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

(2) ~~“EMPLOYEE”~~ “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 AN ORGANIZATION THAT REPRESENTS OR SEEKS TO REPRESENT WORKERS FOR THE PURPOSES OF COLLECTIVE BARGAINING.

(B) (1) EXCEPT AS PROVIDED IN SUBSECTION (C) OR ~~(C)~~ (D) OF THIS SECTION, A LABOR ORGANIZATION OR AN AGENT OF A LABOR ORGANIZATION MAY NOT BE COMPELLED TO DISCLOSE, IN ANY COURT, ADMINISTRATIVE, ARBITRATION, OR OTHER PROCEEDING, ANY COMMUNICATION OR INFORMATION AN AGENT OF THE LABOR ORGANIZATION ACQUIRED FROM A MEMBER OF THE LABOR ORGANIZATION IN THE COURSE OF THE AGENT'S PROFESSIONAL DUTIES OR WHILE ACTING IN THE AGENT'S REPRESENTATIVE CAPACITY THE LABOR ORGANIZATION OR AGENT RECEIVED OR ACQUIRED IN CONFIDENCE FROM A MEMBER OF THE LABOR ORGANIZATION AN EMPLOYEE WHILE THE LABOR ORGANIZATION OR AGENT WAS ACTING IN A REPRESENTATIVE CAPACITY CONCERNING AN EMPLOYEE GRIEVANCE.

(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.

~~(c)~~ **(D)** A LABOR ORGANIZATION OR ITS AGENT MAY DISCLOSE A COMMUNICATION OR INFORMATION DESCRIBED IN SUBSECTION (B) OF THIS SECTION:

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

(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 ~~LABOR ORGANIZATION MEMBER~~ EMPLOYEE HAS COMMITTED A CRIME;

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

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

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

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

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

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

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

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

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

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.

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

Approved by the Governor, May 2, 2012.