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Torts

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Torts

Torts; civil immunity—professional society referral services

Business and Professions Code § 805.1 (new); §§ 805, 2435 (amended); Civil Code §§ 43.7, 43.95, 43.97 (amended); Harbors and Navigation Code § 1134 (new).

AB 2858 (Felando); 1986 STAT. Ch. 669

Support: Society for Clinical Social Workers; California Association of Marriage and Family Therapists; San Francisco Bar Pilots Association

Opposition: California Trial Lawyers Association

SB 1888 (Stiern); 1986 STAT. Ch. 1274

Under existing law, specified professional societies,¹ and members² of a committee which was formed to maintain the professional standards of the society, are immune from civil monetary liability³ for any act performed within the scope of the committee.⁴ This immunity applies if the professional society or committee member acted without malice,⁵ made a reasonable effort to obtain the facts before taking any action, and acted in reasonable belief that the action taken was warranted by the facts, or was warranted after a reasonable effort to obtain facts.⁶ Chapter 669 adds professional

1. CAL. CIV. CODE § 43.7(b) (professional societies include legal, medical, psychological, dental, dental hygiene, dietetic, accounting, optometric, podiatric, pharmaceutical, chiropractic, physical therapist, veterinary, and engineering organizations having as members at least a majority of the eligible or licensed persons in the geographic area served by the particular society).

2. *Id.* (civil immunity applies to any professional society, and any member of a duly appointed committee of a medical specialty society, professional staff committee of a licensed hospital, peer review committee, or the governing board of a hospital in reviewing the quality of medical services rendered by the hospital's members).

3. *Id.* (no cause of action for damages arises).

4. *Id.* See *id.* § 43.7(a), (b) (civil immunity extends to mental health professional quality assurance committees and peer review committees). See generally 4 B. WITKIN, SUMMARY OF CALIFORNIA LAW, Torts § 165 (8th ed. 1974 & Supp. 1984) (civil immunity for professional society committee proceedings).

5. CAL. CIV. CODE § 3294(c)(1) (definition of malice).

6. *Id.* § 43.7(b).

societies of licensed clinical social workers, licensed marriage, family, and child counselors to the list of those immune from civil monetary liability.⁷

Existing law provides that certain professional society referral services⁸ and their agents, members, or employees are immune from civil monetary liability for referring any member of the public to a professional member of such a society.⁹ In addition, these professional referral services are immune from civil monetary liability for acts of negligence or unprofessional conduct committed by a professional to whom a member of the public was referred, if the referral service acted without malice and charged no additional cost other than the initial referral fee.¹⁰ Chapter 1274 extends this immunity from civil monetary liability to include referrals made by professional society referral services of medical; veterinary; licensed clinical social workers; licensed marriage, family, and child counselors; and any agent, member or employee of these societies.¹¹

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7. *Id.*

8. *Id.* § 43.95(a) (professional societies include legal, psychological, architectural, medical, dental, dietetic, accounting, optometric, podiatric, pharmaceutical, chiropractic, and engineering organizations having as members at least a majority of the eligible persons or licensed persons in the geographic area served by the particular society, or the referral service of such a society).

9. *Id.* See *id.* § 43.95(b) (a referral service is not immune from civil liability for making a referral to a member of a professional society if they fail to disclose the nature of any disciplinary action, of which the service has actual knowledge, taken by a state licensing agency against that professional member). See generally 4 B. WITKIN, SUMMARY OF CALIFORNIA LAW, Torts § 165(a) (8th ed. Supp. 1984) (civil immunity for referrals to members of professional societies); *Review of Selected 1978 California Legislation*, 10 PAC. L.J. 599 (1979) (analysis of legislation extending the civil immunity of referral services).

10. CAL. CIV. CODE § 43.95(b).

11. *Id.* § 43.95(a).

Torts; civil rights—damages

Civil Code § 52 (amended).

SB 1961 (Watson); 1986 STAT. Ch. 244

Sponsor: Attorney General

Pursuant to the Unruh Civil Rights Act,¹ existing law entitles every

1. CAL. CIV. CODE § 51 (guarantees an individual's right to full and equal accommodations, advantages, facilities, and privileges in business establishments); see *id.* §§ 51.5 (prohibits

person to the full and equal services of all business establishments.² Under the Ralph Civil Rights Act, existing law prohibits the use of violence, or intimidation by threat of violence, upon any persons or their property because of race, religion, or color.³ Furthermore, existing law provides the Department of Fair Employment and Housing⁴ with the power and duty to receive, investigate, and conciliate complaints alleging violations of the Unruh or Ralph Acts, and thereby relieves the victims of such violations from many of the costs involved in bringing a civil action.⁵ Chapter 244 specifically states that persons claiming violation of the Acts may, in *addition* to filing a civil suit, file a complaint with the Department of Fair Employment and Housing.⁶

Under existing law, violators of the Unruh Act are subject to liability for actual damages, and may also be liable for treble damages⁷ and attorney's fees.⁸ Moreover, violators of the Ralph Act are liable for actual damages and \$10,000 in civil penalties.⁹ Chapter 244 expands existing law by providing treble damages and attorney's fees

business establishments from discriminating against any person because of race, creed, religion, color, national origin, or sex); 52 (liability for civil rights violations); *see also* *Reilly v. Stroh*, 161 Cal. App. 3d 47, 52, 207 Cal. Rptr. 250, 252-53 (1984) (the legislature intended to prohibit all arbitrary discrimination by business establishments). *See generally* 5 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Constitutional Law* §§ 423-425 (8th ed. 1974 & Supp. 1984).

2. CAL. CIV. CODE § 51.

3. *Id.* § 51.7(a). The Ralph Act also prohibits the use of violence or intimidation against persons or their property because of ancestry, national origin, political affiliation, sex, sexual orientation, age, disability, or position in a labor dispute. *Id.*

4. *See* CAL. GOV'T CODE § 12901 (establishment of the Department of Fair Employment and Housing).

5. *See id.* § 12930(f)(2). The remedies provided by the Fair Employment and Housing Department are independent of any other applicable remedy. *Id.* *See also id.* § 12948 (denial of civil rights created by §§ 51 or 51.7 of the Civil Code is an unlawful practice). *See generally id.* §§ 12960-12976 (enforcement and hearing procedures for unlawful practices).

6. CAL. CIV. CODE § 52(f). *See* CAL. GOV'T CODE § 12948 (unlawful to deny or to aid, incite, or conspire in the denial of rights created by the Unruh or Ralph Civil Rights Acts).

7. *See* CAL. CIV. CODE § 52(a) (an amount determined by a jury, or a court sitting without a jury, not to exceed three times the actual damages).

8. *Id.* (attorney's fees to be determined by the court). *See Pines v. Town*, 160 Cal. App. 3d 370, 206 Cal. Rptr. 866 (1984). Publishers of the *Christian Yellow Pages*, restricting advertising space to born-again Christians, were found to have violated the Unruh Act for religious discrimination. *Id.* at 377, 401, 206 Cal. Rptr. at 869-70, 886. Plaintiffs were awarded damages and attorney's fees, and defendant's policy was enjoined. *Id.* at 400-01, 206 Cal. Rptr. at 885-86.

9. CAL. CIV. CODE § 52(b).

as additional remedies for violations of the Ralph Civil Rights Act.¹⁰

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10. *Id.* § 52(b) (attorney's fees will be determined by the court, while the additional imposition of treble damages will be determined by the jury, or by the court when sitting without a jury). *Compare id.* with 1976 Cal. Stat. ch. 1293, sec. 2.5, at 5778 (enacting CAL. CIV. CODE § 52(b)).