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ENGROSSED SUBSTITUTE HOUSE BILL 1187

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State of Washington

68th Legislature

2023 Regular Session

**By** House Civil Rights & Judiciary (originally sponsored by Representatives Hackney, Berry, Bateman, Ramel, Doglio, Simmons, Lekanoff, Bronoske, Wylie, Stonier, Pollet, and Ormsby)

READ FIRST TIME 02/14/23.

1 AN ACT Relating to privileged communication between employees and  
2 the unions that represent them; reenacting and amending RCW 5.60.060;  
3 adding a new section to chapter 28B.52 RCW; adding a new section to  
4 chapter 41.56 RCW; adding a new section to chapter 41.59 RCW; adding  
5 a new section to chapter 41.76 RCW; adding a new section to chapter  
6 41.80 RCW; adding a new section to chapter 47.64 RCW; adding a new  
7 section to chapter 49.36 RCW; adding a new section to chapter 53.18  
8 RCW; and creating a new section.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

10 NEW SECTION. **Sec. 1.** The legislature finds that:

11 (1) Labor unions have fiduciary duties to act on behalf of the  
12 employees they represent in regard to employment relations with  
13 public-sector and private-sector employers, including personnel  
14 matters, grievances, labor disputes, wages, rates of pay, hours of  
15 employment, conditions of work, and collective bargaining.

16 (2) The discharge of those duties fosters industrial peace, human  
17 dignity, and the continued improvement of the employment  
18 relationship, with benefits to employees, employers, and the general  
19 public.

20 (3) The effective discharge of those duties depends on employees'  
21 confidence that their confidential communications with their union

1 representatives in the course of union representation will be  
2 protected against disclosure, and that unions' internal deliberations  
3 concerning their representational duties be protected against  
4 disclosure so that unions may engage in the balancing that is  
5 necessary to carry out their duty to all members.

6 (4) To effectuate the public policy favoring effective collective  
7 bargaining, it is necessary to protect confidential union-employee  
8 communications in the course of union representation against  
9 disclosure, except in the rare circumstances where disclosure appears  
10 necessary to prevent injury from a crime or when legal claims are  
11 brought in formal proceedings against unions. The creation of a  
12 union-employee privilege is accordingly in the best interests of the  
13 state of Washington.

14 **Sec. 2.** RCW 5.60.060 and 2020 c 302 s 113 and 2020 c 42 s 1 are  
15 each reenacted and amended to read as follows:

16 (1) A spouse or domestic partner shall not be examined for or  
17 against his or her spouse or domestic partner, without the consent of  
18 the spouse or domestic partner; nor can either during marriage or  
19 during the domestic partnership or afterward, be without the consent  
20 of the other, examined as to any communication made by one to the  
21 other during the marriage or the domestic partnership. But this  
22 exception shall not apply to a civil action or proceeding by one  
23 against the other, nor to a criminal action or proceeding for a crime  
24 committed by one against the other, nor to a criminal action or  
25 proceeding against a spouse or domestic partner if the marriage or  
26 the domestic partnership occurred subsequent to the filing of formal  
27 charges against the defendant, nor to a criminal action or proceeding  
28 for a crime committed by said spouse or domestic partner against any  
29 child of whom said spouse or domestic partner is the parent or  
30 guardian, nor to a proceeding under chapter 71.05 or 71.09 RCW:  
31 PROVIDED, That the spouse or the domestic partner of a person sought  
32 to be detained under chapter 71.05 or 71.09 RCW may not be compelled  
33 to testify and shall be so informed by the court prior to being  
34 called as a witness.

35 (2)(a) An attorney or counselor shall not, without the consent of  
36 his or her client, be examined as to any communication made by the  
37 client to him or her, or his or her advice given thereon in the  
38 course of professional employment.

1 (b) A parent or guardian of a minor child arrested on a criminal  
2 charge may not be examined as to a communication between the child  
3 and his or her attorney if the communication was made in the presence  
4 of the parent or guardian. This privilege does not extend to  
5 communications made prior to the arrest.

6 (3) A member of the clergy, a Christian Science practitioner  
7 listed in the Christian Science Journal, or a priest shall not,  
8 without the consent of a person making the confession or sacred  
9 confidence, be examined as to any confession or sacred confidence  
10 made to him or her in his or her professional character, in the  
11 course of discipline enjoined by the church to which he or she  
12 belongs.

13 (4) Subject to the limitations under RCW 71.05.217 (6) and (7), a  
14 physician or surgeon or osteopathic physician or surgeon or podiatric  
15 physician or surgeon shall not, without the consent of his or her  
16 patient, be examined in a civil action as to any information acquired  
17 in attending such patient, which was necessary to enable him or her  
18 to prescribe or act for the patient, except as follows:

19 (a) In any judicial proceedings regarding a child's injury,  
20 neglect, or sexual abuse or the cause thereof; and

21 (b) Ninety days after filing an action for personal injuries or  
22 wrongful death, the claimant shall be deemed to waive the physician-  
23 patient privilege. Waiver of the physician-patient privilege for any  
24 one physician or condition constitutes a waiver of the privilege as  
25 to all physicians or conditions, subject to such limitations as a  
26 court may impose pursuant to court rules.

27 (5) A public officer shall not be examined as a witness as to  
28 communications made to him or her in official confidence, when the  
29 public interest would suffer by the disclosure.

30 (6) (a) A peer support group counselor shall not, without consent  
31 of the peer support group client making the communication, be  
32 compelled to testify about any communication made to the counselor by  
33 the peer support group client while receiving counseling. The  
34 counselor must be designated as such by the agency employing the peer  
35 support group client prior to the incident that results in  
36 counseling. The privilege only applies when the communication was  
37 made to the counselor while acting in his or her capacity as a peer  
38 support group counselor. The privilege does not apply if the  
39 counselor was an initial responding first responder, department of  
40 corrections staff person, or jail staff person; a witness; or a party

1 to the incident which prompted the delivery of peer support group  
2 counseling services to the peer support group client.

3 (b) For purposes of this section:

4 (i) "First responder" means:

5 (A) A law enforcement officer;

6 (B) A limited authority law enforcement officer;

7 (C) A firefighter;

8 (D) An emergency services dispatcher or recordkeeper;

9 (E) Emergency medical personnel, as licensed or certified by this  
10 state; or

11 (F) A member or former member of the Washington national guard  
12 acting in an emergency response capacity pursuant to chapter 38.52  
13 RCW.

14 (ii) "Law enforcement officer" means a general authority  
15 Washington peace officer as defined in RCW 10.93.020.

16 (iii) "Limited authority law enforcement officer" means a limited  
17 authority Washington peace officer as defined in RCW 10.93.020 who is  
18 employed by the department of corrections, state parks and recreation  
19 commission, department of natural resources, liquor and cannabis  
20 board, or Washington state gambling commission.

21 (iv) "Peer support group client" means:

22 (A) A first responder;

23 (B) A department of corrections staff person; or

24 (C) A jail staff person.

25 (v) "Peer support group counselor" means:

26 (A) A first responder, department of corrections staff person, or  
27 jail staff person or a civilian employee of a first responder entity  
28 or agency, local jail, or state agency who has received training to  
29 provide emotional and moral support and counseling to a peer support  
30 group client who needs those services as a result of an incident in  
31 which the peer support group client was involved while acting in his  
32 or her official capacity; or

33 (B) A nonemployee counselor who has been designated by the first  
34 responder entity or agency, local jail, or state agency to provide  
35 emotional and moral support and counseling to a peer support group  
36 client who needs those services as a result of an incident in which  
37 the peer support group client was involved while acting in his or her  
38 official capacity.

1 (7) A sexual assault advocate may not, without the consent of the  
2 victim, be examined as to any communication made between the victim  
3 and the sexual assault advocate.

4 (a) For purposes of this section, "sexual assault advocate" means  
5 the employee or volunteer from a community sexual assault program or  
6 underserved populations provider, victim assistance unit, program, or  
7 association, that provides information, medical or legal advocacy,  
8 counseling, or support to victims of sexual assault, who is  
9 designated by the victim to accompany the victim to the hospital or  
10 other health care facility and to proceedings concerning the alleged  
11 assault, including police and prosecution interviews and court  
12 proceedings.

13 (b) A sexual assault advocate may disclose a confidential  
14 communication without the consent of the victim if failure to  
15 disclose is likely to result in a clear, imminent risk of serious  
16 physical injury or death of the victim or another person. Any sexual  
17 assault advocate participating in good faith in the disclosing of  
18 records and communications under this section shall have immunity  
19 from any liability, civil, criminal, or otherwise, that might result  
20 from the action. In any proceeding, civil or criminal, arising out of  
21 a disclosure under this section, the good faith of the sexual assault  
22 advocate who disclosed the confidential communication shall be  
23 presumed.

24 (8) A domestic violence advocate may not, without the consent of  
25 the victim, be examined as to any communication between the victim  
26 and the domestic violence advocate.

27 (a) For purposes of this section, "domestic violence advocate"  
28 means an employee or supervised volunteer from a community-based  
29 domestic violence program or human services program that provides  
30 information, advocacy, counseling, crisis intervention, emergency  
31 shelter, or support to victims of domestic violence and who is not  
32 employed by, or under the direct supervision of, a law enforcement  
33 agency, a prosecutor's office, or the child protective services  
34 section of the department of children, youth, and families as defined  
35 in RCW 26.44.020.

36 (b) A domestic violence advocate may disclose a confidential  
37 communication without the consent of the victim if failure to  
38 disclose is likely to result in a clear, imminent risk of serious  
39 physical injury or death of the victim or another person. This  
40 section does not relieve a domestic violence advocate from the

1 requirement to report or cause to be reported an incident under RCW  
2 26.44.030(1) or to disclose relevant records relating to a child as  
3 required by RCW 26.44.030(15). Any domestic violence advocate  
4 participating in good faith in the disclosing of communications under  
5 this subsection is immune from liability, civil, criminal, or  
6 otherwise, that might result from the action. In any proceeding,  
7 civil or criminal, arising out of a disclosure under this subsection,  
8 the good faith of the domestic violence advocate who disclosed the  
9 confidential communication shall be presumed.

10 (9) A mental health counselor, independent clinical social  
11 worker, or marriage and family therapist licensed under chapter  
12 18.225 RCW may not disclose, or be compelled to testify about, any  
13 information acquired from persons consulting the individual in a  
14 professional capacity when the information was necessary to enable  
15 the individual to render professional services to those persons  
16 except:

17 (a) With the written authorization of that person or, in the case  
18 of death or disability, the person's personal representative;

19 (b) If the person waives the privilege by bringing charges  
20 against the mental health counselor licensed under chapter 18.225  
21 RCW;

22 (c) In response to a subpoena from the secretary of health. The  
23 secretary may subpoena only records related to a complaint or report  
24 under RCW 18.130.050;

25 (d) As required under chapter 26.44 or 74.34 RCW or RCW 71.05.217  
26 (6) or (7); or

27 (e) To any individual if the mental health counselor, independent  
28 clinical social worker, or marriage and family therapist licensed  
29 under chapter 18.225 RCW reasonably believes that disclosure will  
30 avoid or minimize an imminent danger to the health or safety of the  
31 individual or any other individual; however, there is no obligation  
32 on the part of the provider to so disclose.

33 (10) An individual who acts as a sponsor providing guidance,  
34 emotional support, and counseling in an individualized manner to a  
35 person participating in an alcohol or drug addiction recovery  
36 fellowship may not testify in any civil action or proceeding about  
37 any communication made by the person participating in the addiction  
38 recovery fellowship to the individual who acts as a sponsor except  
39 with the written authorization of that person or, in the case of  
40 death or disability, the person's personal representative.

1 (11)(a) Neither a union representative nor an employee the union  
2 represents or has represented shall be examined as to, or be required  
3 to disclose, any communication between an employee and union  
4 representative or between union representatives made in the course of  
5 union representation except:

6 (i) To the extent such examination or disclosure appears  
7 necessary to prevent the commission of a crime that is likely to  
8 result in a clear, imminent risk of serious physical injury or death  
9 of a person;

10 (ii) In actions, civil or criminal, in which the represented  
11 employee is accused of a crime or assault or battery;

12 (iii) In actions, civil or criminal, where a union member is a  
13 party to the action, the union member may obtain a copy of any  
14 statement previously given by that union member concerning the  
15 subject matter of the action and may elicit testimony concerning such  
16 statements. The right of the union member to obtain such statements,  
17 or the union member's possession of such statements, does not render  
18 them discoverable over the objection of the union member;

19 (iv) In actions, regulatory, civil, or criminal, against the  
20 union or its affiliated, subordinate, or parent bodies or their  
21 agents; or

22 (v) When an admission of, or intent to engage in, criminal  
23 conduct is revealed by the represented union member to the union  
24 representative.

25 (b) The privilege created in this subsection (11) does not apply  
26 to any record of communications that would otherwise be subject to  
27 disclosure under chapter 42.56 RCW.

28 (c) For purposes of this subsection:

29 (i) "Employee" means a person represented by a certified or  
30 recognized union regardless of whether the employee is a member of  
31 the union.

32 (ii) "Union" means any lawful organization that has as one of its  
33 primary purposes the representation of employees in their employment  
34 relations with employers, including without limitation labor  
35 organizations defined by 29 U.S.C. Sec. 152(5) and 5 U.S.C. Sec.  
36 7103(a)(4), representatives defined by 45 U.S.C. Sec. 151, and  
37 bargaining representatives defined in RCW 41.56.030, and employee  
38 organizations as defined in RCW 28B.52.020, 41.59.020, 41.80.005,  
39 41.76.005, 47.64.011, and 53.18.010.

1        (iii) "Union representation" means action by a union on behalf of  
2 one or more employees it represents in regard to their employment  
3 relations with employers, including personnel matters, grievances,  
4 labor disputes, wages, rates of pay, hours of employment, conditions  
5 of work, or collective bargaining.

6        (iv) "Union representative" means a person authorized by a union  
7 to act for the union in regard to union representation.

8        (v) "Communication" includes any oral, written, or electronic  
9 communication or document containing such communication.

10        NEW SECTION. Sec. 3. A new section is added to chapter 28B.52  
11 RCW to read as follows:

12        The privilege established by RCW 5.60.060(11) shall apply to all  
13 employee organizations covered by this chapter and in all proceedings  
14 authorized by this chapter.

15        NEW SECTION. Sec. 4. A new section is added to chapter 41.56  
16 RCW to read as follows:

17        The privilege established by RCW 5.60.060(11) shall apply to all  
18 employee organizations covered by this chapter and in all proceedings  
19 authorized by this chapter.

20        NEW SECTION. Sec. 5. A new section is added to chapter 41.59  
21 RCW to read as follows:

22        The privilege established by RCW 5.60.060(11) shall apply to all  
23 employee organizations covered by this chapter and in all proceedings  
24 authorized by this chapter.

25        NEW SECTION. Sec. 6. A new section is added to chapter 41.76  
26 RCW to read as follows:

27        The privilege established by RCW 5.60.060(11) shall apply to all  
28 employee organizations covered by this chapter and in all proceedings  
29 authorized by this chapter.

30        NEW SECTION. Sec. 7. A new section is added to chapter 41.80  
31 RCW to read as follows:

32        The privilege established by RCW 5.60.060(11) shall apply to all  
33 employee organizations covered by this chapter and in all proceedings  
34 authorized by this chapter.



1        NEW SECTION.    **Sec. 8.**    A new section is added to chapter 47.64  
2    RCW to read as follows:

3        The privilege established by RCW 5.60.060(11) shall apply to all  
4    collective bargaining representatives covered by this chapter and in  
5    all proceedings authorized by this chapter.

6        NEW SECTION.    **Sec. 9.**    A new section is added to chapter 49.36  
7    RCW to read as follows:

8        The privilege established by RCW 5.60.060(11) shall apply to all  
9    labor unions covered by this chapter.

10       NEW SECTION.    **Sec. 10.**    A new section is added to chapter 53.18  
11    RCW to read as follows:

12       The privilege established by RCW 5.60.060(11) shall apply to all  
13    employee organizations covered by this chapter and in all proceedings  
14    authorized by this chapter.

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