

AMENDED IN ASSEMBLY MAY 6, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 729**

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**Introduced by Assembly Member Roger Hernández**

February 21, 2013

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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 amended, 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 and a represented employee or represented former employee have~~ 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 communication between the employee or former employee and the union agent while the union agent was acting in his or her representative capacity, except~~

as specified. *The bill would provide that a represented employee or represented former employee also has a privilege to prevent another person from disclosing a privileged communication, 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 clergyperson), 1035.8 (sexual assault  
9 counselor-victim privilege), 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),  
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.

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), 994 (physician-patient privilege), 1014  
6 (psychotherapist-patient privilege), 1035.8 (sexual assault  
7 counselor-victim privilege), 1037.5 (domestic violence  
8 counselor-victim privilege), or 1048 (union agent-represented  
9 worker privilege), when disclosure is reasonably necessary for the  
10 accomplishment of the purpose for which the lawyer, physician,  
11 psychotherapist, sexual assault counselor, ~~or~~ domestic violence  
12 counselor, *or union agent* was consulted, is not a waiver of the  
13 privilege.

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

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

24 (b) A communication between persons in a relationship listed  
25 in subdivision (a) does not lose its privileged character for the sole  
26 reason that it is communicated by electronic means or because  
27 persons involved in the delivery, facilitation, or storage of  
28 electronic communication may have access to the content of the  
29 communication.

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

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

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35 Article 9.5. Union Agent-Represented Worker Privilege

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37 1048. (a) Except as required by subdivision (b), *and subject*  
38 *to Section 912*, a union agent ~~has~~ *and a represented employee or*  
39 *represented former employee have* a privilege to refuse to disclose,  
40 in any court or to any administrative board or agency, or in any

1 arbitration or other proceeding, whether civil or criminal, any  
 2 confidential information he or she may have acquired in attending  
 3 to his or her professional duties or while *communication between*  
 4 *the employee or former employee and the union agent made while*  
 5 *the union agent was acting in his or her representative capacity.*  
 6 *A represented employee or represented former employee also has*  
 7 *a privilege to prevent another from disclosing a confidential*  
 8 *communication between the employee and a union agent that is*  
 9 *privileged pursuant to this section.*

10 (b) A union agent may use or reveal information obtained during  
 11 the course of fulfilling a confidential communication made to the  
 12 union agent while the union agent was acting in his or her  
 13 professional representative duties capacity in any of the following  
 14 circumstances:

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

18 (2) In actions, civil or criminal, against the union agent in his  
 19 or her personal or official representative capacity, or against the  
 20 local union or subordinate body thereof or international union of  
 21 affiliated or subordinate body thereof or any agent thereof in their  
 22 personal or official representative capacities.

23 (3) When required by court order.

24 (4) When, after full disclosure has been provided, the written  
 25 or oral consent of the bargaining unit member has been obtained  
 26 or, if the bargaining unit member is deceased or has been adjudged  
 27 incompetent by a court of competent jurisdiction, the written or  
 28 oral consent of the bargaining unit member’s estate or guardian  
 29 or conservator.

30 1048.1. For purposes of this article ~~a union agent~~, “*union*  
 31 *agent*” means ~~any~~ a person employed by or elected, *elected, or*  
 32 *appointed* by a labor organization and whose duties include the  
 33 representation of employees in a bargaining unit in a grievance  
 34 procedure or in negotiations for a labor agreement and the labor  
 35 organization. *An appointed employee steward is not an union agent*  
 36 *except to the extent a represented employee or represented former*  
 37 *employee communicates in confidence to the steward regarding*  
 38 *a grievance or potential grievance.*

39 1048.2. ~~For purposes of this article, the holders of the privilege~~  
 40 ~~are the employee and the union agent in disciplinary matters; in~~

- 1 ~~all other representative matters the labor organization is the sole~~
- 2 ~~holder of the privilege.~~

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