

1 **ENROLLED**

2 **COMMITTEE SUBSTITUTE**

3 **FOR**

4 **H. B. 3156**

5  
6 (By Delegates D. Poling, Caputo, Manypenny and Walker)

7  
8 [Passed March 8, 2014; in effect ninety days from passage.]

9  
10 AN ACT to amend the Code of West Virginia, 1931, as amended, be  
11 amended by adding thereto a new section, designated §6C-2-8,  
12 relating to recognizing certain communications between a  
13 public employee and a employee organization as confidential;  
14 preventing employee organizations and their agents from being  
15 compelled to disclose certain communications or information  
16 obtained from an employee while the employee organization or  
17 agent is acting in a representative capacity concerning an  
18 employee grievance; providing limitations and exceptions;  
19 ensuring the confidentiality does not extend outside the  
20 grievance process; and providing for resolution of conflicts  
21 with existing law.

22 *Be it enacted by the Legislature of West Virginia:*

23 That the Code of West Virginia, 1931, as amended, be amended  
24 by adding thereto a new section, designated §6C-2-8, to read as

1 follows:

2 **ARTICLE 2. WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE PROCEDURE.**

3 **§6C-2-8. Employee organizations may not be compelled to disclose**  
4 **certain communications; exceptions.**

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

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

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

21 (A) The employee's employment; or

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

24 (3) The confidentiality established under this subsection

1 protects the communication or information received or acquired by  
2 the employee organization or its agent, but does not protect the  
3 employee from being compelled to disclose, to the extent provided  
4 by law, the facts underlying the communication or information.

5 (c) The protection for confidential communications provided by  
6 this section only extends to proceedings under the public employees  
7 grievance procedure. Nothing in this section may be construed to  
8 extend the confidentiality to circuit court proceedings or other  
9 proceedings outside of the public employees grievance procedure.

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

14 (1) It is necessary to prevent certain death or substantial  
15 bodily harm.

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

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

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

24 (e) An employee organization or its agent may disclose a  
25 communication or information described in subsection (a) of this

1 section in order to:

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

4 (2) Establish a claim or defense on behalf of the employee  
5 organization or its agent in a controversy between the employee and  
6 the employee organization or its agent;

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

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

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

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

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

22 (3) The employee is deceased or has been adjudicated  
23 incompetent by a court of competent jurisdiction and the employee  
24 organization has obtained the written or oral consent of the  
25 personal representative of the employee's estate or of the

1 employee's guardian.

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