
SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	AB 340	Hearing Date:	June 25, 2025
Author:	Ahrens		
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Urgency:	No	Fiscal:	Yes
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SUBJECT: Employer-employee relations: confidential communications

KEY ISSUE

This bill prohibits a public employer from: 1) questioning an employee or employee representative regarding representation-related communications made in confidence between the employee and employee representative; and 2) compelling disclosure of such communications to a third party. These prohibitions do not apply to a criminal investigation or supersede rights of public safety officers under investigation.

ANALYSIS

Existing law:

- 1) Finds that California law does not impliedly provide for an employee-union representative privilege, but that, instead, the creation of evidentiary privileges is “the province of the Legislature.” (*American Airlines, Inc. v. Superior Court* (2003) 114 Cal.App 4th 881, 890.)
- 2) Provides under National Labor Relations Board (NLRB) case law with respect to private sector employees, that when an employer compels disclosure of conversations between an employee and their union steward, it interferes with the employee’s right to engage in concerted activities and collectively bargain because allowing an employer to compel disclosure “manifestly restrains employees in their willingness to candidly discuss matters with their chosen, statutory representatives” and “inhibits [union] stewards in obtaining needed information from employees” for their representation. (*Cook Paint v. Varnish Co.* (1981) 258 N.L.R.B. 1230, 1232.)
- 3) Provides under Public Employment Relations Board (PERB) decisional administrative law that a California public employer’s legitimate interest in certain questioning of its employees when investigating an employee’s specified conduct harmed the employees’ and their unions’ protected collective bargaining right under state law, as specified. (*California School Employees Association v. William S. Hart Union High School District* (2018) PERB Decision No. 2595, p. 7.)
- 4) Provides that no person has a privilege to refuse to be a witness; to refuse to disclose any matter or to refuse to produce any writing, object, or other thing, or prevent another person from the same, unless otherwise provided by statute. (Evidence (Evid.) Code §911.)
- 5) Governs the admissibility of evidence in court proceedings and generally provides a privilege to refuse to testify or otherwise disclose confidential communications made in the course of

certain relationships. (Evid. Code §§954, 966, 980, 994, 1014, 1033, 1034, 1035.8, 1037.5, 1038.)

- 6) Provides that the right of a person to claim specified privileges is waived with respect to a protected communication if the holder of the privilege has disclosed a significant part of that communication or consented to disclosure, without coercion. Existing law provides that a disclosure does not constitute a waiver where it was reasonably necessary to accomplish the purposes for which the lawyer, lawyer referral service, physician, psychotherapist, sexual assault counselor, domestic violence counselor, or human trafficking caseworker was consulted. (Evid. Code §912(a), (d).)
- 7) Provides that if two or more persons are joint holders of a privilege, a waiver of a right of a particular joint holder of the privilege to claim the privilege does not affect the right of another joint holder to claim the privilege. In the case of the spousal privilege, the right of one spouse to claim the privilege does not affect the right of the other spouse to claim the privilege. (Evid. Code §912 (b).)
- 8) Provides that if a privilege is claimed on the ground that the matter sought to be disclosed is a communication made in confidence in the course of a recognized privileged relation, the communication is presumed to have been made in confidence, and the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential. A communication does not lose its privileged character for the sole reason that it was communicated by electronic means or because persons involved in the delivery, facilitation, or storage of electronic communication may have access to the content of the communication. (Evid. Code §917.)
- 9) Governs collective bargaining in the private sector under the federal National Labor Relations Act (NLRA) but leaves to the states the regulation of collective bargaining in their respective public sectors. (29 United State Code §151 et seq.) While the NLRA and the decisions of its National Labor Relations Board (NLRB) often provide persuasive precedent in interpreting state collective bargaining law, public employees generally have no collective bargaining rights absent specific statutory authority establishing those rights.
- 10) Provides several statutory frameworks under California law to provide public employees collective bargaining rights, govern public employer-employee relations, and limit labor strife and economic disruption in the public sector through a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and recognized public employee organizations or their exclusive representatives. These include, among others, the Meyers-Milias-Brown Act (MMBA), which governs labor relations between local public agencies and their employees; the Education Employer-Employee Relations Act (EERA), which governs labor relations between school employers and their employees; and the Ralph C. Dills Act (Dills Act) which governs labor relations between the State and its employees. (Government Code (GC) §3500 et seq.)
- 11) Does not cover California's public transit districts by a common collective bargaining statute. Instead, while some transit agencies are subject to the MMBA, other transit agencies are subject to labor relations provisions that are found in each district's specific Public Utilities Code (PUC) enabling statute, in joint powers agreements, or in articles of incorporation and bylaws (for example, see PUC §40000 et seq.).

- 12) Establishes the Public Employment Relations Board (PERB), a quasi-judicial administrative agency charged with resolving disputes and enforcing the statutory duties and rights of public agency employers and employee organizations, but provides the City, and the County, of Los Angeles a local alternative to PERB oversight through the city's Employee Relations Board (ERB) and the county's Employee Relations Commission (ERCOM). (GC §3541)

This bill:

- 1) Prohibits a public employer from questioning a public employee, a representative of a recognized employee organization, or an exclusive representative regarding communications made in confidence between a public employee and the representative in connection with representation relating to any matter within the scope of the recognized employee organization's representation.
- 2) Declares that the Legislature intends that the above prohibition be consistent with, and not in conflict with, *William S. Hart Union High School District* (2018) PERB Dec. No. 2595.¹
- 3) Prohibits a public employer from compelling a public employee, a representative of a recognized employee organization, or an exclusive representative to disclose to a third party, communications made in confidence between a public employee and the representative in connection with representation relating to any matter within the scope of the recognized employee organization's representation.
- 4) Provides that this bill's provisions do not apply to apply to a criminal investigation and do not supersede Government Code Section 3303, which provides public safety officers specified rights under the Public Safety Officers Procedural Bill of Rights Act when they are under investigation and subjected to interrogation, as specified.

COMMENTS

1. Need for this bill?

According to the author:

“While employees commonly believe that discussions with their union representative regarding workplace matters, such as discipline or grievances, are confidential, current state law does not explicitly prohibit employers from compelling employees or their representatives to disclose such communications.”

2. Proponent Arguments

According to the Police Officers Association of California:

¹ In *Hart*, PERB found that a school employer's legitimate interest in investigating an employee's on-campus nighttime activities with an employee from a different campus who was also the union steward were outweighed by its employees' and the union's rights under the Educational Employment Relations Act (EERA) and that the school employer interfered with those rights when the employer questioned the union steward about whether other employees had complained about the employee under investigation.

“This bill would codify existing decisions of the California Public Employment Relations Board which prohibit public employers from coercing union representatives and interfering in the representation of union members by questioning union representatives and members regarding communications made in confidence between an employee and an employee representative in connection with representation relating to any matter within the scope of the recognized employee organization’s representation. The prohibition on such questioning is limited to public employers, so it would not affect criminal investigations conducted by separate and independent third parties, but employers could not compel disclosure of communications or order disclosure to third parties connected to or acting on behalf of the public employer.

This bill amends collective bargaining statutes to make clear that public employers and those acting on their behalf commit an unfair labor practice by questioning union members or their labor representatives about communications between represented employees and their union representatives about matters within the scope of union representation. In short, this bill would recognize the confidentiality of those communications and preclude public employers from interfering with union representation, which benefits every public sector union and public employee in California.”

3. Opponent Arguments:

According to a coalition of several public employers including the California Schoolboards Association and the California State Association of Counties:

“In order to conduct proper investigations that uphold the public’s trust, protect against the misuse of public funds, and ensure the safety and well-being of both public employees and the public at large, it is critical that a public employer has the ability to interview all individuals with relevant information to ascertain the facts and understand the matter fully. AB 340 would increase investigation and litigation costs for the state as well as local governments and schools by creating incomplete investigations, since all appropriate employees with relevant information cannot be questioned. Costs and risks may also increase as conduct challenged as unlawful under the bill’s provisions is adjudicated before the Public Employment Relations Board (PERB). For schools, this is a drain of Proposition 98 funding.”

According to Cal Chamber and the California Hospitals Association:

“AB 340 effectively says that the employer’s interest can *never* justify any questions whatsoever. This is at odds with existing law and employers’ obligations to maintain safe workplaces free from misconduct or unlawful behavior. It also assumes that communications between a worker and a union representative are on par with an attorney and their client. We believe there are significant differences between those two relationships and note that attorneys have codes of conduct and ethics that govern their profession, especially where conflicts may arise in their work.”

4. Dual Referral:

The Senate Rules Committee referred this bill to the Senate Labor, Public Employment and Retirement Committee and the Senate Judiciary Committee.

5. Prior Legislation:

AB 2421 (Low, 2024) would have prohibited specified public employers from questioning employees and employee representatives about communications between employees and employee representatives related to the representative's representation, with a specified exception. *The Senate Committee on Appropriations held the bill in committee on the suspense file.*

AB 418 (Kalra, 2019) would have established an evidentiary privilege from disclosure for communications between a union agent and a represented employee or represented former employee. *This bill died on the Senate inactive file.*

AB 3121 (Kalra, 2018) would have established an evidentiary privilege from disclosure for communications between a union agent and a represented employee or represented former employee. *This bill died on the Senate inactive file.*

AB 729 (Roger Hernández, 2013) would have provided a union agent, as defined, and a represented employee or represented former employee a privilege of refusing to disclose any confidential communication between the employee or former employee and the union agent while the union agent is acting in their representative capacity, except as specified. *The Governor vetoed this bill.*

SUPPORT

Police Officers Association of California (Sponsor)
Calegislation
California Association of Highway Patrolmen
California Association of Psychiatric Technicians
California Community College Independents
California Faculty Association
California Federation of Teachers
California Nurses Association
California Professional Firefighters
California School Employees Association
California Teachers Association
Orange County Employees Association
Professional Engineers in California Government
Santa Clara Police Officers' Association
Service Employees International Union, California

OPPOSITION

Association of California School Administrators
Association of California Healthcare Districts
California Association of Joint Powers Authorities
California Association of Recreation & Park Districts
California Association of School Business Officials
California Chamber of Commerce
California Contract Cities Association
California County Superintendents

California Hospital Association
California School Boards Association
California Special Districts Association
California State Association of Counties
Chief Executive Officers of the California Community Colleges Board
City of Cupertino
City of Norwalk
Community College League of California
Kern County Superintendent of Schools Office
League of California Cities
Public Risk Innovation, Solutions, and Management
Rural County Representatives of California
School Employers Association of California
Schools Excess Liability Fund
Small School Districts' Association
University of California
Urban Counties of California

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