

AMENDED IN ASSEMBLY APRIL 18, 2013

AMENDED IN ASSEMBLY APRIL 4, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1250

Introduced by Assembly Member Perea

February 22, 2013

An act to ~~add Article 12 (commencing with Section 1064) to Chapter 4 of Division 8~~ amend Section 1041 of the Evidence Code, relating to privileged communications.

LEGISLATIVE COUNSEL'S DIGEST

AB 1250, as amended, Perea. Privileged communications: ~~crime stopper privilege~~; *official information; identity of informer.*

Existing law provides that a public entity has a privilege to refuse to disclose the identity of a person who has furnished information purporting to disclose a violation of a law of the United States or of the State of California or of a public entity in the state, and to prevent another from disclosing the identity of that person, as specified. Under existing law, the privilege applies only if the information is furnished in confidence to a law enforcement officer, to a representative of an administrative agency charged with the administration or enforcement of the law alleged to be violated, or to a person for the purpose of transmitting the information to a law enforcement officer or representative of an administrative agency.

This bill would clarify that the term "person" includes a volunteer or employee of a crime stopper organization, as defined.

~~Existing law provides several privileges against the compulsory release of certain types of information.~~

~~This bill would provide that a person shall not be required to disclose identifying information, as defined, regarding a tipster who submits statements of alleged criminal activity to a crime stopper organization, as defined, or to produce any records, documentary evidence, opinions, or decisions relating to the identifying information in connection with any criminal proceeding by way of any discovery procedure. The bill also would authorize, in a criminal proceeding, the defendant and the district attorney to petition the court by noticed motion for an in camera review of the record or report containing the privileged communication, as specified, to determine on the basis of certain facts alleged in the petition if the record or report contains evidence that is exculpatory to the defendant in the trial of that offense. The bill would authorize a court to order production and disclosure to the petitioner's attorney as it deems appropriate, so long as identifying information is not disclosed. The bill would prohibit disclosure of the documents to certain individuals, except as specified, and would, if the petitioner is acting as his or her own attorney, require the court to order the production of documents to a private investigator licensed by the Department of Consumer Affairs and appointed by the court or to impose other reasonable restrictions, as specified.~~

~~Section 28 of Article I of the California Constitution provides that relevant evidence shall not be excluded in any criminal proceeding except as provided by statute enacted by a $\frac{2}{3}$ vote of the membership of each house of the Legislature.~~

~~Because this bill would limit the admissibility of evidence in criminal proceedings, it would require a $\frac{2}{3}$ vote.~~

~~Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: *yes-no*. State-mandated local program: no.~~

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

- 1 *SECTION 1. Section 1041 of the Evidence Code is amended*
- 2 *to read:*
- 3 1041. (a) Except as provided in this section, a public entity
- 4 has a privilege to refuse to disclose the identity of a person who
- 5 has furnished information as provided in subdivision (b) purporting
- 6 to disclose a violation of a law of the United States or of this state
- 7 or of a public entity in this state, and to prevent another from
- 8 disclosing ~~such~~ *the person's* identity, if the privilege is claimed

1 by a person authorized by the public entity to do so ~~and~~; *and either*
2 *of the following apply:*

3 (1) Disclosure is forbidden by an act of the Congress of the
4 United States or a statute of this ~~state~~; *or state.*

5 (2) Disclosure of the identity of the informer is against the public
6 interest because ~~there is a~~ *the* necessity for preserving the
7 confidentiality of his *or her* identity ~~that~~ outweighs the necessity
8 for disclosure in the interest of ~~justice~~; *but no justice. The privilege*
9 ~~may shall not~~ be claimed under this paragraph if ~~any~~ *a* person
10 authorized to do so has consented that the identity of the informer
11 be disclosed in the proceeding. In determining whether disclosure
12 of the identity of the informer is against the public interest, the
13 interest of the public entity as a party in the outcome of the
14 proceeding ~~may shall not~~ be considered.

15 (b) ~~This~~ *The privilege described in this* section applies only if
16 the information is furnished in confidence by the informer ~~to~~; *to*
17 *any of the following:*

18 (1) A law enforcement ~~officer~~; *officer.*

19 (2) A representative of an administrative agency charged with
20 the administration or enforcement of the law alleged to be ~~violated~~;
21 *or violated.*

22 (3) Any person for the purpose of transmittal to a person listed
23 in paragraph (1) or (2). *As used in this paragraph, "person"*
24 *includes a volunteer or employee of a crime stopper organization.*

25 (c) ~~There is no~~ *The privilege under* described in this section
26 *shall not be construed* to prevent the informer from disclosing his
27 *or her* identity.

28 (d) *As used in this section, "crime stopper organization" means*
29 *a private, nonprofit organization that accepts and expends*
30 *donations used to reward persons who report to the organization*
31 *information concerning alleged criminal activity, and forwards*
32 *the information to the appropriate law enforcement agency.*

33 ~~SECTION 1. Article 12 (commencing with Section 1064) is~~
34 ~~added to Chapter 4 of Division 8 of the Evidence Code, to read:~~

35
36 ~~Article 12. Crime Stopper Privilege~~

37
38 ~~1064. As used in this article, the following definitions apply:~~

39 (a) ~~"Crime stopper organization" means a private, nonprofit~~
40 ~~organization that accepts and expends donations for rewards to~~

1 persons who report to the organization information concerning
2 alleged criminal activity and that forwards the information to the
3 appropriate law enforcement agency.

4 (b) “Identifying information” means information that identifies
5 a person who submits a statement of alleged criminal activity to
6 a crime stopper organization by name, address, or telephone
7 number, and includes other information that would allow someone
8 to easily ascertain the identity of the person.

9 (c) “Privileged communication” means any statement,
10 information, or identifying information submitted by a tipster to
11 a crime stopper organization for the purpose of reporting alleged
12 criminal activity.

13 (d) “Tipster” means a person who provides a crime stopper
14 organization with a statement or information regarding alleged
15 criminal activity by any means including, but not limited to, by
16 writing, telephone, text, e-mail, or other electronic means.

17 1065. (a) A person shall not be required to disclose identifying
18 information, by way of testimony or otherwise, or to produce,
19 under subpoena, any records, documentary evidence, opinions, or
20 decisions relating to the identifying information in connection with
21 a criminal proceeding by way of any discovery procedure.

22 (b) In a criminal proceeding, the defendant and the district
23 attorney may petition the court by noticed motion for review of
24 the record or report containing the privileged communication. The
25 motion shall be accompanied by a declaration under penalty of
26 perjury that the record or report contains evidence that is
27 exculpatory to the defendant in the trial of that offense. Upon the
28 filing of the motion, the court may subpoena the record or the
29 report from the crime stopper organization. The court shall conduct
30 an in-camera hearing to determine if the record or report contains
31 evidence that is exculpatory to the defendant in the trial of that
32 offense. A party shall not obtain the privileged communication
33 through a criminal or civil subpoena duces tecum.

34 (1) The court shall determine if any of the documents relating
35 to the privileged communication may be relevant to the issue of
36 the petitioner’s guilt or punishment or to any motions to suppress
37 that may be brought by the petitioner.

38 (2) If the court determines, pursuant to paragraph (1) that any
39 of the documents relating to the privileged communication may
40 be relevant, it may order their production and disclosure to the

1 petitioner's attorney as the court deems appropriate, so long as
2 identifying information is not disclosed.

3 (A) If the court orders the production of documents relating to
4 a privileged communication, the petitioner's attorney shall not
5 disclose the documents to the petitioner, members of the
6 petitioner's family, or any other person unless specifically
7 permitted to do so by the court after a hearing and upon a showing
8 of good cause.

9 (B) Notwithstanding subparagraph (A), the petitioner's attorney
10 may disclose or permit to be disclosed documents relating to a
11 privileged communication to persons employed by the attorney or
12 to persons appointed by the court to assist in the preparation of the
13 petitioner's case if disclosure is required for that purpose. The
14 attorney shall inform all persons provided with the documents that
15 further dissemination of the documents is prohibited, except as
16 provided by this section.

17 (C) If the petitioner is acting as his or her own attorney, the
18 court shall only order the production of documents relating to a
19 privileged communication to a private investigator licensed by the
20 Department of Consumer Affairs and appointed by the court or
21 impose other reasonable restrictions, absent a showing of good
22 cause as determined by the court.

23 (e) Notwithstanding subdivisions (a) and (b), identifying
24 information and privileged communications may be released with
25 the permission of the person who submitted the statement to the
26 crime stoppers organization.

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