

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 797

(Senator Frosh, *et al.*)

Judicial Proceedings

Judiciary

**Courts and Judicial Proceedings - Witnesses - Privileged Communications or
Information Involving Labor Organizations**

This bill prohibits a “labor organization” or its agent (labor organization/agent) from being compelled to disclose any communication or information the labor organization/agent received or acquired in confidence from an “employee” while the labor organization/agent was acting in a representative capacity concerning an employee grievance. An “employee” is an individual represented by a labor organization regardless of whether the individual is a member of the labor organization.

The bill specifies (1) that the privilege does not apply to a criminal proceeding; (2) the extent of the application of an employee’s privilege; (3) situations under which a labor organization/agent *must* disclose a privileged communication or information; and (4) situations under which a labor organization/agent *may* disclose a privileged communication or information. In the event of a conflict between application of the bill’s provisions and any federal or State labor law, the provisions of the federal or State law are controlling.

The bill applies prospectively and may not be construed to have any effect on or application to any collective bargaining agreement or contractual agreement in effect on October 1, 2012, or any communication or information received or acquired by a labor organization/agent before the bill’s October 1, 2012 effective date.

Fiscal Summary

State Effect: None. The bill is procedural and does not affect State finances.

Local Effect: None. The bill is procedural and does not affect local finances.

Small Business Effect: None.

Analysis

Bill Summary: An employee's privilege applies only to the extent that (1) a communication or information is germane to a grievance of the employee; and (2) 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. An employee's privilege continues after termination of (1) the employee's employment; or (2) the representative relationship of the labor organization/agent with the employee.

An employee's privilege protects the communication or information received or acquired by the labor organization/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.

A labor organization/agent *must* disclose a privileged communication or information to the employer as soon as possible to the extent that the labor organization/agent reasonably believes disclosure is necessary to prevent certain death or substantial bodily harm.

A labor organization/agent *may* disclose a privileged communication or information:

- when required by court order;
- in any court, administrative, arbitration, or other proceeding against the agent of the labor organization in the agent's personal or official representative capacity;
- in any court, administrative, arbitration, or other proceeding against 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;
- to the extent the communication or information constitutes an admission that the employee has committed a crime;
- to the extent the labor organization/agent reasonably believes disclosure is necessary to 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/agent;
- to the extent the labor organization/agent reasonably believes disclosure is necessary to 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/agent;

- to the extent the labor organization/agent reasonably believes disclosure is necessary to secure legal advice about the compliance of the labor organization/agent with a court order or other law or the terms of a collective bargaining agreement or contractual agreement;
- to the extent the labor organization/agent reasonably believes disclosure is necessary to establish a claim or defense on behalf of the labor organization/agent in a controversy between the employee and the labor organization/agent, to establish a defense to a criminal charge or civil claim against the labor organization/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/agent on behalf of the employee;
- to the extent the labor organization/agent reasonably believes disclosure is necessary to comply with a court order or other law or the terms of a collective bargaining agreement or contractual agreement;
- if the labor organization has obtained the written or oral consent of the employee;
- to the extent that the employee waives the confidentiality of the communication or information; or
- if the 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 employee's estate or of the member's guardian.

An adverse inference may not be drawn based on the refusal of the labor organization/agent to disclose a communication or any information as authorized under the bill.

Current Law: Under current law, there are instances in which a person may not be compelled to testify regarding information obtained in the course of his/her profession. Examples include the attorney-client privilege, the clergy-communicant privilege, and the psychiatrist/psychologist-patient privilege.

Additional Information

Prior Introductions: None.

Cross File: HB 1042 (Delegate Vallario) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - February 24, 2012
mc/kdm Revised - Senate Third Reader - March 27, 2012
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