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AB-1109 Evidentiary privileges: union agent-represented worker privilege. (2025-2026)

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CALIFORNIA LEGISLATURE— 2025–2026 REGULAR SESSION

ASSEMBLY BILL

NO. 1109

Introduced by Assembly Member Kalra

(~~Coauthor:~~ ~~Coauthors:~~ Assembly ~~Member Mark González~~ *Members Garcia, Mark González, Ortega, Rogers, and Schiavo*)

February 20, 2025

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 privilege.

LEGISLATIVE COUNSEL'S DIGEST

AB 1109, as introduced, Kalra. 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.

This bill would establish a privilege between a union agent, as defined, and a represented employee or represented former employee to refuse to disclose any confidential communication between the employee or former employee and the union agent made while the union agent was acting in the union agent's representative capacity, except as specified. The bill would permit a represented employee or represented former employee 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 and does not apply in criminal proceedings.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

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), 1037.5 (domestic violence counselor-victim privilege), ~~or~~ 1038 (human trafficking caseworker-victim ~~privilege~~) *privilege*, *or 1048 (union agent-represented worker 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 legal standing and the 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), 1037.5 (domestic violence counselor-victim privilege), ~~or~~ 1038 (human trafficking caseworker-victim privilege), *or 1048 (union agent-represented worker 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), 1037.5 (domestic violence counselor-victim privilege), ~~or~~ 1038 (human trafficking caseworker-victim privilege), *or 1048 (union agent-represented worker privilege)* when disclosure is reasonably necessary for the accomplishment of the purpose for which the lawyer, lawyer referral service, physician, psychotherapist, sexual assault counselor, domestic violence counselor, or human trafficking caseworker was consulted, is not a waiver of the privilege.

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

917. (a) If a privilege is claimed on the ground that the matter sought to be disclosed is a communication made in confidence in the course of the lawyer-client, lawyer referral service-client, physician-patient, psychotherapist-patient, clergy-penitent, marital or domestic partnership, sexual assault counselor-victim, domestic violence counselor-victim, ~~or~~ human trafficking caseworker-victim relationship, *or union agent-represented worker relationship*, the communication is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential.

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

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

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

Article 9.5. Union Agent-Represented Worker Privilege

1048. (a) Except as provided by subdivisions (b) and (c), and subject to Section 912, a union agent and a represented employee or represented former employee have a privilege to refuse to disclose, in any court or to any administrative board or agency, or in any arbitration or other proceeding, any confidential communication between the employee or former employee and the union agent made while the union agent was acting in the union agent's representative capacity. A represented employee or represented former employee also has a privilege to prevent another from disclosing a confidential communication between the employee and a union agent that is privileged pursuant to this section.

(b) A union agent may use or reveal a confidential communication made to the union agent while the union agent was acting in the union agent's representative capacity in either of the following circumstances:

(1) In actions against the union agent in the union agent's personal or official representative capacity, or against the local union or subordinate body thereof or international union of affiliated or subordinate body thereof or any agent thereof in their personal or official representative capacities.

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

(c) A union agent shall use or reveal a confidential communication made to the union agent while the union agent was acting in the union agent's representative capacity if required to do so by a court order.

1048.1. For purposes of this article, the following terms mean:

(a) "Confidential communication" means information transmitted, by oral or written communication, between a represented employee or represented former employee and a union agent, in confidence, by a means which, so far as the employee, former employee, or union agent is aware, discloses the information to no third persons other than those who are present to further the interest of the employee, former employee, or union agent or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the communication was made, and includes advice given by a union agent in the course of a representational relationship.

(b) "Union agent" means a person employed, elected, or appointed by a labor organization and whose duties include the representation of employees in a bargaining unit in a grievance procedure or in negotiations for a labor agreement and the labor organization. An appointed employee steward is not a union agent except to the extent a represented employee or represented former employee communicates in confidence to the steward regarding a grievance or potential grievance and the appointed employee steward was a steward at the time the communication was made.

1048.2. There is no privilege under this article if the union agent reasonably believes that disclosure of any confidential communication is necessary to prevent a criminal act that the union agent reasonably believes is likely to result in the death of, or substantial bodily harm to, an individual.

1048.3. There is no privilege under this article with respect to a confidential communication made to enable or aid a person in committing, or planning to commit, a crime or fraud.

1048.4. The privilege established under this article does not apply in criminal proceedings.

REVISIONS:

Heading—Line 2.
