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**ENGROSSED SUBSTITUTE HOUSE BILL 1187**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** House Civil Rights & Judiciary (originally sponsored by Representatives Hackney, Berry, Bateman, Ramel, Doglio, Simmons, Lekanoff, Bronoske, Wylie, Stonier, Pollet, and Ormsby)

AN ACT Relating to privileged communication between employees and the unions that represent them; reenacting and amending RCW 5.60.060; adding a new section to chapter 28B.52 RCW; adding a new section to chapter 41.56 RCW; adding a new section to chapter 41.59 RCW; adding a new section to chapter 41.76 RCW; adding a new section to chapter 41.80 RCW; adding a new section to chapter 47.64 RCW; adding a new section to chapter 49.36 RCW; adding a new section to chapter 53.18 RCW; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  The legislature finds that:

(1) Labor unions have fiduciary duties to act on behalf of the employees they represent in regard to employment relations with public-sector and private-sector employers, including personnel matters, grievances, labor disputes, wages, rates of pay, hours of employment, conditions of work, and collective bargaining.

(2) The discharge of those duties fosters industrial peace, human dignity, and the continued improvement of the employment relationship, with benefits to employees, employers, and the general public.

(3) The effective discharge of those duties depends on employees' confidence that their confidential communications with their union representatives in the course of union representation will be protected against disclosure, and that unions' internal deliberations concerning their representational duties be protected against disclosure so that unions may engage in the balancing that is necessary to carry out their duty to all members.

(4) To effectuate the public policy favoring effective collective bargaining, it is necessary to protect confidential union–employee communications in the course of union representation against disclosure, except in the rare circumstances where disclosure appears necessary to prevent injury from a crime or when legal claims are brought in formal proceedings against unions. The creation of a union–employee privilege is accordingly in the best interests of the state of Washington.

**Sec.**  RCW 5.60.060 and 2020 c 302 s 113 and 2020 c 42 s 1 are each reenacted and amended to read as follows:

(1) A spouse or domestic partner shall not be examined for or against his or her spouse or domestic partner, without the consent of the spouse or domestic partner; nor can either during marriage or during the domestic partnership or afterward, be without the consent of the other, examined as to any communication made by one to the other during the marriage or the domestic partnership. But this exception shall not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other, nor to a criminal action or proceeding against a spouse or domestic partner if the marriage or the domestic partnership occurred subsequent to the filing of formal charges against the defendant, nor to a criminal action or proceeding for a crime committed by said spouse or domestic partner against any child of whom said spouse or domestic partner is the parent or guardian, nor to a proceeding under chapter 71.05 or 71.09 RCW: PROVIDED, That the spouse or the domestic partner of a person sought to be detained under chapter 71.05 or 71.09 RCW may not be compelled to testify and shall be so informed by the court prior to being called as a witness.

(2)(a) An attorney or counselor shall not, without the consent of his or her client, be examined as to any communication made by the client to him or her, or his or her advice given thereon in the course of professional employment.

(b) A parent or guardian of a minor child arrested on a criminal charge may not be examined as to a communication between the child and his or her attorney if the communication was made in the presence of the parent or guardian. This privilege does not extend to communications made prior to the arrest.

(3) A member of the clergy, a Christian Science practitioner listed in the Christian Science Journal, or a priest shall not, without the consent of a person making the confession or sacred confidence, be examined as to any confession or sacred confidence made to him or her in his or her professional character, in the course of discipline enjoined by the church to which he or she belongs.

(4) Subject to the limitations under RCW 71.05.217 (6) and (7), a physician or surgeon or osteopathic physician or surgeon or podiatric physician or surgeon shall not, without the consent of his or her patient, be examined in a civil action as to any information acquired in attending such patient, which was necessary to enable him or her to prescribe or act for the patient, except as follows:

(a) In any judicial proceedings regarding a child's injury, neglect, or sexual abuse or the cause thereof; and

(b) Ninety days after filing an action for personal injuries or wrongful death, the claimant shall be deemed to waive the physician-patient privilege. Waiver of the physician-patient privilege for any one physician or condition constitutes a waiver of the privilege as to all physicians or conditions, subject to such limitations as a court may impose pursuant to court rules.

(5) A public officer shall not be examined as a witness as to communications made to him or her in official confidence, when the public interest would suffer by the disclosure.

(6)(a) A peer support group counselor shall not, without consent of the peer support group client making the communication, be compelled to testify about any communication made to the counselor by the peer support group client while receiving counseling. The counselor must be designated as such by the agency employing the peer support group client prior to the incident that results in counseling. The privilege only applies when the communication was made to the counselor while acting in his or her capacity as a peer support group counselor. The privilege does not apply if the counselor was an initial responding first responder, department of corrections staff person, or jail staff person; a witness; or a party to the incident which prompted the delivery of peer support group counseling services to the peer support group client.

(b) For purposes of this section:

(i) "First responder" means:

(A) A law enforcement officer;

(B) A limited authority law enforcement officer;

(C) A firefighter;

(D) An emergency services dispatcher or recordkeeper;

(E) Emergency medical personnel, as licensed or certified by this state; or

(F) A member or former member of the Washington national guard acting in an emergency response capacity pursuant to chapter 38.52 RCW.

(ii) "Law enforcement officer" means a general authority Washington peace officer as defined in RCW 10.93.020.

(iii) "Limited authority law enforcement officer" means a limited authority Washington peace officer as defined in RCW 10.93.020 who is employed by the department of corrections, state parks and recreation commission, department of natural resources, liquor and cannabis board, or Washington state gambling commission.

(iv) "Peer support group client" means:

(A) A first responder;

(B) A department of corrections staff person; or

(C) A jail staff person.

(v) "Peer support group counselor" means:

(A) A first responder, department of corrections staff person, or jail staff person or a civilian employee of a first responder entity or agency, local jail, or state agency who has received training to provide emotional and moral support and counseling to a peer support group client who needs those services as a result of an incident in which the peer support group client was involved while acting in his or her official capacity; or

(B) A nonemployee counselor who has been designated by the first responder entity or agency, local jail, or state agency to provide emotional and moral support and counseling to a peer support group client who needs those services as a result of an incident in which the peer support group client was involved while acting in his or her official capacity.

(7) A sexual assault advocate may not, without the consent of the victim, be examined as to any communication made between the victim and the sexual assault advocate.

(a) For purposes of this section, "sexual assault advocate" means the employee or volunteer from a community sexual assault program or underserved populations provider, victim assistance unit, program, or association, that provides information, medical or legal advocacy, counseling, or support to victims of sexual assault, who is designated by the victim to accompany the victim to the hospital or other health care facility and to proceedings concerning the alleged assault, including police and prosecution interviews and court proceedings.

(b) A sexual assault advocate may disclose a confidential communication without the consent of the victim if failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death of the victim or another person. Any sexual assault advocate participating in good faith in the disclosing of records and communications under this section shall have immunity from any liability, civil, criminal, or otherwise, that might result from the action. In any proceeding, civil or criminal, arising out of a disclosure under this section, the good faith of the sexual assault advocate who disclosed the confidential communication shall be presumed.

(8) A domestic violence advocate may not, without the consent of the victim, be examined as to any communication between the victim and the domestic violence advocate.

(a) For purposes of this section, "domestic violence advocate" means an employee or supervised volunteer from a community‑based domestic violence program or human services program that provides information, advocacy, counseling, crisis intervention, emergency shelter, or support to victims of domestic violence and who is not employed by, or under the direct supervision of, a law enforcement agency, a prosecutor's office, or the child protective services section of the department of children, youth, and families as defined in RCW 26.44.020.

(b) A domestic violence advocate may disclose a confidential communication without the consent of the victim if failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death of the victim or another person. This section does not relieve a domestic violence advocate from the requirement to report or cause to be reported an incident under RCW 26.44.030(1) or to disclose relevant records relating to a child as required by RCW 26.44.030(15). Any domestic violence advocate participating in good faith in the disclosing of communications under this subsection is immune from liability, civil, criminal, or otherwise, that might result from the action. In any proceeding, civil or criminal, arising out of a disclosure under this subsection, the good faith of the domestic violence advocate who disclosed the confidential communication shall be presumed.

(9) A mental health counselor, independent clinical social worker, or marriage and family therapist licensed under chapter 18.225 RCW may not disclose, or be compelled to testify about, any information acquired from persons consulting the individual in a professional capacity when the information was necessary to enable the individual to render professional services to those persons except:

(a) With the written authorization of that person or, in the case of death or disability, the person's personal representative;

(b) If the person waives the privilege by bringing charges against the mental health counselor licensed under chapter 18.225 RCW;

(c) In response to a subpoena from the secretary of health. The secretary may subpoena only records related to a complaint or report under RCW 18.130.050;

(d) As required under chapter 26.44 or 74.34 RCW or RCW 71.05.217 (6) or (7); or

(e) To any individual if the mental health counselor, independent clinical social worker, or marriage and family therapist licensed under chapter 18.225 RCW reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the individual or any other individual; however, there is no obligation on the part of the provider to so disclose.

(10) An individual who acts as a sponsor providing guidance, emotional support, and counseling in an individualized manner to a person participating in an alcohol or drug addiction recovery fellowship may not testify in any civil action or proceeding about any communication made by the person participating in the addiction recovery fellowship to the individual who acts as a sponsor except with the written authorization of that person or, in the case of death or disability, the person's personal representative.

(11)(a) Neither a union representative nor an employee the union represents or has represented shall be examined as to, or be required to disclose, any communication between an employee and union representative or between union representatives made in the course of union representation except:

(i) To the extent such examination or disclosure appears necessary to prevent the commission of a crime that is likely to result in a clear, imminent risk of serious physical injury or death of a person;

(ii) In actions, civil or criminal, in which the represented employee is accused of a crime or assault or battery;

(iii) In actions, civil or criminal, where a union member is a party to the action, the union member may obtain a copy of any statement previously given by that union member concerning the subject matter of the action and may elicit testimony concerning such statements. The right of the union member to obtain such statements, or the union member's possession of such statements, does not render them discoverable over the objection of the union member;

(iv) In actions, regulatory, civil, or criminal, against the union or its affiliated, subordinate, or parent bodies or their agents; or

(v) When an admission of, or intent to engage in, criminal conduct is revealed by the represented union member to the union representative.

(b) The privilege created in this subsection (11) does not apply to any record of communications that would otherwise be subject to disclosure under chapter 42.56 RCW.

(c) For purposes of this subsection:

(i) "Employee" means a person represented by a certified or recognized union regardless of whether the employee is a member of the union.

(ii) "Union" means any lawful organization that has as one of its primary purposes the representation of employees in their employment relations with employers, including without limitation labor organizations defined by 29 U.S.C. Sec. 152(5) and 5 U.S.C. Sec. 7103(a)(4), representatives defined by 45 U.S.C. Sec. 151, and bargaining representatives defined in RCW 41.56.030, and employee organizations as defined in RCW 28B.52.020, 41.59.020, 41.80.005, 41.76.005, 47.64.011, and 53.18.010.

(iii) "Union representation" means action by a union on behalf of one or more employees it represents in regard to their employment relations with employers, including personnel matters, grievances, labor disputes, wages, rates of pay, hours of employment, conditions of work, or collective bargaining.

(iv) "Union representative" means a person authorized by a union to act for the union in regard to union representation.

(v) "Communication" includes any oral, written, or electronic communication or document containing such communication.

NEW SECTION. **Sec.**  A new section is added to chapter 28B.52 RCW to read as follows:

The privilege established by RCW 5.60.060(11) shall apply to all employee organizations covered by this chapter and in all proceedings authorized by this chapter.

NEW SECTION. **Sec.**  A new section is added to chapter 41.56 RCW to read as follows:

The privilege established by RCW 5.60.060(11) shall apply to all employee organizations covered by this chapter and in all proceedings authorized by this chapter.

NEW SECTION. **Sec.**  A new section is added to chapter 41.59 RCW to read as follows:

The privilege established by RCW 5.60.060(11) shall apply to all employee organizations covered by this chapter and in all proceedings authorized by this chapter.

NEW SECTION. **Sec.**  A new section is added to chapter 41.76 RCW to read as follows:

The privilege established by RCW 5.60.060(11) shall apply to all employee organizations covered by this chapter and in all proceedings authorized by this chapter.

NEW SECTION. **Sec.**  A new section is added to chapter 41.80 RCW to read as follows:

The privilege established by RCW 5.60.060(11) shall apply to all employee organizations covered by this chapter and in all proceedings authorized by this chapter.

NEW SECTION. **Sec.**  A new section is added to chapter 47.64 RCW to read as follows:

The privilege established by RCW 5.60.060(11) shall apply to all collective bargaining representatives covered by this chapter and in all proceedings authorized by this chapter.

NEW SECTION. **Sec.**  A new section is added to chapter 49.36 RCW to read as follows:

The privilege established by RCW 5.60.060(11) shall apply to all labor unions covered by this chapter.

NEW SECTION. **Sec.**  A new section is added to chapter 53.18 RCW to read as follows:

The privilege established by RCW 5.60.060(11) shall apply to all employee organizations covered by this chapter and in all proceedings authorized by this chapter.

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