

ASSEMBLY BILL

No. 934

Introduced by Assembly Member Feuer

February 18, 2011

An act to amend Section 47 of the Civil Code, relating to privileged communications.

LEGISLATIVE COUNSEL'S DIGEST

AB 934, as introduced, Feuer. Privileged communications.

Existing law provides that libel is a false and unprivileged written publication that injures the reputation, and that slander is a false and unprivileged publication, orally uttered, that injures the reputation, as specified. Existing law makes certain publications and communications privileged, and therefore protected from the threat of civil action, including communications made in a legislative proceeding, judicial proceeding, or other proceedings authorized by law, except as specified.

This bill would identify specified communications that are not made privileged under those provisions, including communications authorized, or made unlawful, by certain provisions of state law relating to real property transactions, or by local ordinances regarding the regulation of rents, termination of tenancy, eviction, or harassment of residential tenants, or discrimination against residential tenants.

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 47 of the Civil Code is amended to read:
- 2 47. A privileged publication or broadcast is one made:

1 (a) In the proper discharge of an official duty.

2 (b) In any (1) legislative proceeding, (2) judicial proceeding,
3 (3) in any other official proceeding authorized by law, or (4) in
4 the initiation or course of any other proceeding authorized by law
5 and reviewable pursuant to Chapter 2 (commencing with Section
6 1084) of Title 1 of Part 3 of the Code of Civil Procedure, except
7 as follows:

8 (1) An allegation or averment contained in any pleading or
9 affidavit filed in an action for marital dissolution or legal separation
10 made of or concerning a person by or against whom no affirmative
11 relief is prayed in the action shall not be a privileged publication
12 or broadcast as to the person making the allegation or averment
13 within the meaning of this section unless the pleading is verified
14 or affidavit sworn to, and is made without malice, by one having
15 reasonable and probable cause for believing the truth of the
16 allegation or averment and unless the allegation or averment is
17 material and relevant to the issues in the action.

18 (2) This subdivision does not make privileged any
19 communication made in furtherance of an act of intentional
20 destruction or alteration of physical evidence undertaken for the
21 purpose of depriving a party to litigation of the use of that evidence,
22 whether or not the content of the communication is the subject of
23 a subsequent publication or broadcast which is privileged pursuant
24 to this section. As used in this paragraph, "physical evidence"
25 means evidence specified in Section 250 of the Evidence Code or
26 evidence that is property of any type specified in Chapter 14
27 (commencing with Section 2031.010) of Title 4 of Part 4 of the
28 Code of Civil Procedure.

29 (3) This subdivision does not make privileged any
30 communication made in a judicial proceeding knowingly
31 concealing the existence of an insurance policy or policies.

32 (4) A recorded lis pendens is not a privileged publication unless
33 it identifies an action previously filed with a court of competent
34 jurisdiction which affects the title or right of possession of real
35 property, as authorized or required by law.

36 (5) *This subdivision does not make privileged any*
37 *communication made pursuant to or authorized by Section 827,*
38 *1946, 1946.1, 1946.5, or 1951.3 of this code, or by Sections 1161,*
39 *1161a, and 1161b of the Code of Civil Procedure.*

(6) *This subdivision does not make privileged any communication made unlawful by any provision of Part 2 (commencing with Section 43) of Division 1 or Title 5 (commencing with Section 1925) of Part 4 of Division 3 of this code, or Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure, or Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code, or by a local ordinance regarding the regulation of rents, termination of tenancy, eviction, or harassment of residential tenants, or discrimination of tenancy, eviction, or harassment of residential tenants, or discrimination against residential tenants.*

(c) In a communication, without malice, to a person interested therein, (1) by one who is also interested, or (2) by one who stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication to be innocent, or (3) who is requested by the person interested to give the information. This subdivision applies to and includes a communication concerning the job performance or qualifications of an applicant for employment, based upon credible evidence, made without malice, by a current or former employer of the applicant to, and upon request of, one whom the employer reasonably believes is a prospective employer of the applicant. This subdivision authorizes a current or former employer, or the employer's agent, to answer whether or not the employer would rehire a current or former employee. This subdivision shall not apply to a communication concerning the speech or activities of an applicant for employment if the speech or activities are constitutionally protected, or otherwise protected by Section 527.3 of the Code of Civil Procedure or any other provision of law.

(d) (1) By a fair and true report in, or a communication to, a public journal, of (A) a judicial, (B) legislative, or (C) other public official proceeding, or (D) of anything said in the course thereof, or (E) of a verified charge or complaint made by any person to a public official, upon which complaint a warrant has been issued.

(2) Nothing in paragraph (1) shall make privileged any communication to a public journal that does any of the following:

(A) Violates Rule 5-120 of the State Bar Rules of Professional Conduct.

(B) Breaches a court order.

(C) Violates any requirement of confidentiality imposed by law.

1 (e) By a fair and true report of (1) the proceedings of a public
2 meeting, if the meeting was lawfully convened for a lawful purpose
3 and open to the public, or (2) the publication of the matter
4 complained of was for the public benefit.

5 (f) *In enacting paragraphs (5) and (6) of subdivision (b), it is*
6 *the intent of the Legislature to invalidate the holdings in Action*
7 *Apartment Ass’n v. Santa Monica Rent Control Bd. (2007) 41*
8 *Cal.4th 1232 and Feldman v. 1100 Park Lane Associates (2008)*
9 *160 Cal.App.4th 1467.*