

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2025-2026 Regular Session**

SB 861 (Committee on Business, Professions and Economic Development)

Version: March 13, 2025

Hearing Date: April 29, 2025

Fiscal: Yes

Urgency: No

AM

**SUBJECT**

Consumer affairs

**DIGEST**

This bill makes various noncontroversial changes to existing law, and clarifies that if a licensed private investigator turns over a signed client agreement and investigative findings to the Bureau of Security and Investigative Services, protections under the lawyer-client privilege or attorney work product doctrine are not violated, waived, or extinguished.

**EXECUTIVE SUMMARY**

This bill is the annual Senate Business, Professions, and Economic Development Committee bill that makes various technical, clarifying, and noncontroversial changes to existing law. There is only one provision of this bill in this Committee's jurisdiction and this analysis will focus solely on that piece. This bill clarifies that if a licensed private investigator turns over a signed client agreement and investigative findings to the Bureau of Security and Investigative Services, protections under the lawyer-client privilege or attorney work product doctrine are not violated, waived, or extinguished. The provisions of the bill that are in this Committee's jurisdiction are supported by the California Lawyers Association. No timely opposition was received by the Committee. The bill passed the Senate Business, Professions, and Economic Development Committee on a vote of 11 to 0.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Provides that no person has a privilege to refuse to be a witness; to refuse to disclose any matter or to refuse to produce any writing, object, or other thing, or

prevent another person from the same, unless otherwise provided by statute. (Evid. Code § 911.)

- 2) Governs the admissibility of evidence in court proceedings and generally provides a privilege to refuse to testify or otherwise disclose confidential communications made in the course of certain relationships. (Evid. Code §§ 954, 966, 980, 994, 1014, 1033, 1034, 1035.8, 1037.5, 1038.)
- 3) Establishes the lawyer-client privilege, where a client, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the client and a lawyer if the privilege is claimed by the holder of the privilege; a person who is authorized to claim the privilege by the holder of the privilege; or the person who was the lawyer except where no holder exists or the holder instructs otherwise. (Evid. Code § 954.)
  - a) The client is the holder of the privilege, as specified. (Evid. Code § 953.)
- 4) Defines a “confidential communication between client and lawyer” to mean information transmitted between a client and their lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship. (Evid. Code § 952.)
- 5) Provides that the right of a person to claim specified privileges is waived with respect to a protected communication if the holder of the privilege has disclosed a significant part of that communication or consented to disclosure, without coercion. Existing law provides that a disclosure does not constitute a waiver where it was reasonably necessary to accomplish the purposes for which the lawyer was consulted. (Evid. Code § 912(a), (d).)
- 6) Establishes the attorney work product doctrine by providing that a writing that reflects an attorney’s impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances.
  - a) Work product of an attorney, other than a writing described in 2), above, is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party’s claim or defense or will result in an injustice. (Code of Civ. Proc. § 2018.030.)

- 7) Provides that it is the duty of an attorney to maintain inviolate the confidence, and at every peril to themselves to preserve the secrets, of their client. (Bus. & Prof. Code § 6068(e)(1).)
- 8) Establishes the Private Investigator Act (Act) to license and regulate private investigators in this state by the Bureau of Security and Investigative Services (Bureau). (Bus. & Prof. Code §§ 7212 et seq.)
  - a) Requires every agreement to provide a service under the Act to be in writing. (Bus. & Prof. Code § 7524(a))
  - b) Requires the licensee to maintain a legible copy of the signed agreement and investigative findings, including any written report, for a minimum of two years. (*Id.* at subd. (e).)
  - c) Requires these records to be made available for inspection by the Bureau upon demand. (*Ibid.*)

This bill specifies that making a signed agreement and investigative findings available for inspection by the Bureau does not violate, waive, or extinguish the lawyer-client privilege, the attorney work product doctrine, the duty to maintain the confidence and preserve the secrets of an attorney's client, or the protections of any other rule or law related to attorney work product or the attorney-client privilege.

### COMMENTS

#### 1. Stated need for the bill

The author writes:

This bill is the annual 'committee bill' authored by the Business, Professions, and Economic Development Committee, which is intended to consolidate a number of non-controversial provisions related to various regulatory programs and professions governed by the BPC. Consolidating the provisions in one bill aims to relieve the various licensing boards, bureaus, professions, and other regulatory agencies from the necessity and burden of having separate measures for a number of non-controversial revisions. Many of the provisions of this bill are minor, technical, and updating changes.

#### 2. Lawyer-client relationship

Privileges are policy exclusions, unrelated to the reliability of the information involved, which are granted because it is considered more important to keep that information confidential than it is to require disclosure of all the information relevant to the issues in a pending proceeding. The lawyer-client privilege provides that a client has the privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the client and a lawyer. (Evid. Code § 954.) This privilege is

necessary to protect the lawyer-client relationship by ensuring confidential communications made in the course of that relationship are kept confidential. (Comments to Evid. Code § 910.) Additionally, the attorney work product doctrine provides a privilege for material created or derived from an attorney's work on behalf of a client, which provides an attorney the ability to thoroughly prepare a case. (Code of Civ. Proc. § 2018.030.) These privileges stem from the duties an attorney has to their client, including to maintain inviolate the confidence of a client and preserve the secrets of a client at every peril to themselves. (Bus. Prof. Code § 6068(e)(1).) A disclosure of information could result in a waiver of these privileges. (Evid. Code § 912.)

SB 1454 (Ashby, Ch. 484, Stats. 2024) added Section 7524 to the Business and Professions Code and required a licensed private investigator to maintain a legible copy of the signed agreement and any investigative findings, including any written report, for a minimum of two years, and required these records to be made available for inspection by the Bureau upon demand. A concern has been raised that this could lead to a third party claiming one of the privileges above has been waived if the signed agreement and investigative findings were made available to the Bureau. As the California Lawyers Association notes:

Attorneys often hire licensed private investigators in connection with anticipated or pending litigation. The private investigator's agreement with the attorney, investigative findings, and written report prepared for the attorney are likely to contain information protected by the attorney-client privilege, attorney work product, and attorney-client confidentiality. Disclosure to the [Bureau] of these records could result in an assertion by third parties, including adverse parties in anticipated or pending litigation, that protections that would otherwise be provided are waived by disclosure to the [Bureau], thereby entitling third parties to obtain these same records directly from the private investigator or the attorney.

The language being added by this bill is the same as in Section 6091.4 of the Business and Professions Codes applicable when attorneys are required to provide the State Bar of California with certain information, records, and communications as part of a compliance review or investigative audit relating to client trust accounts.

### 3. Statements in support

The California Lawyers Association writes in support to this provision of the bill, stating:

The amendment contained in Section 19 of this bill would avoid any disputes about whether a licensed private investigator's disclosure of records to the [Bureau] results in a waiver that would entitle third parties to these same records. The proposed language follows the language of Business and Professions Code Section 6091.4,

recently added to the State Bar Act by AB 3279 (Committee on Judiciary, Ch. 227, Stats. 2024) applicable when attorneys are required to provide the State Bar with certain information, records, and communications pursuant to a request made by the State Bar as part of a compliance review or investigative audit relating to client trust accounting.

### **SUPPORT**

California Lawyers Association

### **OPPOSITION**

None received

### **RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation: SB 1454 (Ashby, Ch. 484, Stats. 2024), among other things, required a licensed private investigator to maintain a legible copy of a signed agreement and any investigative findings, including any written report, for a minimum of two years, and required these records to be made available for inspection by the Bureau upon demand.

### **PRIOR VOTES:**

Senate Business, Professions and Economic Development Committee (11 Ayes, 0 Noes)

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