

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) to Chapter 4 of Division 8 of the Evidence Code, relating to evidentiary privileges.

LEGISLATIVE COUNSEL'S DIGEST

AB 267, as introduced, 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 from disclosing, a confidential communication

between the client and the lawyer referral service. The bill would further provide that the lawyer referral service-client privilege may be waived in accordance with existing law.

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 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
 9 ~~clergyman~~ *clergy member*), 1035.8 (sexual assault
 10 counselor-victim privilege), or 1037.5 (domestic violence
 11 counselor-victim privilege) is waived with respect to a
 12 communication protected by the privilege if any holder of the
 13 privilege, without coercion, has disclosed a significant part of the
 14 communication or has consented to disclosure made by anyone.
 15 Consent to disclosure is manifested by any statement or other
 16 conduct of the holder of the privilege indicating consent to the
 17 disclosure, including failure to claim the privilege in any
 18 proceeding in which the holder has the legal standing and
 19 opportunity to claim the privilege.
 20 (b) Where two or more persons are joint holders of a privilege
 21 provided by Section 954 (lawyer-client privilege), 966 (*lawyer*
 22 *referral service-client privilege*), 994 (physician-patient privilege),
 23 1014 (psychotherapist-patient privilege), 1035.8 (sexual assault
 24 counselor-victim privilege), or 1037.5 (domestic violence
 25 counselor-victim privilege), a waiver of the right of a particular
 26 joint holder of the privilege to claim the privilege does not affect
 27 the right of another joint holder to claim the privilege. In the case
 28 of the privilege provided by Section 980 (privilege for confidential
 29 marital communications), a waiver of the right of one spouse to
 30 claim the privilege does not affect the right of the other spouse to
 31 claim the privilege.

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

3 (d) A disclosure in confidence of a communication that is
4 protected by a privilege provided by Section 954 (lawyer-client
5 privilege), 966 (*lawyer referral service-client privilege*), 994
6 (physician-patient privilege), 1014 (psychotherapist-patient
7 privilege), 1035.8 (sexual assault counselor-victim privilege), or
8 1037.5 (domestic violence counselor-victim privilege), when
9 disclosure is reasonably necessary for the accomplishment of the
10 purpose for which the lawyer, *lawyer referral service*, physician,
11 psychotherapist, sexual assault counselor, or domestic violence
12 counselor was consulted, is not a waiver of the privilege.

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

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16 Article 3.5. Lawyer Referral Service-Client Privilege

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18 963. As used in this article, “lawyer referral service” means a
19 lawyer referral service certified under and operating in compliance
20 with Section 6155 of the Business and Professions Code and the
21 minimum standards, rules, and regulations of the State Bar
22 governing lawyer referral services.

23 964. As used in this article, “client” means a person who
24 consults a lawyer referral service for the purpose of retaining, or
25 securing legal services or advice from, a lawyer in his or her
26 professional capacity.

27 965. As used in this article, “confidential communication
28 between client and lawyer referral service” means information
29 transmitted between a client and lawyer referral service in the
30 course of that relationship and in confidence by a means which,
31 so far as the client is aware, does not disclose the information to
32 third persons.

33 966. Subject to Section 912 and except as otherwise provided
34 in this article, the client, whether or not a party, has a privilege to
35 refuse to disclose, and to prevent the lawyer referral service from
36 disclosing, a confidential communication between client and lawyer
37 referral service.

38 967. A lawyer referral service that has received or made a
39 communication subject to the privilege under this article shall

1 claim the privilege if the communication is sought to be disclosed
2 and the client has not consented to the disclosure.
3 968. There is no privilege under this article as to a
4 communication relevant to an issue of breach, by the lawyer referral
5 service or by the client, of a duty arising out of the relationship.

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