

HOUSE No. 2040

The Commonwealth of Massachusetts

PRESENTED BY:

David Allen Robertson

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the confidentiality of communications of information of labor organizations.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>David Allen Robertson</i>	<i>19th Middlesex</i>	<i>2/19/2021</i>

HOUSE No. 2040

By Mr. Robertson of Tewksbury, a petition (accompanied by bill, House, No. 2040) of David Allen Robertson relative to the confidentiality of communications of information of labor organizations. Labor and Workforce Development.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1679 OF 2019-2020.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act relative to the confidentiality of communications of information of labor organizations.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Definitions

2 (a) (1) In this section the following words have the meanings indicated.

3 (2) “Employee” means an individual represented by a labor organization regardless of
4 whether the individual is a member of the labor organization.

5 (3) “Labor organization” means an organization that represents or seeks to represent
6 workers for the purposes of collective bargaining.

7 Confidentiality of labor organization communications or information

8 (b) (1) Except as provided in subsection (c) or (d) of this section, a labor organization or
9 an agent of a labor organization may not be compelled to disclose any communication or
10 information the labor organization or agent received or acquired in confidence from an employee
11 while the labor organization or agent was acting in a representative capacity concerning an
12 employee grievance.

13 (2) Paragraph (1) of this subsection does not apply to a criminal proceeding.

14 (3) An employee's privilege under this subsection applies only to the extent that:

15 (i) A communication or information is germane to a grievance of the employee; and

16 (ii) The grievance of the employee is a subject matter of an investigation, a grievance
17 proceeding, or a civil court, administrative, arbitration, or other civil proceeding.

18 (4) An employee's privilege under this subsection continues after termination of:

19 (i) The employee's employment; or

20 (ii) The representative relationship of the labor organization or its agent with the
21 employee.

22 (5) An employee's privilege under this subsection protects the communication or
23 information received or acquired by the labor organization or its agent, but does not protect the
24 employee from being compelled to disclose, to the extent provided by law, the facts underlying
25 the communication or information.

26 Disclosure of information to prevent certain death or substantial bodily harm

27 (1) A labor organization or its agent shall disclose to the employer as soon as possible
28 a communication or information described in subsection (b)(1) of this section to the extent the
29 labor organization or its agent reasonably believes necessary to prevent certain death or
30 substantial bodily harm.

31 Disclosure of communication or information to prevent commission of crime or fraud

32 (d) A labor organization or its agent may disclose a communication or information
33 described in subsection (b) of this section:

34 (1) To the extent the labor organization or its agent reasonably believes necessary to:

35 (i) Prevent the employee from committing a crime, fraud, or any act in violation of a
36 collective bargaining agreement or contractual agreement that is reasonably certain to result in
37 substantial injury to the financial interests or property of another and in furtherance of which the
38 employee has used or is using the services of the labor organization or its agent;

39 (ii) Prevent, mitigate, or rectify substantial injury to the financial interests or property
40 of another that is reasonably certain to result or has resulted from the employee's commission of
41 a crime, fraud, or any act in violation of a collective bargaining agreement or contractual
42 agreement in furtherance of which the employee has used the services of the labor organization
43 or its agent;

44 (iii) Secure legal advice about the compliance of the labor organization or its agent
45 with a court order or other law or the terms of a collective bargaining agreement or contractual
46 agreement;

47 (iv) Establish a claim or defense on behalf of the labor organization or its agent in a
48 controversy between the employee and the labor organization or its agent, to establish a defense
49 to a criminal charge or civil claim against the labor organization or its agent based on conduct in
50 which the employee was involved, or to respond to allegations in any proceeding concerning the
51 performance of professional duties by the labor organization or its agent on behalf of the
52 employee; or

53 (iv) Comply with a court order or other law or the terms of a collective bargaining
54 agreement or contractual agreement;

55 (2) To the extent the communication or information constitutes an admission that the
56 employee has committed a crime;

57 (3) In any court, administrative, arbitration, or other proceeding against:

58 (i) The agent of the labor organization in the agent's personal or official
59 representative capacity; or

60 (ii) The labor organization, any affiliated or subordinate body of the labor
61 organization,

62 (iii) or any agent of the labor organization or its affiliated or subordinate body;

63 (4) If the labor organization has obtained the written or oral consent of the employee;

64 (5) If the employee is deceased or has been adjudicated incompetent by a court of
65 competent jurisdiction and the labor organization has obtained the written or oral consent of the
66 personal representative of the employee's estate or of the employee's guardian;

67 (6) When required by court order; or

68 (7) To the extent that the employee waives the confidentiality of the communication or
69 information.

70 Adverse inferences based on refusal to disclose communications or information
71 prohibited

72 (1) An adverse inference may not be drawn based on the refusal of a labor organization or
73 an agent of a labor organization to disclose a communication or any information under
74 subsection (d)(3) of this section.