

FINAL BILL REPORT

ESHB 1187

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Synopsis as Enacted

Brief Description: Concerning privileged communication between employees and the unions that represent them.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Hackney, Berry, Bateman, Ramel, Doglio, Simmons, Lekanoff, Bronoske, Wylie, Stonier, Pollet and Ormsby).

House Committee on Civil Rights & Judiciary
Senate Committee on Law & Justice

Background:

Testimonial Privilege.

The judiciary has the power to compel witnesses to appear and testify in judicial proceedings so that the court will receive all relevant evidence. The common law and statutory law recognize exceptions to certain communications when certain classes of relationships or communications within those relationships are deemed of such importance that they should be protected from being compelled to testify in judicial proceedings.

There are a number of these statutory testimonial privileges, including communications between the following persons: (1) husband and wife; (2) attorney and client; (3) clergy and confessor; (4) physician and patient; (5) psychologist and client; (6) optometrist and client; (7) peer support group counselor and law enforcement officer, limited authority law enforcement officer, or firefighter; (8) sexual assault advocate and victim; (9) mental health counselor and client; and (10) alcohol or drug addiction sponsor and addiction recovery fellowship participant.

Summary:

Testimonial Privilege.

A testimonial privilege is established that prohibits a union representative and an employee

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the union represents or has represented from being examined or required to disclose any communication between an employee and union representative or between union representatives that is made in the course of union representation. Exceptions to this privilege are established that permit examination and disclosure of such communications:

- when such examination or disclosure appears necessary to prevent the commission of a crime that is likely to result in a clear, imminent risk of serious physical injury or death of a person;
- in civil or criminal actions in which the represented employee is accused of a crime or assault or battery;
- in civil or criminal actions where a union member is a party to the action, the union member may obtain a copy of any statement previously given that concerns the subject matter of the action and may elicit testimony concerning such statements—however, this right does not render them discoverable over the objection of the union member;
- in civil, criminal, or regulatory actions against the union or its affiliated, subordinate, or parent bodies or their agents; or
- when a union employee discloses information to a union representative about the employee's commission of a crime or intent to engage in criminal conduct.

The testimonial privilege does not apply to any record of communications that would otherwise be subject to disclosure under the Public Records Act. A "communication" includes any oral, written, or electronic communication or document containing such communication.

The testimonial privilege does not interfere with statutory mandatory reporting requirements for an employee or union representative.

Union Employees and Representatives.

An employee includes a person represented by a certified or recognized union regardless of whether the employee is a member of the union. Union includes any lawful organization that has as one of its primary purposes the representation of employees in their employment relations with employers. Union representation includes any action by a union on behalf of one or more employees it represents in regard to their employment relations with employers, including personnel matters, grievances, labor disputes, wages, rates of pay, hours of employment, conditions of work, or collective bargaining. Union representative includes a person authorized by a union to act for the union in regard to union representation.

The testimonial privilege from being examined or required to disclose certain communications is applicable to employees and representatives of any organization that represents the following employees in negotiations with employers: (1) any teacher, counselor, librarian, or department head, who is employed by any college district; (2) public employees; (3) school district educational employees; (4) faculty at a public four-year institution of higher education; (5) civil service employees; (6) ferry employees who are

members of a collective bargaining unit represented by a ferry employee organization; (7) labor unions; and (8) port employees in a labor organization.

Votes on Final Passage:

House	95	0	
Senate	34	14	(Senate amended)
House	96	0	(House concurred)

Effective: July 23, 2023