



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2319/2
PJH:sbb&jld&wlj:rs

2011 ASSEMBLY BILL 249

September 8, 2011 – Introduced by Representatives STEINEKE, FARROW, MURSAU, NYGREN and A. OTT, cosponsored by Senator TAYLOR. Referred to Committee on Judiciary and Ethics.

1 **AN ACT** *to create* 905.055 of the statutes; **relating to:** privileged
2 communications to a school guidance counselor, school teacher, or teacher's
3 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

ASSEMBLY BILL 249

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:

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

2 **905.055 Communications to a guidance counselor, teacher, or**
3 **teacher's aide. (1) DEFINITIONS.** In this section:

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

7 (b) "School guidance counselor" means an elementary or secondary school
8 guidance counselor.

9 (c) "School teacher" means an elementary or secondary school teacher.

10 (d) "Teacher's aide" means a person who is employed to assist a school teacher.

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

15 **(3) WHO MAY CLAIM THE PRIVILEGE.** The privilege under sub. (2) may be claimed
16 by the person who made the communication. The school guidance counselor, school
17 teacher, or teacher's aide may claim the privilege on behalf of the person, and his or
18 her authority so to do is presumed in the absence of evidence to the contrary.

