

Assembly Bill No. 267

CHAPTER 123

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

[Approved by Governor August 19, 2013. Filed with
Secretary of State August 19, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

AB 267, 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 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 $\frac{2}{3}$ vote.

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

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

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

912. (a) Except as otherwise provided in this section, the right of any person to claim a privilege provided by Section 954 (lawyer-client privilege), 966 (lawyer referral service-client privilege), 980 (privilege for confidential marital communications), 994 (physician-patient privilege), 1014 (psychotherapist-patient privilege), 1033 (privilege of penitent), 1034 (privilege of clergy member), 1035.8 (sexual assault counselor-victim privilege), or 1037.5 (domestic violence counselor-victim 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 disclosure made by anyone. Consent to disclosure is manifested by any statement or other conduct of the holder of the privilege indicating consent to the disclosure, including failure to claim the privilege in any proceeding in which the holder has the legal standing and opportunity to claim the privilege.

(b) Where two or more persons are joint holders of a privilege provided by Section 954 (lawyer-client privilege), 966 (lawyer referral service-client privilege), 994 (physician-patient privilege), 1014 (psychotherapist-patient privilege), 1035.8 (sexual assault counselor-victim privilege), or 1037.5 (domestic violence counselor-victim privilege), a waiver of the right of a particular joint holder of the privilege to claim the privilege does not affect the right of another joint holder to claim the privilege. In the case of the privilege provided by Section 980 (privilege for confidential marital communications), a waiver of the right of one spouse to claim the privilege does not affect the right of the other spouse to claim the privilege.

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

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

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

Article 3.5. Lawyer Referral Service-Client Privilege

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

(a) “Client” means a person who, directly or through an authorized representative, consults a lawyer referral service for the purpose of retaining, or securing legal services or advice from, a lawyer in his or her professional capacity, and includes an incompetent who consults the lawyer referral

service himself or herself or whose guardian or conservator consults the lawyer referral service on his or her behalf.

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

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

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

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

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

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

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

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

(1) The holder of the privilege.

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

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

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

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

communication is sought to be disclosed and the client has not consented to the disclosure.

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

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

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