



Ohio Legislative Service Commission

Bill Analysis

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S.B. 31

128th General Assembly
(As Introduced)

Sen. Patton

BILL SUMMARY

- Creates a testimonial privilege, subject to specified exceptions, for communications between a representative of an employee organization and a bargaining unit member made while the representative was acting in a representative capacity on behalf of the employee organization.

CONTENT AND OPERATION

Existing testimonial privilege law

The existing law on testimonial privilege, which the bill expands, shields testimony concerning communications made between certain persons, subject to specified exceptions. Generally, communications made between the following or concerning certain information or acts are protected by this testimonial privilege: attorney and client; physician or dentist and patient; member of the clergy, rabbi, priest, Christian Science practitioner, or minister, concerning a confession made or information confidentially communicated for a religious counseling purpose; husband and wife, concerning communications made by one to the other, or acts done in the presence of each other, during coverture; a person assigning a claim or interest, concerning any matter in respect to which the person would not, if a party, be permitted to testify; a person who, if a party, would be restricted under continuing law regarding testifying in an action involving specified adverse parties (R.C. 2317.03, not in the bill), when the property or thing is sold or transferred by an executor, administrator, guardian, trustee, heir, devisee, or legatee; school guidance counselor, professional clinical counselor, professional counselor, social worker, independent social worker, marriage and family therapist, independent marriage and family therapist, or registered social work assistant, and client; mediator acting under a mediation order issued under continuing

law or issued in any proceeding for divorce, dissolution, legal separation, annulment, or the allocation of parental rights and responsibility for the care of children, concerning information in the mediation process; communications assistant, when providing telecommunications relay service pursuant to Ohio law (R.C. 4931.35, not in the bill) or the federal Communications Act of 1934; chiropractor and patient; critical incident stress management team member and individual receiving crisis response services from the team member; and employee assistance professional and client. (R.C. 2317.02.)

Testimonial privilege for representative of an employee organization

The bill expands the current testimonial privilege law (see "**Existing testimonial privilege law**") by providing that a representative of an "employee organization" (see definition below) cannot testify in any civil, criminal, or administrative action or proceeding concerning a communication between the representative and a bargaining unit member made while the representative was acting in a representative capacity on behalf of the employee organization (R.C. 2317.02(M)(1)). This testimonial privilege does not apply, and a representative of an employee organization may testify, under any of the following circumstances (R.C. 2317.02(M)(2)):

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

(2) In a civil or criminal action against the representative in the representative's personal or representative capacity, against the employee organization or an affiliate of the employee organization, or against any representative of the employee organization in the representative's representative capacity;

(3) If required to do so by court order;

(4) With the express consent of the bargaining unit member, the guardian or other legal representative of the bargaining unit member, or, if the bargaining unit member is deceased, the spouse, executor, or administrator of the bargaining unit member.

The bill provides that if there is a conflict between the bill's provisions and any federal or state labor law with regard to a specific situation, the provisions of the federal or state labor law control (R.C. 2317.02(M)(3)).

The bill defines "employee organization" as any labor union or bona fide organization in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, hours, terms, and other conditions of employment (R.C. 2317.02(M)(4)).

HISTORY

ACTION

DATE

Introduced

02-10-09

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