HOUSE DOCKET, NO. 607 FILED ON: 1/13/2017

HOUSE . . . . . No. 1032

The Commonwealth of Massachusetts

PRESENTED BY:

James R. Miceli

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the confidentiality of communications or information of labor organizations.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
James R. Miceli	*19th Middlesex*	*1/13/2017*
Paul Larkham	*7 Technology Dr. – #102 Chelmsford, Massachusetts 01863*	*1/13/2017*
James Arciero	*2nd Middlesex*	*1/13/2017*
Steven Ultrino	*33rd Middlesex*	*1/13/2017*
Timothy R. Whelan	*1st Barnstable*	*1/13/2017*
Colleen M. Garry	*36th Middlesex*	*1/13/2017*
Shawn Dooley	*9th Norfolk*	*1/13/2017*
Harold P. Naughton, Jr.	*12th Worcester*	*1/13/2017*

HOUSE DOCKET, NO. 607 FILED ON: 1/13/2017

HOUSE . . . . . No. 1032

By Mr. Miceli of Wilmington, a petition (accompanied by bill, House, No. 1032) of James R. Miceli and others relative to the confidentiality of communications or information of labor organizations. Labor and Workforce Development.

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act relative to the confidentiality of communications or information of labor organizations.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Definitions

(a) (1) In this section the following words have the meanings indicated.

(2) "Employee" means an individual represented by a labor organization regardless of whether the individual is a member of the labor organization.

(3) "Labor organization" means an organization that represents or seeks to represent workers for the purposes of collective bargaining.

Confidentiality of labor organization communications or information

(b) (1)Except as provided in subsection (c) or (d) of this section, a labor organization or an agent

of a labor organization may not be compelled to disclose any communication or information

the labor organization or agent received or acquired in confidence from an employee while

the labor organization or agent was acting in a representative capacity concerning an employee grievance.

(2)Paragraph (1) of this subsection does not apply to a criminal proceeding.

(3)An employee's privilege under this subsection applies only to the extent that:

(i) A communication or information is germane to a grievance of the employee; and

(ii) The grievance of the employee is a subject matter of an investigation, a grievance proceeding, or a civil court, administrative, arbitration, or other civil proceeding.

(4)An employee's privilege under this subsection continues after termination of:

(i) The employee's employment; or

(ii) The representative relationship of the labor organization or its agent with the employee.

(5)An employee's privilege under this subsection protects the communication or information received or acquired by the labor organization or its agent, but does not protect the employee from being compelled to disclose, to the extent provided by law, the facts underlying the communication or information.

Disclosure of information to prevent certain death or substantial bodily harm

(1) A labor organization or its agent shall disclose to the employer as soon as possible a communication or information described in subsection (b)(1) of this section to the extent the labor organization or its agent reasonably believes necessary to prevent certain death or substantial bodily harm.

Disclosure of communication or information to prevent commission of crime or fraud

(d) A labor organization or its agent may disclose a communication or information described in

subsection (b) of this section:

(1) To the extent the labor organization or its agent reasonably believes necessary to:

(i) Prevent the employee from committing a crime, fraud, or any act in violation of a collective bargaining agreement or contractual agreement that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the employee has used or is using the services of the labor organization or its agent;

(ii) Prevent, mitigate, or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the employee's commission of a crime, fraud, or any act in violation of a collective bargaining agreement or contractual agreement in furtherance of which the employee has used the services of the labor organization or its agent;

(iii) Secure legal advice about the compliance of the labor organization or its agent with a court order or other law or the terms of a collective bargaining agreement or contractual agreement;

(iv) Establish a claim or defense on behalf of the labor organization or its agent in a controversy between the employee and the labor organization or its agent, to establish a defense to a criminal charge or civil claim against the labor organization or its agent based on conduct in which the employee was involved, or to respond to allegations in any proceeding concerning the performance of professional duties by the labor organization or its agent on behalf of the employee; or

(iv) Comply with a court order or other law or the terms of a collective bargaining agreement or contractual agreement;

(2) To the extent the communication or information constitutes an admission that the employee has committed a crime;

(3) In any court, administrative, arbitration, or other proceeding against:

(i) The agent of the labor organization in the agent's personal or official representative capacity; or

(ii) The labor organization, any affiliated or subordinate body of the labor organization,

(iii) or any agent of the labor organization or its affiliated or subordinate body;

(4) If the labor organization has obtained the written or oral consent of the employee;

(5) If the employee is deceased or has been adjudicated incompetent by a court of competent jurisdiction and the labor organization has obtained the written or oral consent of the personal representative of the employee's estate or of the employee's guardian;

(6) When required by court order; or

(7) To the extent that the employee waives the confidentiality of the communication or information.

Adverse inferences based on refusal to disclose communications or information prohibited

(1) An adverse inference may not be drawn based on the refusal of a labor organization or an agent of a labor organization to disclose a communication or any information under subsection (d)(3) of this section.