

ASSEMBLY BILL

No. 1109

**Introduced by Assembly Member Kalra
(Coauthor: Assembly Member Mark González)**

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.
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), 966 (lawyer referral service-client
6 privilege), 980 (privilege for confidential marital communications),
7 994 (physician-patient privilege), 1014 (psychotherapist-patient
8 privilege), 1033 (privilege of penitent), 1034 (privilege of clergy
9 member), 1035.8 (sexual assault counselor-victim privilege),
10 1037.5 (domestic violence counselor-victim privilege), ~~or 1038~~
11 (human trafficking caseworker-victim ~~privilege~~) *privilege*, or
12 1048 (*union agent-represented worker privilege*) is waived with
13 respect to a communication protected by the privilege if any holder
14 of the privilege, without coercion, has disclosed a significant part
15 of the communication or has consented to disclosure made by
16 anyone. Consent to disclosure is manifested by any statement or
17 other conduct of the holder of the privilege indicating consent to
18 the disclosure, including failure to claim the privilege in any
19 proceeding in which the holder has legal standing and the
20 opportunity to claim the privilege.

21 (b) Where two or more persons are joint holders of a privilege
22 provided by Section 954 (lawyer-client privilege), 966 (lawyer
23 referral service-client privilege), 994 (physician-patient privilege),
24 1014 (psychotherapist-patient privilege), 1035.8 (sexual assault
25 counselor-victim privilege), 1037.5 (domestic violence
26 counselor-victim privilege), ~~or 1038~~ (human trafficking
27 caseworker-victim privilege), or 1048 (*union agent-represented*
28 *worker privilege*) a waiver of the right of a particular joint holder
29 of the privilege to claim the privilege does not affect the right of
30 another joint holder to claim the privilege. In the case of the
31 privilege provided by Section 980 (privilege for confidential marital
32 communications), a waiver of the right of one spouse to claim the

1 privilege does not affect the right of the other spouse to claim the
2 privilege.

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

5 (d) A disclosure in confidence of a communication that is
6 protected by a privilege provided by Section 954 (lawyer-client
7 privilege), 966 (lawyer referral service-client privilege), 994
8 (physician-patient privilege), 1014 (psychotherapist-patient
9 privilege), 1035.8 (sexual assault counselor-victim privilege),
10 1037.5 (domestic violence counselor-victim privilege), ~~or 1038~~
11 (human trafficking caseworker-victim privilege), *or 1048 (union*
12 *agent-represented worker privilege)* when disclosure is reasonably
13 necessary for the accomplishment of the purpose for which the
14 lawyer, lawyer referral service, physician, psychotherapist, sexual
15 assault counselor, domestic violence counselor, or human
16 trafficking caseworker was consulted, is not a waiver of the
17 privilege.

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

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

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

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

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

1 Article 9.5. Union Agent-Represented Worker Privilege

2
3 1048. (a) Except as provided by subdivisions (b) and (c), and
4 subject to Section 912, a union agent and a represented employee
5 or represented former employee have a privilege to refuse to
6 disclose, in any court or to any administrative board or agency, or
7 in any arbitration or other proceeding, any confidential
8 communication between the employee or former employee and
9 the union agent made while the union agent was acting in the union
10 agent's representative capacity. A represented employee or
11 represented former employee also has a privilege to prevent another
12 from disclosing a confidential communication between the
13 employee and a union agent that is privileged pursuant to this
14 section.

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

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

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

34 1048.1. For purposes of this article, the following terms mean:

35 (a) "Confidential communication" means information
36 transmitted, by oral or written communication, between a
37 represented employee or represented former employee and a union
38 agent, in confidence, by a means which, so far as the employee,
39 former employee, or union agent is aware, discloses the information
40 to no third persons other than those who are present to further the

1 interest of the employee, former employee, or union agent or those
2 to whom disclosure is reasonably necessary for the transmission
3 of the information or the accomplishment of the purpose for which
4 the communication was made, and includes advice given by a
5 union agent in the course of a representational relationship.

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

15 1048.2. There is no privilege under this article if the union
16 agent reasonably believes that disclosure of any confidential
17 communication is necessary to prevent a criminal act that the union
18 agent reasonably believes is likely to result in the death of, or
19 substantial bodily harm to, an individual.

20 1048.3. There is no privilege under this article with respect to
21 a confidential communication made to enable or aid a person in
22 committing, or planning to commit, a crime or fraud.

23 1048.4. The privilege established under this article does not
24 apply in criminal proceedings.