

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 370

By Senator Woodrum

[Passed March 1, 2024; in effect from passage]

1 AN ACT to amend and reenact §6C-2-5 and §6C-2-8 of the Code of West Virginia, 1931, as
2 amended, all relating to updating Public Employees Grievance Board procedure to reflect
3 that Level 3 decisions be appealed to the Intermediate Court of Appeals; and establishing
4 venue for the enforceability of final orders issued by an administrative law judge.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. PUBLIC EMPLOYEES GRIEVANCE PROCEDURE.

§6C-2-5. Enforcement and appeal.

1 (a) The decision of the administrative law judge is final upon the parties and is enforceable
2 in the circuit court situated in the judicial district in which the grievant is employed.

3 (b) An appeal of the decision of the administrative law judge shall be to the Intermediate
4 Court of Appeals in accordance with §51-11-4(b)(4) of this code and the Rules of Appellate
5 Procedure.

**§6C-2-8. Employee organizations may not be compelled to disclose certain
communications; exceptions.**

1 (a) Except as otherwise provided in this section, an employee organization or an agent of
2 an employee organization may not be compelled to disclose any communication or information the
3 employee organization or agent received or acquired in confidence from a public employee, while
4 the employee organization or agent was acting in a representative capacity concerning a public
5 employee grievance or an investigation of a potential public employee grievance, regardless of
6 whether the public employee is a member of the employee organization: *Provided*, That the
7 confidentiality established under this section does not apply to written communications between
8 the employee and the employee organization.

9 (b) (1) The confidentiality established under this section applies only to the extent that the
10 communication or information is germane to a grievance or potential grievance of the employee.

11 (2) The confidentiality established under this subsection continues after termination of:

12 (A) The employee's employment; or

13 (B) The representative relationship of the employee organization or its agent with the
14 public employee.

15 (3) The confidentiality established under this subsection protects the communication or
16 information received or acquired by the employee organization or its agent, but does not protect
17 the employee from being compelled to disclose, to the extent provided by law, the facts underlying
18 the communication or information.

19 (c) The protection for confidential communications provided by this section only extends to
20 proceedings under the public employees grievance procedure. Nothing in this section may be
21 construed to extend the confidentiality to circuit court, appellate proceedings, or other proceedings
22 outside of the public employees grievance procedure.

23 (d) An employee organization or its agent shall disclose to the employer as soon as
24 possible a communication or information described in subsection (a) of this section to the extent
25 the employee organization or its agent reasonably believes:

26 (1) It is necessary to prevent certain death or substantial bodily harm;

27 (2) It is necessary to prevent the employee from committing a crime, fraud, or any act that
28 is reasonably certain to result in substantial injury to the financial interests or property of another or
29 to rectify or mitigate the action after it has occurred;

30 (3) The communication or information constitutes an admission that the employee has
31 committed a crime; or

32 (4) It is necessary to comply with a court order or other law.

33 (e) An employee organization or its agent may disclose a communication or information
34 described in subsection (a) of this section in order to:

35 (1) Secure legal advice about the compliance of the employee organization or its agent
36 with a court order or other law;

37 (2) Establish a claim or defense on behalf of the employee organization or its agent in a

38 controversy between the employee and the employee organization or its agent;

39 (3) Establish a defense to a criminal charge or civil claim against the employee
40 organization or its agent based on conduct in which the employee was involved; or

41 (4) Respond to allegations in any proceeding concerning the performance of professional
42 duties by the employee organization or its agent on behalf of the employee.

43 (f) An employee organization or its agent may disclose a communication or information
44 described in subsection (a) of this section, without regard to whether the disclosure is made within
45 the public employees grievance procedure, in the following circumstances:

46 (1) The employee organization has obtained the express written or oral consent of the
47 employee;

48 (2) The employee has, by other act or conduct, waived the confidentiality of the
49 communication or information; or

50 (3) The employee is deceased or has been adjudicated incompetent by a court of
51 competent jurisdiction and the employee organization has obtained the written or oral consent of
52 the personal representative of the employee's estate or of the employee's guardian.

53 (g) If there is a conflict between the application of this section and any federal or state labor
54 law, the provisions of the federal or other state law shall control.