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.
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H. B. 3156

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

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

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.
Be it enacted by the Legislature of West Virginia:

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 employee organization or an agent of an employee organization may not be compelled to disclose any communication or information the employee organization or agent received or acquired in confidence from a public employee, while the employee organization or agent was acting in a representative capacity concerning a public employee grievance or an investigation of a potential public employee grievance, regardless of whether the public employee is a member of the employee organization: Provided, That the confidentiality established under this section does not apply to written communications between the employee and the employee organization.

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

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

(A) The employee’s employment; or

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

(3) The confidentiality established under this subsection protects the communication or information received or acquired
by the employee 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.

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

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

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

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

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

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

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

(1) Secure legal advice about the compliance of the
employee organization or its agent with a court order or other
law;
(2) Establish a claim or defense on behalf of the employee organization or its agent in a controversy between the employee and the employee organization or its agent;

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

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

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

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

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

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

(g) If there is a conflict between the application of this section and any federal or state labor law, the provisions of the federal or other state law shall control.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Member - Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

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

Governor
PRESENTED TO THE GOVERNOR

MAR 20 2014

Time 11:00 am