

As Introduced

**128th General Assembly
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S. B. No. 31

Senator Patton

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A B I L L

To amend section 2317.02 of the Revised Code to 1
create a testimonial privilege for communications 2
between a representative of an employee 3
organization and a bargaining unit member. 4

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 2317.02 of the Revised Code be 5
amended to read as follows: 6

Sec. 2317.02. The following persons shall not testify in 7
certain respects: 8

(A)(1) An attorney, concerning a communication made to the 9
attorney by a client in that relation or the attorney's advice to 10
a client, except that the attorney may testify by express consent 11
of the client or, if the client is deceased, by the express 12
consent of the surviving spouse or the executor or administrator 13
of the estate of the deceased client. However, if the client 14
voluntarily testifies or is deemed by section 2151.421 of the 15
Revised Code to have waived any testimonial privilege under this 16
division, the attorney may be compelled to testify on the same 17
subject. 18

The testimonial privilege established under this division 19
does not apply concerning a communication between a client who has 20

since died and the deceased client's attorney if the communication 21
is relevant to a dispute between parties who claim through that 22
deceased client, regardless of whether the claims are by testate 23
or intestate succession or by inter vivos transaction, and the 24
dispute addresses the competency of the deceased client when the 25
deceased client executed a document that is the basis of the 26
dispute or whether the deceased client was a victim of fraud, 27
undue influence, or duress when the deceased client executed a 28
document that is the basis of the dispute. 29

(2) An attorney, concerning a communication made to the 30
attorney by a client in that relationship or the attorney's advice 31
to a client, except that if the client is an insurance company, 32
the attorney may be compelled to testify, subject to an in camera 33
inspection by a court, about communications made by the client to 34
the attorney or by the attorney to the client that are related to 35
the attorney's aiding or furthering an ongoing or future 36
commission of bad faith by the client, if the party seeking 37
disclosure of the communications has made a prima facie showing of 38
bad faith, fraud, or criminal misconduct by the client. 39

(B)(1) A physician or a dentist concerning a communication 40
made to the physician or dentist by a patient in that relation or 41
the physician's or dentist's advice to a patient, except as 42
otherwise provided in this division, division (B)(2), and division 43
(B)(3) of this section, and except that, if the patient is deemed 44
by section 2151.421 of the Revised Code to have waived any 45
testimonial privilege under this division, the physician may be 46
compelled to testify on the same subject. 47

The testimonial privilege established under this division 48
does not apply, and a physician or dentist may testify or may be 49
compelled to testify, in any of the following circumstances: 50

(a) In any civil action, in accordance with the discovery 51
provisions of the Rules of Civil Procedure in connection with a 52

civil action, or in connection with a claim under Chapter 4123. of 53
the Revised Code, under any of the following circumstances: 54

(i) If the patient or the guardian or other legal 55
representative of the patient gives express consent; 56

(ii) If the patient is deceased, the spouse of the patient or 57
the executor or administrator of the patient's estate gives 58
express consent; 59

(iii) If a medical claim, dental claim, chiropractic claim, 60
or optometric claim, as defined in section 2305.113 of the Revised 61
Code, an action for wrongful death, any other type of civil 62
action, or a claim under Chapter 4123. of the Revised Code is 63
filed by the patient, the personal representative of the estate of 64
the patient if deceased, or the patient's guardian or other legal 65
representative. 66

(b) In any civil action concerning court-ordered treatment or 67
services received by a patient, if the court-ordered treatment or 68
services were ordered as part of a case plan journalized under 69
section 2151.412 of the Revised Code or the court-ordered 70
treatment or services are necessary or relevant to dependency, 71
neglect, or abuse or temporary or permanent custody proceedings 72
under Chapter 2151. of the Revised Code. 73

(c) In any criminal action concerning any test or the results 74
of any test that determines the presence or concentration of 75
alcohol, a drug of abuse, a combination of them, a controlled 76
substance, or a metabolite of a controlled substance in the 77
patient's whole blood, blood serum or plasma, breath, urine, or 78
other bodily substance at any time relevant to the criminal 79
offense in question. 80

(d) In any criminal action against a physician or dentist. In 81
such an action, the testimonial privilege established under this 82
division does not prohibit the admission into evidence, in 83

accordance with the Rules of Evidence, of a patient's medical or 84
dental records or other communications between a patient and the 85
physician or dentist that are related to the action and obtained 86
by subpoena, search warrant, or other lawful means. A court that 87
permits or compels a physician or dentist to testify in such an 88
action or permits the introduction into evidence of patient 89
records or other communications in such an action shall require 90
that appropriate measures be taken to ensure that the 91
confidentiality of any patient named or otherwise identified in 92
the records is maintained. Measures to ensure confidentiality that 93
may be taken by the court include sealing its records or deleting 94
specific information from its records. 95

(e)(i) If the communication was between a patient who has 96
since died and the deceased patient's physician or dentist, the 97
communication is relevant to a dispute between parties who claim 98
through that deceased patient, regardless of whether the claims 99
are by testate or intestate succession or by inter vivos 100
transaction, and the dispute addresses the competency of the 101
deceased patient when the deceased patient executed a document 102
that is the basis of the dispute or whether the deceased patient 103
was a victim of fraud, undue influence, or duress when the 104
deceased patient executed a document that is the basis of the 105
dispute. 106

(ii) If neither the spouse of a patient nor the executor or 107
administrator of that patient's estate gives consent under 108
division (B)(1)(a)(ii) of this section, testimony or the 109
disclosure of the patient's medical records by a physician, 110
dentist, or other health care provider under division (B)(1)(e)(i) 111
of this section is a permitted use or disclosure of protected 112
health information, as defined in 45 C.F.R. 160.103, and an 113
authorization or opportunity to be heard shall not be required. 114

(iii) Division (B)(1)(e)(i) of this section does not require 115

a mental health professional to disclose psychotherapy notes, as 116
defined in 45 C.F.R. 164.501. 117

(iv) An interested person who objects to testimony or 118
disclosure under division (B)(1)(e)(i) of this section may seek a 119
protective order pursuant to Civil Rule 26. 120

(v) A person to whom protected health information is 121
disclosed under division (B)(1)(e)(i) of this section shall not 122
use or disclose the protected health information for any purpose 123
other than the litigation or proceeding for which the information 124
was requested and shall return the protected health information to 125
the covered entity or destroy the protected health information, 126
including all copies made, at the conclusion of the litigation or 127
proceeding. 128

(2)(a) If any law enforcement officer submits a written 129
statement to a health care provider that states that an official 130
criminal investigation has begun regarding a specified person or 131
that a criminal action or proceeding has been commenced against a 132
specified person, that requests the provider to supply to the 133
officer copies of any records the provider possesses that pertain 134
to any test or the results of any test administered to the 135
specified person to determine the presence or concentration of 136
alcohol, a drug of abuse, a combination of them, a controlled 137
substance, or a metabolite of a controlled substance in the 138
person's whole blood, blood serum or plasma, breath, or urine at 139
any time relevant to the criminal offense in question, and that 140
conforms to section 2317.022 of the Revised Code, the provider, 141
except to the extent specifically prohibited by any law of this 142
state or of the United States, shall supply to the officer a copy 143
of any of the requested records the provider possesses. If the 144
health care provider does not possess any of the requested 145
records, the provider shall give the officer a written statement 146
that indicates that the provider does not possess any of the 147

requested records. 148

(b) If a health care provider possesses any records of the 149
type described in division (B)(2)(a) of this section regarding the 150
person in question at any time relevant to the criminal offense in 151
question, in lieu of personally testifying as to the results of 152
the test in question, the custodian of the records may submit a 153
certified copy of the records, and, upon its submission, the 154
certified copy is qualified as authentic evidence and may be 155
admitted as evidence in accordance with the Rules of Evidence. 156
Division (A) of section 2317.422 of the Revised Code does not 157
apply to any certified copy of records submitted in accordance 158
with this division. Nothing in this division shall be construed to 159
limit the right of any party to call as a witness the person who 160
administered the test to which the records pertain, the person 161
under whose supervision the test was administered, the custodian 162
of the records, the person who made the records, or the person 163
under whose supervision the records were made. 164

(3)(a) If the testimonial privilege described in division 165
(B)(1) of this section does not apply as provided in division 166
(B)(1)(a)(iii) of this section, a physician or dentist may be 167
compelled to testify or to submit to discovery under the Rules of 168
Civil Procedure only as to a communication made to the physician 169
or dentist by the patient in question in that relation, or the 170
physician's or dentist's advice to the patient in question, that 171
related causally or historically to physical or mental injuries 172
that are relevant to issues in the medical claim, dental claim, 173
chiropractic claim, or optometric claim, action for wrongful 174
death, other civil action, or claim under Chapter 4123. of the 175
Revised Code. 176

(b) If the testimonial privilege described in division (B)(1) 177
of this section does not apply to a physician or dentist as 178
provided in division (B)(1)(c) of this section, the physician or 179

dentist, in lieu of personally testifying as to the results of the 180
test in question, may submit a certified copy of those results, 181
and, upon its submission, the certified copy is qualified as 182
authentic evidence and may be admitted as evidence in accordance 183
with the Rules of Evidence. Division (A) of section 2317.422 of 184
the Revised Code does not apply to any certified copy of results 185
submitted in accordance with this division. Nothing in this 186
division shall be construed to limit the right of any party to 187
call as a witness the person who administered the test in 188
question, the person under whose supervision the test was 189
administered, the custodian of the results of the test, the person 190
who compiled the results, or the person under whose supervision 191
the results were compiled. 192

(4) The testimonial privilege described in division (B)(1) of 193
this section is not waived when a communication is made by a 194
physician to a pharmacist or when there is communication between a 195
patient and a pharmacist in furtherance of the physician-patient 196
relation. 197

(5)(a) As used in divisions (B)(1) to (4) of this section, 198
"communication" means acquiring, recording, or transmitting any 199
information, in any manner, concerning any facts, opinions, or 200
statements necessary to enable a physician or dentist to diagnose, 201
treat, prescribe, or act for a patient. A "communication" may 202
include, but is not limited to, any medical or dental, office, or 203
hospital communication such as a record, chart, letter, 204
memorandum, laboratory test and results, x-ray, photograph, 205
financial statement, diagnosis, or prognosis. 206

(b) As used in division (B)(2) of this section, "health care 207
provider" means a hospital, ambulatory care facility, long-term 208
care facility, pharmacy, emergency facility, or health care 209
practitioner. 210

(c) As used in division (B)(5)(b) of this section: 211

(i) "Ambulatory care facility" means a facility that provides	212
medical, diagnostic, or surgical treatment to patients who do not	213
require hospitalization, including a dialysis center, ambulatory	214
surgical facility, cardiac catheterization facility, diagnostic	215
imaging center, extracorporeal shock wave lithotripsy center, home	216
health agency, inpatient hospice, birthing center, radiation	217
therapy center, emergency facility, and an urgent care center.	218
"Ambulatory health care facility" does not include the private	219
office of a physician or dentist, whether the office is for an	220
individual or group practice.	221
(ii) "Emergency facility" means a hospital emergency	222
department or any other facility that provides emergency medical	223
services.	224
(iii) "Health care practitioner" has the same meaning as in	225
section 4769.01 of the Revised Code.	226
(iv) "Hospital" has the same meaning as in section 3727.01 of	227
the Revised Code.	228
(v) "Long-term care facility" means a nursing home,	229
residential care facility, or home for the aging, as those terms	230
are defined in section 3721.01 of the Revised Code; an adult care	231
facility, as defined in section 3722.01 of the Revised Code; a	232
nursing facility or intermediate care facility for the mentally	233
retarded, as those terms are defined in section 5111.20 of the	234
Revised Code; a facility or portion of a facility certified as a	235
skilled nursing facility under Title XVIII of the "Social Security	236
Act," 49 Stat. 286 (1965), 42 U.S.C.A. 1395, as amended.	237
(vi) "Pharmacy" has the same meaning as in section 4729.01 of	238
the Revised Code.	239
(d) As used in divisions (B)(1) and (2) of this section,	240
"drug of abuse" has the same meaning as in section 4506.01 of the	241
Revised Code.	242

(6) Divisions (B)(1), (2), (3), (4), and (5) of this section 243
apply to doctors of medicine, doctors of osteopathic medicine, 244
doctors of podiatry, and dentists. 245

(7) Nothing in divisions (B)(1) to (6) of this section 246
affects, or shall be construed as affecting, the immunity from 247
civil liability conferred by section 307.628 of the Revised Code 248
or the immunity from civil liability conferred by section 2305.33 249
of the Revised Code upon physicians who report an employee's use 250
of a drug of abuse, or a condition of an employee other than one 251
involving the use of a drug of abuse, to the employer of the 252
employee in accordance with division (B) of that section. As used 253
in division (B)(7) of this section, "employee," "employer," and 254
"physician" have the same meanings as in section 2305.33 of the 255
Revised Code. 256

(C)(1) A cleric, when the cleric remains accountable to the 257
authority of that cleric's church, denomination, or sect, 258
concerning a confession made, or any information confidentially 259
communicated, to the cleric for a religious counseling purpose in 260
the cleric's professional character. The cleric may testify by 261
express consent of the person making the communication, except 262
when the disclosure of the information is in violation of a sacred 263
trust and except that, if the person voluntarily testifies or is 264
deemed by division (A)(4)(c) of section 2151.421 of the Revised 265
Code to have waived any testimonial privilege under this division, 266
the cleric may be compelled to testify on the same subject except 267
when disclosure of the information is in violation of a sacred 268
trust. 269

(2) As used in division (C) of this section: 270

(a) "Cleric" means a member of the clergy, rabbi, priest, 271
Christian Science practitioner, or regularly ordained, accredited, 272
or licensed minister of an established and legally cognizable 273
church, denomination, or sect. 274

(b) "Sacred trust" means a confession or confidential communication made to a cleric in the cleric's ecclesiastical capacity in the course of discipline enjoined by the church to which the cleric belongs, including, but not limited to, the Catholic Church, if both of the following apply:

(i) The confession or confidential communication was made directly to the cleric.

(ii) The confession or confidential communication was made in the manner and context that places the cleric specifically and strictly under a level of confidentiality that is considered inviolate by canon law or church doctrine.

(D) Husband or wife, concerning any communication made by one to the other, or an act done by either in the presence of the other, during coverture, unless the communication was made, or act done, in the known presence or hearing of a third person competent to be a witness; and such rule is the same if the marital relation has ceased to exist;

(E) A person who assigns a claim or interest, concerning any matter in respect to which the person would not, if a party, be permitted to testify;

(F) A person who, if a party, would be restricted under section 2317.03 of the Revised Code, when the property or thing is sold or transferred by an executor, administrator, guardian, trustee, heir, devisee, or legatee, shall be restricted in the same manner in any action or proceeding concerning the property or thing.

(G)(1) A school guidance counselor who holds a valid educator license from the state board of education as provided for in section 3319.22 of the Revised Code, a person licensed under Chapter 4757. of the Revised Code as a professional clinical counselor, professional counselor, social worker, independent

social worker, marriage and family therapist or independent 306
marriage and family therapist, or registered under Chapter 4757. 307
of the Revised Code as a social work assistant concerning a 308
confidential communication received from a client in that relation 309
or the person's advice to a client unless any of the following 310
applies: 311

(a) The communication or advice indicates clear and present 312
danger to the client or other persons. For the purposes of this 313
division, cases in which there are indications of present or past 314
child abuse or neglect of the client constitute a clear and 315
present danger. 316

(b) The client gives express consent to the testimony. 317

(c) If the client is deceased, the surviving spouse or the 318
executor or administrator of the estate of the deceased client 319
gives express consent. 320

(d) The client voluntarily testifies, in which case the 321
school guidance counselor or person licensed or registered under 322
Chapter 4757. of the Revised Code may be compelled to testify on 323
the same subject. 324

(e) The court in camera determines that the information 325
communicated by the client is not germane to the counselor-client, 326
marriage and family therapist-client, or social worker-client 327
relationship. 328

(f) A court, in an action brought against a school, its 329
administration, or any of its personnel by the client, rules after 330
an in-camera inspection that the testimony of the school guidance 331
counselor is relevant to that action. 332

(g) The testimony is sought in a civil action and concerns 333
court-ordered treatment or services received by a patient as part 334
of a case plan journalized under section 2151.412 of the Revised 335
Code or the court-ordered treatment or services are necessary or 336

relevant to dependency, neglect, or abuse or temporary or 337
permanent custody proceedings under Chapter 2151. of the Revised 338
Code. 339

(2) Nothing in division (G)(1) of this section shall relieve 340
a school guidance counselor or a person licensed or registered 341
under Chapter 4757. of the Revised Code from the requirement to 342
report information concerning child abuse or neglect under section 343
2151.421 of the Revised Code. 344

(H) A mediator acting under a mediation order issued under 345
division (A) of section 3109.052 of the Revised Code or otherwise 346
issued in any proceeding for divorce, dissolution, legal 347
separation, annulment, or the allocation of parental rights and 348
responsibilities for the care of children, in any action or 349
proceeding, other than a criminal, delinquency, child abuse, child 350
neglect, or dependent child action or proceeding, that is brought 351
by or against either parent who takes part in mediation in 352
accordance with the order and that pertains to the mediation 353
process, to any information discussed or presented in the 354
mediation process, to the allocation of parental rights and 355
responsibilities for the care of the parents' children, or to the 356
awarding of parenting time rights in relation to their children; 357

(I) A communications assistant, acting within the scope of 358
the communication assistant's authority, when providing 359
telecommunications relay service pursuant to section 4931.35 of 360
the Revised Code or Title II of the "Communications Act of 1934," 361
104 Stat. 366 (1990), 47 U.S.C. 225, concerning a communication 362
made through a telecommunications relay service. Nothing in this 363
section shall limit the obligation of a communications assistant 364
to divulge information or testify when mandated by federal law or 365
regulation or pursuant to subpoena in a criminal proceeding. 366

Nothing in this section shall limit any immunity or privilege 367
granted under federal law or regulation. 368

(J)(1) A chiropractor in a civil proceeding concerning a 369
communication made to the chiropractor by a patient in that 370
relation or the chiropractor's advice to a patient, except as 371
otherwise provided in this division. The testimonial privilege 372
established under this division does not apply, and a chiropractor 373
may testify or may be compelled to testify, in any civil action, 374
in accordance with the discovery provisions of the Rules of Civil 375
Procedure in connection with a civil action, or in connection with 376
a claim under Chapter 4123. of the Revised Code, under any of the 377
following circumstances: 378

(a) If the patient or the guardian or other legal 379
representative of the patient gives express consent. 380

(b) If the patient is deceased, the spouse of the patient or 381
the executor or administrator of the patient's estate gives 382
express consent. 383

(c) If a medical claim, dental claim, chiropractic claim, or 384
optometric claim, as defined in section 2305.113 of the Revised 385
Code, an action for wrongful death, any other type of civil 386
action, or a claim under Chapter 4123. of the Revised Code is 387
filed by the patient, the personal representative of the estate of 388
the patient if deceased, or the patient's guardian or other legal 389
representative. 390

(2) If the testimonial privilege described in division (J)(1) 391
of this section does not apply as provided in division (J)(1)(c) 392
of this section, a chiropractor may be compelled to testify or to 393
submit to discovery under the Rules of Civil Procedure only as to 394
a communication made to the chiropractor by the patient in 395
question in that relation, or the chiropractor's advice to the 396
patient in question, that related causally or historically to 397
physical or mental injuries that are relevant to issues in the 398
medical claim, dental claim, chiropractic claim, or optometric 399
claim, action for wrongful death, other civil action, or claim 400

under Chapter 4123. of the Revised Code. 401

(3) The testimonial privilege established under this division 402
does not apply, and a chiropractor may testify or be compelled to 403
testify, in any criminal action or administrative proceeding. 404

(4) As used in this division, "communication" means 405
acquiring, recording, or transmitting any information, in any 406
manner, concerning any facts, opinions, or statements necessary to 407
enable a chiropractor to diagnose, treat, or act for a patient. A 408
communication may include, but is not limited to, any 409
chiropractic, office, or hospital communication such as a record, 410
chart, letter, memorandum, laboratory test and results, x-ray, 411
photograph, financial statement, diagnosis, or prognosis. 412

(K)(1) Except as provided under division (K)(2) of this 413
section, a critical incident stress management team member 414
concerning a communication received from an individual who 415
receives crisis response services from the team member, or the 416
team member's advice to the individual, during a debriefing 417
session. 418

(2) The testimonial privilege established under division 419
(K)(1) of this section does not apply if any of the following are 420
true: 421

(a) The communication or advice indicates clear and present 422
danger to the individual who receives crisis response services or 423
to other persons. For purposes of this division, cases in which 424
there are indications of present or past child abuse or neglect of 425
the individual constitute a clear and present danger. 426

(b) The individual who received crisis response services 427
gives express consent to the testimony. 428

(c) If the individual who received crisis response services 429
is deceased, the surviving spouse or the executor or administrator 430
of the estate of the deceased individual gives express consent. 431

(d) The individual who received crisis response services 432
voluntarily testifies, in which case the team member may be 433
compelled to testify on the same subject. 434

(e) The court in camera determines that the information 435
communicated by the individual who received crisis response 436
services is not germane to the relationship between the individual 437
and the team member. 438

(f) The communication or advice pertains or is related to any 439
criminal act. 440

(3) As used in division (K) of this section: 441

(a) "Crisis response services" means consultation, risk 442
assessment, referral, and on-site crisis intervention services 443
provided by a critical incident stress management team to 444
individuals affected by crisis or disaster. 445

(b) "Critical incident stress management team member" or 446
"team member" means an individual specially trained to provide 447
crisis response services as a member of an organized community or 448
local crisis response team that holds membership in the Ohio 449
critical incident stress management network. 450

(c) "Debriefing session" means a session at which crisis 451
response services are rendered by a critical incident stress 452
management team member during or after a crisis or disaster. 453

(L)(1) Subject to division (L)(2) of this section and except 454
as provided in division (L)(3) of this section, an employee 455
assistance professional, concerning a communication made to the 456
employee assistance professional by a client in the employee 457
assistance professional's official capacity as an employee 458
assistance professional. 459

(2) Division (L)(1) of this section applies to an employee 460
assistance professional who meets either or both of the following 461

requirements:	462
(a) Is certified by the employee assistance certification commission to engage in the employee assistance profession;	463 464
(b) Has education, training, and experience in all of the following:	465 466
(i) Providing workplace-based services designed to address employer and employee productivity issues;	467 468
(ii) Providing assistance to employees and employees' dependents in identifying and finding the means to resolve personal problems that affect the employees or the employees' performance;	469 470 471 472
(iii) Identifying and resolving productivity problems associated with an employee's concerns about any of the following matters: health, marriage, family, finances, substance abuse or other addiction, workplace, law, and emotional issues;	473 474 475 476
(iv) Selecting and evaluating available community resources;	477
(v) Making appropriate referrals;	478
(vi) Local and national employee assistance agreements;	479
(vii) Client confidentiality.	480
(3) Division (L)(1) of this section does not apply to any of the following:	481 482
(a) A criminal action or proceeding involving an offense under sections 2903.01 to 2903.06 of the Revised Code if the employee assistance professional's disclosure or testimony relates directly to the facts or immediate circumstances of the offense;	483 484 485 486
(b) A communication made by a client to an employee assistance professional that reveals the contemplation or commission of a crime or serious, harmful act;	487 488 489
(c) A communication that is made by a client who is an	490

unemancipated minor or an adult adjudicated to be incompetent and 491
indicates that the client was the victim of a crime or abuse; 492

(d) A civil proceeding to determine an individual's mental 493
competency or a criminal action in which a plea of not guilty by 494
reason of insanity is entered; 495

(e) A civil or criminal malpractice action brought against 496
the employee assistance professional; 497

(f) When the employee assistance professional has the express 498
consent of the client or, if the client is deceased or disabled, 499
the client's legal representative; 500

(g) When the testimonial privilege otherwise provided by 501
division (L)(1) of this section is abrogated under law. 502

(M)(1) Except as provided in division (M)(2) of this section 503
and subject to division (M)(3) of this section, a representative 504
of an employee organization, in any civil, criminal, or 505
administrative action or proceeding, concerning a communication 506
between the representative and a bargaining unit member made while 507
the representative was acting in a representative capacity on 508
behalf of the employee organization. 509

(2) The testimonial privilege established under division 510
(M)(1) of this section does not apply, and a representative of an 511
employee organization may testify, under any of the following 512
circumstances: 513

(a) If and to the extent the testimony appears necessary to 514
prevent the commission of a crime that is likely to create a 515
clear, imminent risk of serious physical harm to or death of 516
another person; 517

(b) In a civil or criminal action against the representative 518
in the representative's personal or representative capacity, 519
against the employee organization or an affiliate of the employee 520

organization, or against any representative of the employee 521
organization in the representative's representative capacity; 522

(c) If required to do so by court order; 523

(d) With the express consent of the bargaining unit member, 524
the guardian or other legal representative of the bargaining unit 525
member, or if the bargaining unit member is deceased, the spouse, 526
executor, or administrator of the bargaining unit member. 527

(3) If there is a conflict between division (M)(1) or (2) of 528
this section and any federal or state labor law with regard to a 529
specific situation, the provisions of the federal or state labor 530
law shall control. 531

(4) As used in division (M) of this section, "employee 532
organization" means any labor union or bona fide organization in 533
which employees participate and that exists for the purpose, in 534
whole or in part, of dealing with employers concerning grievances, 535
labor disputes, wages, hours, terms, and other conditions of 536
employment. 537

Section 2. That existing section 2317.02 of the Revised Code 538
is hereby repealed. 539