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H.293

Introduced by Representative Casey of Montpelier

Referred to Committee on

Date:

Subject: Court procedure; witnesses; union agent-represented worker privilege

Statement of purpose of bill as introduced: This bill proposes to establish a union agent-represented worker privilege that permits employees and former employees to refuse to disclose confidential communications with union agents.

An act relating to establishing a union agent-represented worker privilege

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 12 V.S.A. § 1616 is added to read:

§ 1616. UNION AGENT-REPRESENTED WORKER PRIVILEGE

(a) Definitions. As used in this section:

(1) “Confidential communication” means information, including advice given by a union agent in the course of a representational relationship, that:

(A) is transmitted in confidence orally or in writing between a represented employee or represented former employee and a union agent; and

(B) the employee, former employee, and union agent believe is not disclosed to any other person except:

1 (i) persons who are present when the communication is made to
2 further the interest of the employee, former employee, or union agent; or

3 (ii) persons to whom disclosure is reasonably necessary for the
4 transmission of the information or the accomplishment of the purpose for
5 which the communication was made.

6 (2) “Union agent” means a person employed, elected, or appointed by a
7 labor organization whose duties include the representation of employees in a
8 bargaining unit in grievance procedures or in negotiations for a labor
9 agreement and for the labor organization. An appointed employee steward is
10 not a “union agent” under this subdivision unless a represented employee or
11 represented former employee communicates in confidence to the steward
12 regarding a grievance or potential grievance and the appointed employee
13 steward was a steward at the time the communication was made.

14 (b) Privilege to refuse to disclose; exceptions.

15 (1)(A) A union agent and a represented employee or a represented
16 former employee each have a privilege to refuse to disclose in connection with
17 a court proceeding, administrative board or agency proceeding, arbitration, or
18 other proceeding any confidential communication made between them while
19 the union agent was acting in the union agent’s representative capacity.

20 (B) A represented employee or a represented former employee each
21 have a privilege to prevent another person from disclosing in connection with a

1 court proceeding, administrative board or agency proceeding, arbitration, or
2 other proceeding a confidential communication between the employee and a
3 union agent made while the union agent was acting in the union agent's
4 representative capacity.

5 (2) Notwithstanding subdivision (1) of this subsection, there is no
6 privilege to refuse to disclose:

7 (A) if the union agent reasonable believes that disclosure of a
8 confidential communication is necessary to prevent a criminal act that is likely
9 to result in death or serious bodily injury to any person;

10 (B) a confidential communication made to enable or aid a person in
11 committing or planning to commit a crime or fraud; or

12 (C) in criminal proceedings in the Criminal Division of the Superior
13 Court.

14 (c) Disclosure permitted. A union agent may disclose a confidential
15 communication made to the union agent while the union agent was acting in
16 the union agent's representative capacity:

17 (1) if the disclosure is made in an action against:

18 (A) the union agent in the union agent's personal or representative
19 capacity; or

1 (B) the labor organization, a subordinate body of the labor
2 organization, or any agent of the labor organization in the agent's personal or
3 representative capacity; or

4 (2) when, after full disclosure has been provided:

5 (A) the written or oral consent of the bargaining unit member has
6 been obtained; or

7 (B) if the bargaining unit member is deceased or has been found
8 incompetent by a court, the written or oral consent of the bargaining unit
9 member's estate or guardian has been obtained.

10 (d) Disclosure required. A union agent shall disclose a confidential
11 communication made to the union agent while the union agent was acting in
12 the union agent's representative capacity if disclosure is required by a court
13 order.

14 Sec. 2. EFFECTIVE DATE

15 This act shall take effect on passage.