

HOUSE BILL 1042

D3

2lr3234
CF SB 797

By: **Delegate Vallario**

Introduced and read first time: February 10, 2012

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: April 3, 2012

CHAPTER _____

1 AN ACT concerning

2 **Courts and Judicial Proceedings – Witnesses – Privileged Communications**
3 **or 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
14 certain terms; providing for the application and construction of this Act; and
15 generally relating to ~~privileged~~ certain communications or information.

16 BY adding to

17 Article – Courts and Judicial Proceedings

18 Section 9–124

19 Annotated Code of Maryland

20 (2006 Replacement Volume and 2011 Supplement)

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

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.



1 Article – Courts and Judicial Proceedings

2 9–124.

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

5 (2) “EMPLOYEE” MEANS AN INDIVIDUAL REPRESENTED BY A
6 LABOR ORGANIZATION REGARDLESS OF WHETHER THE INDIVIDUAL IS A
7 MEMBER OF THE LABOR ORGANIZATION.

8 (3) “LABOR ORGANIZATION” MEANS AN ORGANIZATION THAT
9 REPRESENTS OR SEEKS TO REPRESENT WORKERS FOR THE PURPOSES OF
10 COLLECTIVE BARGAINING.

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

22 (2) PARAGRAPH (1) OF THIS SUBSECTION DOES NOT APPLY TO A
23 CRIMINAL PROCEEDING.

24 (3) AN EMPLOYEE’S PRIVILEGE UNDER THIS SUBSECTION
25 APPLIES ONLY TO THE EXTENT THAT:

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

28 (II) THE GRIEVANCE OF THE EMPLOYEE IS A SUBJECT
29 MATTER OF AN INVESTIGATION, A GRIEVANCE PROCEEDING, OR A CIVIL COURT,
30 ADMINISTRATIVE, ARBITRATION, OR OTHER CIVIL PROCEEDING.

31 (4) AN EMPLOYEE’S PRIVILEGE UNDER THIS SUBSECTION
32 CONTINUES AFTER TERMINATION OF:

33 (I) THE EMPLOYEE’S EMPLOYMENT; OR

1 **(II) THE REPRESENTATIVE RELATIONSHIP OF THE LABOR**
2 **ORGANIZATION OR ITS AGENT WITH THE EMPLOYEE.**

3 **(5) AN EMPLOYEE'S PRIVILEGE UNDER THIS SUBSECTION**
4 **PROTECTS THE COMMUNICATION OR INFORMATION RECEIVED OR ACQUIRED BY**
5 **THE LABOR ORGANIZATION OR ITS AGENT, BUT DOES NOT PROTECT THE**
6 **EMPLOYEE FROM BEING COMPELLED TO DISCLOSE, TO THE EXTENT PROVIDED**
7 **BY LAW, THE FACTS UNDERLYING THE COMMUNICATION OR INFORMATION.**

8 **(C) A LABOR ORGANIZATION OR ITS AGENT SHALL DISCLOSE TO THE**
9 **EMPLOYER AS SOON AS POSSIBLE A COMMUNICATION OR INFORMATION**
10 **DESCRIBED IN SUBSECTION (B)(1) OF THIS SECTION TO THE EXTENT THE LABOR**
11 **ORGANIZATION OR ITS AGENT REASONABLY BELIEVES NECESSARY TO PREVENT**
12 **CERTAIN DEATH OR SUBSTANTIAL BODILY HARM.**

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

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

19 **(1) TO THE EXTENT THE LABOR ORGANIZATION OR ITS AGENT**
20 **REASONABLY BELIEVES NECESSARY TO:**

21 **(i) PREVENT THE EMPLOYEE FROM COMMITTING A CRIME,**
22 **FRAUD, OR ANY ACT IN VIOLATION OF A COLLECTIVE BARGAINING AGREEMENT**
23 **OR CONTRACTUAL AGREEMENT THAT IS REASONABLY CERTAIN TO RESULT IN**
24 **SUBSTANTIAL INJURY TO THE FINANCIAL INTERESTS OR PROPERTY OF**
25 **ANOTHER AND IN FURTHERANCE OF WHICH THE EMPLOYEE HAS USED OR IS**
26 **USING THE SERVICES OF THE LABOR ORGANIZATION OR ITS AGENT;**

27 **(ii) PREVENT, MITIGATE, OR RECTIFY SUBSTANTIAL INJURY**
28 **TO THE FINANCIAL INTERESTS OR PROPERTY OF ANOTHER THAT IS**
29 **REASONABLY CERTAIN TO RESULT OR HAS RESULTED FROM THE EMPLOYEE'S**
30 **COMMISSION OF A CRIME, FRAUD, OR ANY ACT IN VIOLATION OF A COLLECTIVE**
31 **BARGAINING AGREEMENT OR CONTRACTUAL AGREEMENT IN FURTHERANCE OF**
32 **WHICH THE EMPLOYEE HAS USED THE SERVICES OF THE LABOR ORGANIZATION**
33 **OR ITS AGENT;**

34 **(iii) SECURE LEGAL ADVICE ABOUT THE COMPLIANCE OF**
35 **THE LABOR ORGANIZATION OR ITS AGENT WITH A COURT ORDER OR OTHER LAW**

1 OR THE TERMS OF A COLLECTIVE BARGAINING AGREEMENT OR CONTRACTUAL
 2 AGREEMENT;

3 (IV) ESTABLISH A CLAIM OR DEFENSE ON BEHALF OF THE
 4 LABOR ORGANIZATION OR ITS AGENT IN A CONTROVERSY BETWEEN THE
 5 EMPLOYEE AND THE LABOR ORGANIZATION OR ITS AGENT, TO ESTABLISH A
 6 DEFENSE TO A CRIMINAL CHARGE OR CIVIL CLAIM AGAINST THE LABOR
 7 ORGANIZATION OR ITS AGENT BASED ON CONDUCT IN WHICH THE EMPLOYEE
 8 WAS INVOLVED, OR TO RESPOND TO ALLEGATIONS IN ANY PROCEEDING
 9 CONCERNING THE PERFORMANCE OF PROFESSIONAL DUTIES BY THE LABOR
 10 ORGANIZATION OR ITS AGENT ON BEHALF OF THE EMPLOYEE; OR

11 (V) COMPLY WITH A COURT ORDER OR OTHER LAW OR THE
 12 TERMS OF A COLLECTIVE BARGAINING AGREEMENT OR CONTRACTUAL
 13 AGREEMENT;

14 (2) TO THE EXTENT THE COMMUNICATION OR INFORMATION
 15 CONSTITUTES AN ADMISSION THAT THE EMPLOYEE HAS COMMITTED A CRIME;

16 ~~(2)~~ (3) IN ANY COURT, ADMINISTRATIVE, ARBITRATION, OR
 17 OTHER PROCEEDING AGAINST:

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

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

23 ~~(3)~~ (4) IF THE LABOR ORGANIZATION HAS OBTAINED THE
 24 WRITTEN OR ORAL CONSENT OF THE ~~LABOR ORGANIZATION MEMBER~~
 25 EMPLOYEE;

26 ~~(4)~~ (5) IF THE ~~LABOR ORGANIZATION MEMBER~~ EMPLOYEE IS
 27 DECEASED OR HAS BEEN ADJUDICATED INCOMPETENT BY A COURT OF
 28 COMPETENT JURISDICTION AND THE LABOR ORGANIZATION HAS OBTAINED THE
 29 WRITTEN OR ORAL CONSENT OF THE PERSONAL REPRESENTATIVE OF THE
 30 ~~MEMBER'S~~ EMPLOYEE'S ESTATE OR OF THE ~~MEMBER'S~~ EMPLOYEE'S GUARDIAN;
 31 OR

32 ~~(5)~~ (6) WHEN REQUIRED BY COURT ORDER; OR

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

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

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

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

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

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.