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2014 MAR 26 A 10:08

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

SECOND REGULAR SESSION, 2014



**ENROLLED**

COMMITTEE SUBSTITUTE  
FOR

**House Bill No. 3156**

(By Delegates D. Poling, Caputo,  
Manypenny and Walker)



Passed March 8, 2014

In effect ninety days from passage.

HB 3156

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FOR

**H. B. 3156**

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(BY DELEGATES D. POLING, CAPUTO,  
MANYPENNY AND WALKER)

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[Passed March 8, 2014; in effect ninety days from passage.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §6C-2-8, relating to recognizing certain communications between a public employee and a employee organization as confidential; preventing employee organizations and their agents from being compelled to disclose certain communications or information obtained from an employee while the employee organization or agent is acting in a representative capacity concerning an employee grievance; providing limitations and exceptions; ensuring the confidentiality does not extend outside the grievance process; and providing for resolution of conflicts with existing law.

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*Be it enacted by the Legislature of West Virginia:*

AMENDED  
STATE CODE

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §6C-2-8, to read as follows:

**ARTICLE 2. WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE PROCEDURE.**

**§6C-2-8. Employee organizations may not be compelled to disclose certain communications; exceptions.**

1 (a) Except as otherwise provided in this section, an  
2 employee organization or an agent of an employee organization  
3 may not be compelled to disclose any communication or  
4 information the employee organization or agent received or  
5 acquired in confidence from a public employee, while the  
6 employee organization or agent was acting in a representative  
7 capacity concerning a public employee grievance or an  
8 investigation of a potential public employee grievance,  
9 regardless of whether the public employee is a member of the  
10 employee organization: *Provided*, That the confidentiality  
11 established under this section does not apply to written  
12 communications between the employee and the employee  
13 organization.

14 (b) (1) The confidentiality established under this section  
15 applies only to the extent that the communication or information  
16 is germane to a grievance or potential grievance of the employee.

17 (2) The confidentiality established under this subsection  
18 continues after termination of:

19 (A) The employee's employment; or

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

22 (3) The confidentiality established under this subsection  
23 protects the communication or information received or acquired

24 by the employee organization or its agent, but does not protect  
25 the employee from being compelled to disclose, to the extent  
26 provided by law, the facts underlying the communication or  
27 information.

28 (c) The protection for confidential communications provided  
29 by this section only extends to proceedings under the public  
30 employees grievance procedure. Nothing in this section may be  
31 construed to extend the confidentiality to circuit court  
32 proceedings or other proceedings outside of the public  
33 employees grievance procedure.

34 (d) An employee organization or its agent shall disclose to  
35 the employer as soon as possible a communication or  
36 information described in subsection (a) of this section to the  
37 extent the employee organization or its agent reasonably  
38 believes:

39 (1) It is necessary to prevent certain death or substantial  
40 bodily harm.

41 (2) It is necessary to prevent the employee from committing  
42 a crime, fraud or any act that is reasonably certain to result in  
43 substantial injury to the financial interests or property of another  
44 or to rectify or mitigate any such action after it has occurred;

45 (3) The communication or information constitutes an  
46 admission that the employee has committed a crime; or

47 (4) It is necessary to comply with a court order or other law.

48 (e) An employee organization or its agent may disclose a  
49 communication or information described in subsection (a) of this  
50 section in order to:

51 (1) Secure legal advice about the compliance of the  
52 employee organization or its agent with a court order or other  
53 law;

54       (2) Establish a claim or defense on behalf of the employee  
55 organization or its agent in a controversy between the employee  
56 and the employee organization or its agent;

57       (3) Establish a defense to a criminal charge or civil claim  
58 against the employee organization or its agent based on conduct  
59 in which the employee was involved; or

60       (4) Respond to allegations in any proceeding concerning the  
61 performance of professional duties by the employee organization  
62 or its agent on behalf of the employee.

63       (f) An employee organization or its agent may disclose a  
64 communication or information described in subsection (a) of this  
65 section, without regard to whether the disclosure is made within  
66 the public employees grievance procedure, in the following  
67 circumstances:

68       (1) The employee organization has obtained the express  
69 written or oral consent of the employee;

70       (2) The employee has, by other act or conduct, waived the  
71 confidentiality of the communication or information; or

72       (3) The employee is deceased or has been adjudicated  
73 incompetent by a court of competent jurisdiction and the  
74 employee organization has obtained the written or oral consent  
75 of the personal representative of the employee's estate or of the  
76 employee's guardian.

77       (g) If there is a conflict between the application of this  
78 section and any federal or state labor law, the provisions of the  
79 federal or other state law shall control.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Danny Wells*  
Chairman, House Committee

*Rocky Filamoras*  
Member ~~Chairman~~, Senate Committee

Originating in the House.

In effect ninety days from passage.

*Gregory D. Scaf*  
Clerk of the House of Delegates

*Joseph W. Minard*  
Clerk of the Senate

*Robert G. Evans*  
Speaker of the House of Delegates

*Jeffrey K. Cook*  
President of the Senate

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The within *is approved* this the *26th*  
day of *March*, 2014.

*Earl Ray Tomblin*  
Governor

**PRESENTED TO THE GOVERNOR**

MAR 20 2014

Time 11:00 am