

AMENDED IN ASSEMBLY APRIL 9, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 267

Introduced by Assembly Member Chau

February 7, 2013

An act to amend Section 912 of the Evidence Code, and to add Article 3.5 (commencing with Section ~~963~~ 965) to Chapter 4 of Division 8 of the Evidence Code, relating to evidentiary privileges.

LEGISLATIVE COUNSEL'S DIGEST

AB 267, as amended, Chau. Evidentiary privileges: lawyer referral service-client privilege.

Existing law governs the admissibility of evidence in court proceedings and generally provides a privilege as to communications made in the course of the attorney-client relationship, as specified. Under existing law, the right of any person to claim certain evidentiary privileges, including the lawyer-client privilege, is waived with respect to a communication protected by the privilege if any holder of the privilege, without coercion, has disclosed a significant part of the communication or has consented to a disclosure made by anyone.

Existing law prohibits an individual or entity from operating a lawyer referral service unless that service meets specified requirements, including registration with the State Bar of California. Existing law requires the State Bar, with the approval of the Supreme Court, to formulate and enforce rules and regulations relating to lawyer referral services.

This bill would provide that a person who consults a lawyer referral service, as defined, for the purpose of retaining a lawyer or securing legal advice has a privilege to refuse to disclose, and to prevent ~~the~~

~~lawyer referral service~~ *another* from disclosing, a confidential communication between the client and the lawyer referral service *if the privilege is claimed by a specified person or entity. The bill would establish the circumstances in which the privilege does not apply.* The bill would further provide that the lawyer referral service-client privilege may be waived in accordance with existing law.

The California Constitution requires that a statute that would exclude relevant evidence in any criminal proceeding be enacted by a ²/₃ vote.

Because this bill would exclude certain communications between a client and a lawyer referral service in criminal proceedings, the bill would require a ²/₃ vote.

Vote: ~~majority~~²/₃. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 912 of the Evidence Code is amended to
2 read:

3 912. (a) Except as otherwise provided in this section, the right
4 of any person to claim a privilege provided by Section 954
5 (lawyer-client privilege), 966 (lawyer referral service-client
6 privilege), 980 (privilege for confidential marital communications),
7 994 (physician-patient privilege), 1014 (psychotherapist-patient
8 privilege), 1033 (privilege of penitent), 1034 (privilege of clergy
9 member), 1035.8 (sexual assault counselor-victim privilege), or
10 1037.5 (domestic violence counselor-victim privilege) is waived
11 with respect to a communication protected by the privilege if any
12 holder of the privilege, without coercion, has disclosed a significant
13 part of the communication or has consented to disclosure made by
14 anyone. Consent to disclosure is manifested by any statement or
15 other conduct of the holder of the privilege indicating consent to
16 the disclosure, including failure to claim the privilege in any
17 proceeding in which the holder has the legal standing and
18 opportunity to claim the privilege.

19 (b) Where two or more persons are joint holders of a privilege
20 provided by Section 954 (lawyer-client privilege), 966 (lawyer
21 referral service-client privilege), 994 (physician-patient privilege),
22 1014 (psychotherapist-patient privilege), 1035.8 (sexual assault
23 counselor-victim privilege), or 1037.5 (domestic violence
24 counselor-victim privilege), a waiver of the right of a particular

1 joint holder of the privilege to claim the privilege does not affect
2 the right of another joint holder to claim the privilege. In the case
3 of the privilege provided by Section 980 (privilege for confidential
4 marital communications), a waiver of the right of one spouse to
5 claim the privilege does not affect the right of the other spouse to
6 claim the privilege.

7 (c) A disclosure that is itself privileged is not a waiver of any
8 privilege.

9 (d) A disclosure in confidence of a communication that is
10 protected by a privilege provided by Section 954 (lawyer-client
11 privilege), 966 (lawyer referral service-client privilege), 994
12 (physician-patient privilege), 1014 (psychotherapist-patient
13 privilege), 1035.8 (sexual assault counselor-victim privilege), or
14 1037.5 (domestic violence counselor-victim privilege), when
15 disclosure is reasonably necessary for the accomplishment of the
16 purpose for which the lawyer, lawyer referral service, physician,
17 psychotherapist, sexual assault counselor, or domestic violence
18 counselor was consulted, is not a waiver of the privilege.

19 SEC. 2. Article 3.5 (commencing with Section ~~963~~ 965) is
20 added to Chapter 4 of Division 8 of the Evidence Code, to read:

21
22 Article 3.5. Lawyer Referral Service-Client Privilege

23
24 ~~963. As used in this article, “lawyer referral service” means a~~
25 ~~lawyer referral service certified under and operating in compliance~~
26 ~~with Section 6155 of the Business and Professions Code and the~~
27 ~~minimum standards, rules, and regulations of the State Bar~~
28 ~~governing lawyer referral services.~~

29 ~~964. As used in this article, “client” means a person who~~
30 ~~consults a lawyer referral service for the purpose of retaining, or~~
31 ~~securing legal services or advice from, a lawyer in his or her~~
32 ~~professional capacity.~~

33 ~~965. As used in this article, “confidential communication~~
34 ~~between client and lawyer referral service” means information~~
35 ~~transmitted between a client and lawyer referral service in the~~
36 ~~course of that relationship and in confidence by a means which,~~
37 ~~so far as the client is aware, does not disclose the information to~~
38 ~~third persons.~~

39 ~~965. For purposes of this article, the following terms have the~~
40 ~~following meanings:~~

1 (a) “Client” means a person who, directly or through an
2 authorized representative, consults a lawyer referral service for
3 the purpose of retaining, or securing legal services or advice from,
4 a lawyer in his or her professional capacity, and includes an
5 incompetent who consults the lawyer referral service himself or
6 herself or whose guardian or conservator consults the lawyer
7 referral service on his or her behalf.

8 (b) “Confidential communication between client and lawyer
9 referral service” means information transmitted between a client
10 and a lawyer referral service in the course of that relationship and
11 in confidence by a means that, so far as the client is aware, does
12 not disclose the information to third persons other than those who
13 are present to further the interests of the client in the consultation
14 or those to whom disclosure is reasonably necessary for the
15 transmission of the information or the accomplishment of the
16 purpose for which the lawyer referral service is consulted.

17 (c) “Holder of the privilege” means any of the following:

18 (1) The client, if the client has no guardian or conservator.

19 (2) A guardian or conservator of the client, if the client has a
20 guardian or conservator.

21 (3) The personal representative of the client if the client is dead,
22 including a personal representative appointed pursuant to Section
23 12252 of the Probate Code.

24 (4) A successor, assign, trustee in dissolution, or any similar
25 representative of a firm, association, organization, partnership,
26 business trust, corporation, or public entity that is no longer in
27 existence.

28 (d) “Lawyer referral service” means a lawyer referral service
29 certified under, and operating in compliance with, Section 6155
30 of the Business and Professions Code or an enterprise reasonably
31 believed by the client to be a lawyer referral service certified under,
32 and operating in compliance with, Section 6155 of the Business
33 and Professions Code.

34 966. (a) Subject to Section 912 and except as otherwise
35 provided in this article, the client, whether or not a party, has a
36 privilege to refuse to disclose, and to prevent ~~the lawyer referral~~
37 ~~service~~ another from disclosing, a confidential communication
38 between client and lawyer referral service: if the privilege is
39 claimed by any of the following:

40 (1) The holder of the privilege.

1 (2) A person who is authorized to claim the privilege by the
2 holder of the privilege.

3 (3) The lawyer referral service or a staff person thereof, but the
4 lawyer referral service or a staff person thereof may not claim the
5 privilege if there is no holder of the privilege in existence or if the
6 lawyer referral service or a staff person thereof is otherwise
7 instructed by a person authorized to permit disclosure.

8 (b) The relationship of lawyer referral service and client shall
9 exist between a lawyer referral service, as defined in Section 965,
10 and the persons to whom it renders services, as well as between
11 such persons and anyone employed by the lawyer referral service
12 to render services to such persons. The word "persons" as used
13 in this subdivision includes partnerships, corporations, limited
14 liability companies, associations, and other groups and entities.

15 967. A lawyer referral service that has received or made a
16 communication subject to the privilege under this article shall
17 claim the privilege if the communication is sought to be disclosed
18 and the client has not consented to the disclosure.

19 ~~968. There is no privilege under this article as to a~~
20 ~~communication relevant to an issue of breach, by the lawyer referral~~
21 ~~service or by the client, of a duty arising out of the relationship.~~

22 968. There is no privilege under this article if either of the
23 following applies:

24 (a) The services of the lawyer referral service were sought or
25 obtained to enable or aid anyone to commit or plan to commit a
26 crime or a fraud.

27 (b) A staff person of the lawyer referral service who receives a
28 confidential communication in processing a request for legal
29 assistance reasonably believes that disclosure of the confidential
30 communication is necessary to prevent a criminal act that the staff
31 person of the lawyer referral service reasonably believes is likely
32 to result in the death of, or substantial bodily harm to, an
33 individual.

- 1 _____
- 2 **CORRECTIONS:**
- 3 **Digest—Page 2.**
- 4 **Digest—Vote key line.**
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