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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anna Caballero, Chair  
2025 - 2026 Regular Session

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### **AB 1109 (Kalra) - Evidentiary privileges: union agent-represented worker privilege**

**Version:** February 20, 2025

**Urgency:** No

**Hearing Date:** July 14, 2025

**Policy Vote:** JUD. 10 - 2

**Mandate:** No

**Consultant:** Liah Burnley

**Bill Summary:** AB 1109 establishes an evidentiary privilege for communications between union agents and represented employees.

**Fiscal Impact:** CalHR estimates this bill would result in unknown but potentially significant unbudgeted costs (General Fund) related to dispute resolutions, arbitration fees, and attorney fees. CalHR notes that it is unknown to what extent this bill would impact current legal proceedings.

**Background:** California has codified numerous evidentiary privileges, recognizing the need to protect the confidentiality of certain communications. Among those are the: lawyer-client privilege, lawyer referral service-client privilege, spousal privilege, confidential marital communications privilege, physician-patient privilege, psychotherapist-patient privilege, clergyman-penitent privilege, sexual assault counselor-victim privilege, domestic violence counselor-victim privilege, and human trafficking caseworker-victim privilege. Other statutory privileges protect official information acquired in confidence by a public employee and the identity of informants, protect persons from having to reveal their votes in public elections, and protect against disclosure of trade secrets.

According to the author, this bill would add union agent-represented worker as a recognized statutory evidentiary privilege along with 11 existing types of communications deemed privileged. By allowing evidentiary privilege between workers and union representatives, we ensure the safe, private, and full disclosure of workplace concerns and needs. These communications focus on workers' rights and support California's fair employment standards.

Although there are concerns about a privilege such as this interfering with workplace investigations, protecting communications between victims of discrimination and harassment in the workplace and their union representatives may encourage more victims to come forward to understand their options.

### **Proposed Law:**

- Establishes the union agent-represented worker privilege and provides that a union agent and a represented employee or represented former employee have a privilege to refuse to disclose, in any court or to any administrative board or agency, or in any arbitration or other proceeding, any confidential communication between them made while the union agent was acting in the union agent's representative capacity.

- Specifies that a represented employee or represented former employee also has a privilege to prevent another person from disclosing, in connection with the proceedings outlined above, a confidential communication between the employee and a union agent that is privileged.
- Authorizes a union agent to disclose, in connection with a proceeding, a confidential communication made to the union agent while the union agent was acting in the agent's representative capacity in specified circumstances, including actions against the union agent or against the local union or with consent.
- Requires a union agent to disclose, in connection with a proceeding, a confidential communication made to the union agent while the union agent was acting in the union agent's representative capacity if required to do so by a court order.
- Defines "confidential communication" to mean information transmitted, by oral or written communication, between a represented employee or represented former employee and a union agent, in confidence by a means which, so far as the employee, former employee, or union agent is aware, discloses the information to no third persons other than those who are present to further the interest of the employee, former employee, or union agent or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the communication was made, and includes advice given by a union agency in the course of a representational relationship.
- Defines "union agent" to mean a person employed, elected, or appointed by a labor organization and whose duties include the representation of employees in a bargaining unit in a grievance procedure or in negotiations for a labor agreement and the labor organization. An appointed employee steward is not a union agent except to the extent a represented employee or represented former employee communicates in confidence to the steward regarding a grievance or potential grievance.
- Provides that there is no privilege if the union agent reasonably believes that disclosure of any confidential communication is necessary to prevent a criminal act that the union agent reasonably believes is likely to result in the death of, or substantial bodily harm to, an individual.
- Provides that there is no privilege with respect to a confidential communication made to enable or aid a person in committing, or planning to commit, a crime or fraud.
- Provides that the union agent-represented worker privilege does not apply in criminal proceedings.
- Applies the various provisions of the Evidence Code regarding waiver, joint holders, burden of proof, and other related provisions concerning privilege to the union agent-represented worker privilege.

**Related Legislation:**

- AB 729 (Hernández, 2013) would have established an evidentiary privilege from disclosure for communications between a union agent and a represented employee or represented former employee. AB 729 was vetoed by Governor Brown. In his veto message, the Governor wrote:

I am returning Assembly Bill 729 without my signature.

This bill would establish an evidentiary privilege to prohibit the disclosure of confidential communications between represented employees and their union agents.

I don't believe it is appropriate to put communications with a union agent on equal footing with communications with one's spouse, priest, physician or attorney. Moreover, this bill could compromise the ability of employers to conduct investigations into workplace safety, harassment and other allegations.

- AB 3121 (Kalra, 2018) and AB 418 (Kalra, 2019) were nearly identical to this bill but were not taken up on the Senate Floor.

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