

**ASSEMBLY BILL**

**No. 2713**

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**Introduced by Assembly Member Pavley  
(Principal coauthor: Assembly Member Steinberg)  
(Coauthor: Assembly Member Koretz)  
(Coauthors: Senators Kuehl and Romero)**

February 20, 2004

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An act to add Section 6068.1 to the Business and Professions Code, relating to attorneys.

LEGISLATIVE COUNSEL'S DIGEST

AB 2713, as introduced, Pavley. Attorneys.

Existing law, the State Bar Act, specifies the duties of an attorney, which include the obligation to maintain the confidentiality of information disclosed by a client.

This bill would authorize an attorney who, in the course of representing a governmental organization, learns of improper governmental activity, as defined, to urge reconsideration of the matter and to refer it to a higher authority in the organization. The bill would also authorize the attorney, in specified circumstances, to refer the matter to law enforcement or to another governmental agency and would exempt the attorney from disciplinary action for making a referral of the matter.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. (a) The Legislature hereby finds and declares  
2 the following:

3 (1) The California Rules of Professional Conduct  
4 appropriately underscore the importance in our justice system of  
5 protecting attorney-client confidential information. However, in  
6 the representation of governmental organizations, circumstances  
7 may arise where the interests of the public may justify an attorney  
8 reporting client information that is otherwise confidential. The  
9 commission of a crime or fraud that may justify the breach of the  
10 attorney-client privilege covers a broad spectrum and includes, but  
11 is not limited to, a conflict of interest in violation of Section 1090  
12 of the Government Code, misuse or misappropriation of public  
13 funds in violation of Section 424 of the Penal Code, embezzlement  
14 of property by a public official in violation of Section 504 of the  
15 Penal Code, falsifying government records in violation of Section  
16 6200 of the Government Code, and conspiracy to obstruct justice  
17 in violation of paragraph (5) of subdivision (a) of Section 182 of  
18 the Penal Code.

19 (2) Current law and the California Rules of Professional  
20 Conduct do not provide adequate guidance and clarity for  
21 attorneys representing governmental organizations to determine  
22 the circumstances under which they may properly seek to protect  
23 the public interest by reporting improper governmental activity to  
24 appropriate enforcement, regulatory, and oversight bodies.

25 (3) Generally, the governmental organization itself is the client  
26 of the attorney, and not any official or entity within the  
27 organization, notwithstanding the ability of the official or entity to  
28 exercise exclusive power over any given subject on behalf of the  
29 organization.

30 (b) The California Supreme Court did not approve  
31 amendments to the California Rules of Professional Conduct  
32 proposed by the State Bar, stating that the proposed modifications  
33 conflict with subdivision (e) of Section 6068 of the Business and  
34 Professions Code. Accordingly, the Legislature hereby finds and  
35 declares that statutory changes are necessary to address this issue.

36 SEC. 2. Section 6068.1 is added to the Business and  
37 Professions Code, to read:



1 6068.1. (a) If, in the course of representing a governmental  
2 organization, an attorney learns of improper governmental  
3 activity, the attorney may take one or both of the following actions:

4 (1) Urge reconsideration of the matter while explaining its  
5 likely consequences to the organization.

6 (2) Refer the matter to a higher authority in the organization,  
7 including, if warranted by the seriousness of the matter, referral to  
8 the highest internal authority that can act on behalf of the  
9 organization.

10 (b) Notwithstanding subdivision (e) of Section 6068, if the  
11 attorney has taken both actions as described in paragraphs (1) and  
12 (2) of subdivision (a) without the matter being resolved, or if the  
13 attorney reasonably believes that the highest internal authority that  
14 can act on behalf of the organization has directly or indirectly  
15 participated in the improper governmental activity, or if the  
16 attorney reasonably believes that taking the actions described in  
17 subdivision (a) are futile, the attorney may refer the matter to the  
18 law enforcement agency charged with responsibility over the  
19 matter or to any other governmental agency or official charged  
20 with overseeing or regulating the matter if all of the following  
21 exist:

22 (1) The referral is warranted by the seriousness of the  
23 circumstances and is not otherwise prohibited by law.

24 (2) The improper governmental activity constitutes the use of  
25 the organization's official authority or influence to commit a crime  
26 or to perpetrate fraud.

27 (3) Further action is required in order to prevent or rectify  
28 substantial harm to the public interest or to the governmental  
29 organization resulting from the improper governmental activity.

30 (c) An attorney's conduct in making a referral under  
31 subdivision (b) shall not be a cause for disbarment, suspension, or  
32 other discipline if the attorney has acted reasonably and in good  
33 faith to determine the propriety of making a referral, to identify the  
34 appropriate governmental agency or official as described in  
35 subdivision (b), and to cooperate with the agency or official in the  
36 execution of the oversight or regulatory responsibilities of the  
37 agency or official regarding the referral. However, once an  
38 attorney has made the referral, this subdivision shall not apply to  
39 any further affirmative conduct outside of the scope of subdivision



1 (b) or this subdivision that is initiated by the attorney to address the  
2 improper governmental activity.

3 (d) An attorney may, but has no affirmative duty to, take action  
4 pursuant to this section.

5 (e) As used in this section, “improper governmental activity”  
6 means conduct by the governmental organization or by its agent  
7 that comes within one or more of the following:

8 (1) Constitutes the use of the organization’s official authority  
9 or influence by the agent to commit a crime, fraud, or other serious  
10 and willful violation of law.

11 (2) Involves the agent’s willful misuse of public funds, willful  
12 breach of fiduciary duty, or willful or corrupt misconduct in office.

13 (3) Involves the agent’s willful omission to perform his or her  
14 official duty.

15 (f) This section shall not be construed to require that the  
16 improper governmental activity subject to its provisions be  
17 related, directly or indirectly, to the matter for which the attorney  
18 was engaged as outside counsel by the governmental organization.

