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**HOUSE BILL NO. 1997**

Offered January 9, 2013

Prefiled January 9, 2013

A *BILL to amend the Code of Virginia by adding in Article 1 of Chapter 4 of Title 40.1 a section numbered 40.1-54.3, relating to privileged communications involving labor unions.*

Patron—Sickles

Referred to Committee on Commerce and Labor

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding in Article 1 of Chapter 4 of Title 40.1 a section numbered 40.1-54.3 as follows:**

**§ 40.1-54.3. Confidentiality of communications or information obtained by a labor union or agent from an employee.**

A. As used in this section, unless the context requires a different meaning:

"Employee" means an individual represented by a labor organization regardless of whether the individual is a member of the labor organization.

"Labor organization" means an organization that represents or seeks to represent workers for the purposes of collective bargaining.

B. Except as provided in subsection C or D, a labor organization or an agent of a labor organization may not be compelled to disclose any communication or information the labor organization or agent received or acquired in confidence from an employee while the labor organization or agent was acting in a representative capacity concerning an employee grievance.

C. This section does not apply to a criminal proceeding.

D. An employee's privilege under this section 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.

E. 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.

F. An employee's privilege under this section 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.

G. A labor organization or its agent shall disclose to the employer as soon as possible a communication or information described in subsection B to the extent the labor organization or its agent reasonably believes necessary to prevent certain death or substantial bodily harm.

H. A labor organization or its agent may disclose a communication or information described in subsection B:

1. To the extent the labor organization or its agent reasonably believes necessary to:

a. 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;

b. 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;

c. 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;

d. 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

e. 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 employee has

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HB1997

59 committed a crime;  
60 3. In any court, administrative, arbitration, or other proceeding against:  
61 a. The agent of the labor organization in the agent's personal or official representative capacity; or  
62 b. The labor organization, any affiliated or subordinate body of the labor organization, or any agent  
63 of the labor organization or its affiliated or subordinate body;  
64 4. If the labor organization has obtained the written or oral consent of the employee;  
65 5. If the employee is deceased or has been adjudicated incompetent by a court of competent  
66 jurisdiction and the labor organization has obtained the written or oral consent of the personal  
67 representative of the employee's estate or of the employee's guardian;  
68 6. When required by court order; or  
69 7. To the extent that the employee waives the confidentiality of the communication or information.  
70 1. An adverse inference may not be drawn based on the refusal of a labor organization or an agent  
71 of a labor organization to disclose a communication or any information under subdivision H 3.