AN ACT to create 905.055 of the statutes; relating to: privileged communications to a school guidance counselor, school teacher, or teacher’s aide.

Analysis by the Legislative Reference Bureau

Generally, a person may not refuse to be a witness or prevent another person from being a witness. Current law allows a few exceptions to this rule, and confers a privilege to keep confidential certain communications a person makes to health care providers, members of the clergy, or other professionals in certain circumstances. Under current law, the person who made the communication may refuse to disclose and may prevent the health care provider, member of the clergy, or other covered professional from disclosing the communication in a court proceeding. Generally, only communications that the person expected to be kept confidential may be kept undisclosed.

Under this bill, a person who is a petitioner or a respondent in an action affecting the family and who makes a communication he or she expects to be confidential to a school guidance counselor, school teacher, or teacher’s aide may refuse to disclose and may prevent the school guidance counselor, teacher, or teacher’s aide from disclosing the communication in the action. The bill makes an exception, however, to information a school guidance counselor, teacher, or teacher’s
aide receives that he or she is required to report under the state’s mandatory child abuse and neglect reporting laws.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 905.055 of the statutes is created to read:

905.055 Communications to a guidance counselor, teacher, or teacher’s aide. (1) DEFINITIONS. In this section:

(a) “Confidential communication” means a communication made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b) “School guidance counselor” means an elementary or secondary school guidance counselor.

(c) “School teacher” means an elementary or secondary school teacher.

(d) “Teacher’s aide” means a person who is employed to assist a school teacher.

(2) GENERAL RULE OF PRIVILEGE. In an action affecting the family, as defined in s. 767.001 (1), a petitioner or a respondent has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication he or she made to a school guidance counselor, a school teacher, or a teacher’s aide.

(3) WHO MAY CLAIM THE PRIVILEGE. The privilege under sub. (2) may be claimed by the person who made the communication. The school guidance counselor, school teacher, or teacher’s aide may claim the privilege on behalf of the person, and his or her authority so to do is presumed in the absence of evidence to the contrary.
(4) EXCEPTIONS. There is no privilege under this section concerning observations or information a person is required to report as suspected or threatened child abuse under s. 48.981.