

ASSEMBLY BILL

No. 729

Introduced by Assembly Member Roger Hernández

February 21, 2013

An act to amend Sections 912 and 917 of, and to add Article 9.5 (commencing with Section 1048) to Chapter 4 of Division 8 of, the Evidence Code, relating to evidentiary privileges.

LEGISLATIVE COUNSEL'S DIGEST

AB 729, as introduced, Roger Hernández. Evidentiary privileges: union agent-represented worker privilege.

Existing law governs the admissibility of evidence in court proceedings and generally provides a privilege as to communications made in the course of certain relations, including the attorney-client, physician-patient, and psychotherapist-patient relationship, as specified. Under existing law, the right of any person to claim those evidentiary privileges 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.

This bill would provide that a union agent, as defined, has a privilege to refuse to disclose any confidential information he or she may have acquired, whether or not the information was revealed in a communication between the union agent and a represented employee, in attending to his or her professional duties or while acting in his or her representative capacity, except as specified. The bill would further provide that this 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), 980 (privilege for confidential marital
6 communications), 994 (physician-patient privilege), 1014
7 (psychotherapist-patient privilege), 1033 (privilege of penitent),
8 1034 (privilege of ~~clergyman~~ *clergyperson*), 1035.8 (sexual assault
9 counselor-victim privilege), ~~or~~ 1037.5 (domestic violence
10 counselor-victim privilege), *or 1048 (union agent-represented*
11 *worker privilege)* is waived with respect to a communication
12 protected by the privilege if any holder of the privilege, without
13 coercion, has disclosed a significant part of the communication or
14 has consented to disclosure made by anyone. Consent to disclosure
15 is manifested by any statement or other conduct of the holder of
16 the privilege indicating consent to the disclosure, including failure
17 to claim the privilege in any proceeding in which the holder has
18 the legal standing and 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), 994
21 (physician-patient privilege), 1014 (psychotherapist-patient
22 privilege), 1035.8 (sexual assault counselor-victim privilege), ~~or~~
23 1037.5 (domestic violence counselor-victim privilege), *or 1048*
24 *(union agent-represented worker privilege)* a waiver of the right
25 of a particular joint holder of the privilege to claim the privilege
26 does not affect the right of another joint holder to claim the
27 privilege. In the case of the privilege provided by Section 980
28 (privilege for confidential marital communications), a waiver of
29 the right of one spouse to claim the privilege does not affect the
30 right of the other spouse to claim the privilege.

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

33 (d) A disclosure in confidence of a communication that is
34 protected by a privilege provided by Section 954 (lawyer-client
35 privilege), 994 (physician-patient privilege), 1014

1 (psychotherapist-patient privilege), 1035.8 (sexual assault
2 counselor-victim privilege), ~~or~~ 1037.5 (domestic violence
3 counselor-victim privilege), *or* 1048 (*union agent-represented*
4 *worker privilege*), when disclosure is reasonably necessary for the
5 accomplishment of the purpose for which the lawyer, physician,
6 psychotherapist, sexual assault counselor, or domestic violence
7 counselor was consulted, is not a waiver of the privilege.

8 SEC. 2. Section 917 of the Evidence Code is amended to read:

9 917. (a) If a privilege is claimed on the ground that the matter
10 sought to be disclosed is a communication made in confidence in
11 the course of the lawyer-client, physician-patient,
12 psychotherapist-patient, clergy-penitent, husband-wife, sexual
13 assault counselor-victim, ~~or~~ domestic violence counselor-victim,
14 *or union agent-represented worker* relationship, the communication
15 is presumed to have been made in confidence and the opponent of
16 the claim of privilege has the burden of proof to establish that the
17 communication was not confidential.

18 (b) A communication between persons in a relationship listed
19 in subdivision (a) does not lose its privileged character for the sole
20 reason that it is communicated by electronic means or because
21 persons involved in the delivery, facilitation, or storage of
22 electronic communication may have access to the content of the
23 communication.

24 (c) For purposes of this section, “electronic” has the same
25 meaning provided in Section 1633.2 of the Civil Code.

26 SEC. 3. Article 9.5 (commencing with Section 1048) is added
27 to Chapter 4 of Division 8 of the Evidence Code, to read:

28

29 Article 9.5. Union Agent-Represented Worker Privilege

30

31 1048. (a) Except as required by subdivision (b), a union agent
32 has a privilege to refuse to disclose, in any court or to any
33 administrative board or agency, or in any arbitration or other
34 proceeding, whether civil or criminal, any confidential information
35 he or she may have acquired in attending to his or her professional
36 duties or while acting in his or her representative capacity.

37 (b) A union agent may use or reveal information obtained during
38 the course of fulfilling his or her professional representative duties
39 in any of the following circumstances:

1 (1) To the extent it appears necessary to prevent the commission
2 of a crime that is likely to result in a clear, imminent risk of serious
3 injury or death of another person.

4 (2) In actions, civil or criminal, against the union agent in his
5 or her personal or official representative capacity, or against the
6 local union or subordinate body thereof or international union of
7 affiliated or subordinate body thereof or any agent thereof in their
8 personal or official representative capacities.

9 (3) When required by court order.

10 (4) When, after full disclosure has been provided, the written
11 or oral consent of the bargaining unit member has been obtained
12 or, if the bargaining unit member is deceased or has been adjudged
13 incompetent by a court of competent jurisdiction, the written or
14 oral consent of the bargaining unit member's estate or guardian
15 or conservator.

16 1048.1. For purposes of this article a union agent means any
17 person employed by or elected by a labor organization and whose
18 duties include the representation of employees in a bargaining unit
19 in a grievance procedure or in negotiations for a labor agreement
20 and the labor organization.

21 1048.2. For purposes of this article, the holders of the privilege
22 are the employee and the union agent in disciplinary matters; in
23 all other representative matters the labor organization is the sole
24 holder of the privilege.