

**CS FOR SENATE BILL NO. 224(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

**BY THE SENATE JUDICIARY COMMITTEE**

**Offered: 4/7/12**

**Referred: Rules**

**Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE**

**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 advocate who represents the employee on behalf of an organization in connection with  
9 an employee disciplinary proceeding are privileged as provided under AS 23.40.065.  
10 In this section, "advocate," "organization," and "proceeding" have the meanings given  
11 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 advocate may not be compelled in a proceeding to

1 disclose information the advocate acquired from an employee while the advocate  
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 advocate's providing advocacy services to  
6 the employee that are related to disciplinary proceedings.

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

9 (1) that an advocate receives from an employee to whom the advocate  
10 provides advocacy services, on behalf of an organization, if the advocate's services  
11 were sought, obtained, or used to enable or aid the employee in committing or  
12 planning to commit acts or omissions that the employee knew or reasonably should  
13 have known constitute fraud or a crime;

14 (2) in a proceeding concerning an alleged breach of either the  
15 organization's legal duty to the employee or the employee's legal duty to the  
16 organization;

17 (3) to prevent physical injury or death in a workplace;

18 (4) as required by the superior court following a hearing in camera;

19 (5) when, after being fully informed regarding the nature and extent of  
20 the privilege under this section, the employee waives the privilege; or

21 (6) after the employee's death, on written consent by the employee's  
22 personal representative.

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

26 (d) In this section,

27 (1) "advocate" means an individual who represents an employee on  
28 behalf of an organization in connection with a proceeding that is related to employee  
29 discipline;

30 (2) "organization" means a labor or employee organization of any kind  
31 in which employees participate and which exists for the primary purpose of dealing

1 with employers concerning grievances, labor disputes, wages, rates of pay, hours of  
2 employment, and conditions of employment;

3 (3) "proceeding" means

4 (A) a proceeding heard before a legislative, judicial,  
5 administrative, or other governmental body or official authorized to hear  
6 evidence under oath; or

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

9 \* **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to  
10 read:

11 **INDIRECT COURT RULE CHANGE.** AS 09.25.405, enacted by sec. 1 of this Act,  
12 and AS 23.40.065, enacted by sec. 2 of this Act, have the effect of amending Rules 402 and  
13 501, Alaska Rules of Evidence, by creating a new privilege preventing a person from being  
14 compelled to testify or produce evidence in a court and precluding admissibility of certain  
15 evidence in certain cases.

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

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