

AMENDED IN ASSEMBLY MAY 19, 2011
AMENDED IN ASSEMBLY MARCH 29, 2011
AMENDED IN ASSEMBLY MARCH 10, 2011
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 934

Introduced by Assembly Member Feuer

February 18, 2011

An act to amend Section 47 of the Civil Code, relating to privileged communications.

LEGISLATIVE COUNSEL'S DIGEST

AB 934, as amended, Feuer. Privileged communications.

Existing law provides that libel is a false and unprivileged written publication that injures the reputation, and that slander is a false and unprivileged publication, orally uttered, that injures the reputation, as specified. Existing law makes certain publications and communications privileged, and therefore protected from the threat of civil action, including communications made in a legislative proceeding, judicial proceeding, or other proceedings authorized by law, except as specified.

This bill would identify specified communications that are not made privileged under those provisions, including communications authorized; ~~or made unlawful~~, by certain provisions of state law relating to real property transactions, ~~or by local laws regarding the regulation of rents, termination of tenancy, eviction, or harassment~~ of residential tenants, or discrimination against residential tenants *that violate any federal, state, or local law, or breach a contractual obligation owed by the landlord. The bill would set forth specified exceptions from that provision.*

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. Section 47 of the Civil Code is amended to read:
2 47. A privileged publication or broadcast is one made:
3 (a) In the proper discharge of an official duty.
4 (b) In any (1) legislative proceeding, (2) judicial proceeding,
5 (3) in any other official proceeding authorized by law, or (4) in
6 the initiation or course of any other proceeding authorized by law
7 and reviewable pursuant to Chapter 2 (commencing with Section
8 1084) of Title 1 of Part 3 of the Code of Civil Procedure, except
9 as follows:
10 (1) An allegation or averment contained in any pleading or
11 affidavit filed in an action for marital dissolution or legal separation
12 made of or concerning a person by or against whom no affirmative
13 relief is prayed in the action shall not be a privileged publication
14 or broadcast as to the person making the allegation or averment
15 within the meaning of this section unless the pleading is verified
16 or affidavit sworn to, and is made without malice, by one having
17 reasonable and probable cause for believing the truth of the
18 allegation or averment and unless the allegation or averment is
19 material and relevant to the issues in the action.
20 (2) This subdivision does not make privileged any
21 communication made in furtherance of an act of intentional
22 destruction or alteration of physical evidence undertaken for the
23 purpose of depriving a party to litigation of the use of that evidence,
24 whether or not the content of the communication is the subject of
25 a subsequent publication or broadcast which is privileged pursuant
26 to this section. As used in this paragraph, "physical evidence"
27 means evidence specified in Section 250 of the Evidence Code or
28 evidence that is property of any type specified in Chapter 14
29 (commencing with Section 2031.010) of Title 4 of Part 4 of the
30 Code of Civil Procedure.
31 (3) This subdivision does not make privileged any
32 communication made in a judicial proceeding knowingly
33 concealing the existence of an insurance policy or policies.
34 (4) A recorded lis pendens is not a privileged publication unless
35 it identifies an action previously filed with a court of competent

1 jurisdiction which affects the title or right of possession of real
2 property, as authorized or required by law.

3 (5) This subdivision does not make privileged any
4 communication made pursuant to or authorized by Section 827,
5 1946, 1946.1, 1946.5, or 1951.3 of this code, or by ~~Sections~~ *Section*
6 1161, 1161a, ~~and 1161b~~ *1161b, or 1166* of the Code of Civil
7 Procedure *that violates any federal, state, or local law, or breaches*
8 *a contractual obligation owed by the landlord.* However, an
9 allegation or averment contained in a pleading or affidavit filed in
10 an action for unlawful detainer, *or any prelitigation notice issued*
11 *in good faith and required by state or local law as a precondition*
12 *to filing an action for unlawful detainer,* shall be privileged as to
13 a subsequent cause of action for defamation, as defined in Section
14 44.

15 ~~(6) This subdivision does not make privileged any~~
16 ~~communication made unlawful by any provision of Part 2~~
17 ~~(commencing with Section 43) of Division 1 or Title 5~~
18 ~~(commencing with Section 1925) of Part 4 of Division 3 of this~~
19 ~~code, or Chapter 4 (commencing with Section 1159) of Title 3 of~~
20 ~~Part 3 of the Code of Civil Procedure, or Part 2.8 (commencing~~
21 ~~with Section 12900) of Division 3 of Title 2 of the Government~~
22 ~~Code, or by a local law regarding the regulation of rents,~~
23 ~~termination of tenancy, eviction, or harassment of residential~~
24 ~~tenants, or discrimination against residential tenants. However, an~~
25 ~~allegation or averment contained in a pleading or affidavit filed in~~
26 ~~an action for unlawful detainer shall be privileged as to a~~
27 ~~subsequent cause of action for defamation, as defined in Section~~
28 ~~44.~~

29 (c) In a communication, without malice, to a person interested
30 therein, (1) by one who is also interested, or (2) by one who stands
31 in such a relation to the person interested as to afford a reasonable
32 ground for supposing the motive for the communication to be
33 innocent, or (3) who is requested by the person interested to give
34 the information. This subdivision applies to and includes a
35 communication concerning the job performance or qualifications
36 of an applicant for employment, based upon credible evidence,
37 made without malice, by a current or former employer of the
38 applicant to, and upon request of, one whom the employer
39 reasonably believes is a prospective employer of the applicant.
40 This subdivision authorizes a current or former employer, or the

1 employer’s agent, to answer whether or not the employer would
 2 rehire a current or former employee. This subdivision shall not
 3 apply to a communication concerning the speech or activities of
 4 an applicant for employment if the speech or activities are
 5 constitutionally protected, or otherwise protected by Section 527.3
 6 of the Code of Civil Procedure or any other provision of law.

7 (d) (1) By a fair and true report in, or a communication to, a
 8 public journal, of (A) a judicial, (B) legislative, or (C) other public
 9 official proceeding, or (D) of anything said in the course thereof,
 10 or (E) of a verified charge or complaint made by any person to a
 11 public official, upon which complaint a warrant has been issued.

12 (2) Nothing in paragraph (1) shall make privileged any
 13 communication to a public journal that does any of the following:

14 (A) Violates Rule 5-120 of the State Bar Rules of Professional
 15 Conduct.

16 (B) Breaches a court order.

17 (C) Violates any requirement of confidentiality imposed by law.

18 (e) By a fair and true report of (1) the proceedings of a public
 19 meeting, if the meeting was lawfully convened for a lawful purpose
 20 and open to the public, or (2) the publication of the matter
 21 complained of was for the public benefit.

22 (f) In enacting ~~paragraphs (5) and (6)~~ *paragraph (5)* of
 23 subdivision (b), it is the intent of the Legislature to invalidate the
 24 holdings in *Action Apartment Assn., Inc. v. City of Santa Monica*
 25 (2007) 41 Cal.4th 1232 and *Feldman v. 1100 Park Lane Associates*
 26 (2008) 160 Cal.App.4th 1467.

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