

HOUSE BILL NO. 327

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE LYNN

Introduced: 2/17/12

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act making privileged certain communications between employees and employee**
2 **union representatives; and amending Rule 402 and Rule 501, Alaska Rules of**
3 **Evidence."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 09.25 is amended by adding a new section to article 3 to read:

6 **Sec. 09.25.405. Privileged communication between employees and**
7 **employee advocates.** Confidential communications between an employee and an
8 individual who represents the employee on behalf of an organization in connection
9 with the individual's providing advocacy services to the employee that are related to
10 anticipated or ongoing disciplinary proceedings are privileged as provided under AS
11 23.40.065. In this section, "organization" has the meaning given in AS 23.40.065.

12 * **Sec. 2.** AS 23.40 is amended by adding a new section to article 1 to read:

13 **Sec. 23.40.065. Privileged communication between employees and**
14 **employee organizations.** (a) An individual may not be compelled in a proceeding to

1 disclose information the individual acquired from an employee while the individual
 2 represented the employee on behalf of an organization, if the information was
 3 communicated

4 (1) in confidence; and

5 (2) in connection with the individual's providing advocacy services to
 6 the employee that are related to anticipated or ongoing disciplinary proceedings.

7 (b) Nothing in (a) of this section prohibits a person from disclosing
 8 information

9 (1) to prevent a crime that would cause serious physical injury or death
 10 or create a risk of imminent serious physical injury or death;

11 (2) in a civil or criminal proceeding against the organization;

12 (3) as required by the superior court following a hearing in camera;

13 (4) when, after being fully informed regarding the nature and extent of
 14 the privilege under this section, the employee waives the privilege in writing; or

15 (5) after the employee's death, on written consent by the employee's
 16 personal representative.

17 (c) If a provision of this section is preempted by federal law or is in conflict
 18 with a federal or state law in a particular situation, the provision does not apply to the
 19 extent of the preemption or conflict.

20 (d) In this section,

21 (1) "organization" means a labor or employee organization of any kind
 22 in which employees participate and which exists for the primary purpose of dealing
 23 with employers concerning grievances, labor disputes, wages, rates of pay, hours of
 24 employment, and conditions of employment;

25 (2) "proceeding" means

26 (A) a proceeding heard before a legislative, judicial,
 27 administrative, or other governmental body or official authorized to hear
 28 evidence under oath; or

29 (B) an arbitration, hearing, or meeting that is part of a
 30 grievance procedure conducted under a collective bargaining agreement.

31 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 INDIRECT COURT RULE CHANGE. AS 09.25.405, enacted by sec. 1 of this Act,
3 and AS 23.40.065, enacted by sec. 2 of this Act, have the effect of amending Rules 402 and
4 501, Alaska Rules of Evidence, by creating a new privilege preventing a person from being
5 compelled to testify or produce evidence in a court and precluding admissibility of certain
6 evidence in certain cases.

7 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 CONDITIONAL EFFECT. AS 09.25.405, enacted by sec. 1 of this Act, and AS
10 23.40.065, enacted by sec. 2 of this Act, take effect only if sec. 3 of this Act receives the two-
11 thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of
12 Alaska.