

SENATE
STATE OF MINNESOTA
EIGHTY-SEVENTH LEGISLATURE

S.F. No. 344

(SENATE AUTHORS: THOMPSON and Latz)

DATE	D-PG	OFFICIAL STATUS
02/17/2011	259	Introduction and first reading Referred to Judiciary and Public Safety

1.1 A bill for an act
1.2 relating to evidence; limiting the availability of certain evidence arising from a
1.3 collaborative law process; amending Minnesota Statutes 2010, section 595.02,
1.4 subdivision 1.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2010, section 595.02, subdivision 1, is amended to read:

1.7 Subdivision 1. **Competency of witnesses.** Every person of sufficient understanding,
1.8 including a party, may testify in any action or proceeding, civil or criminal, in court or
1.9 before any person who has authority to receive evidence, except as provided in this
1.10 subdivision:

1.11 (a) A husband cannot be examined for or against his wife without her consent, nor a
1.12 wife for or against her husband without his consent, nor can either, during the marriage or
1.13 afterwards, without the consent of the other, be examined as to any communication made
1.14 by one to the other during the marriage. This exception does not apply to a civil action or
1.15 proceeding by one against the other, nor to a criminal action or proceeding for a crime
1.16 committed by one against the other or against a child of either or against a child under the
1.17 care of either spouse, nor to a criminal action or proceeding in which one is charged with
1.18 homicide or an attempt to commit homicide and the date of the marriage of the defendant
1.19 is subsequent to the date of the offense, nor to an action or proceeding for nonsupport,
1.20 neglect, dependency, or termination of parental rights.

1.21 (b) An attorney cannot, without the consent of the attorney's client, be examined as
1.22 to any communication made by the client to the attorney or the attorney's advice given
1.23 thereon in the course of professional duty; nor can any employee of the attorney be
1.24 examined as to the communication or advice, without the client's consent.

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2.1 (c) A member of the clergy or other minister of any religion shall not, without the
2.2 consent of the party making the confession, be allowed to disclose a confession made to
2.3 the member of the clergy or other minister in a professional character, in the course of
2.4 discipline enjoined by the rules or practice of the religious body to which the member of
2.5 the clergy or other minister belongs; nor shall a member of the clergy or other minister of
2.6 any religion be examined as to any communication made to the member of the clergy or
2.7 other minister by any person seeking religious or spiritual advice, aid, or comfort or advice
2.8 given thereon in the course of the member of the clergy's or other minister's professional
2.9 character, without the consent of the person.

2.10 (d) A licensed physician or surgeon, dentist, or chiropractor shall not, without the
2.11 consent of the patient, be allowed to disclose any information or any opinion based thereon
2.12 which the professional acquired in attending the patient in a professional capacity, and
2.13 which was necessary to enable the professional to act in that capacity; after the decease
2.14 of the patient, in an action to recover insurance benefits, where the insurance has been
2.15 in existence two years or more, the beneficiaries shall be deemed to be the personal
2.16 representatives of the deceased person for the purpose of waiving this privilege, and no
2.17 oral or written waiver of the privilege shall have any binding force or effect except when
2.18 made upon the trial or examination where the evidence is offered or received.

2.19 (e) A public officer shall not be allowed to disclose communications made to the
2.20 officer in official confidence when the public interest would suffer by the disclosure.

2.21 (f) Persons of unsound mind and persons intoxicated at the time of their production
2.22 for examination are not competent witnesses if they lack capacity to remember or to relate
2.23 truthfully facts respecting which they are examined.

2.24 (g) A registered nurse, psychologist, consulting psychologist, or licensed social
2.25 worker engaged in a psychological or social assessment or treatment of an individual
2.26 at the individual's request shall not, without the consent of the professional's client, be
2.27 allowed to disclose any information or opinion based thereon which the professional has
2.28 acquired in attending the client in a professional capacity, and which was necessary to
2.29 enable the professional to act in that capacity. Nothing in this clause exempts licensed
2.30 social workers from compliance with the provisions of sections 626.556 and 626.557.

2.31 (h) An interpreter for a person disabled in communication shall not, without the
2.32 consent of the person, be allowed to disclose any communication if the communication
2.33 would, if the interpreter were not present, be privileged. For purposes of this section, a
2.34 "person disabled in communication" means a person who, because of a hearing, speech
2.35 or other communication disorder, or because of the inability to speak or comprehend the
2.36 English language, is unable to understand the proceedings in which the person is required

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3.1 to participate. The presence of an interpreter as an aid to communication does not destroy
3.2 an otherwise existing privilege.

3.3 (i) Licensed chemical dependency counselors shall not disclose information or
3.4 an opinion based on the information which they acquire from persons consulting them
3.5 in their professional capacities, and which was necessary to enable them to act in that
3.6 capacity, except that they may do so:

3.7 (1) when informed consent has been obtained in writing, except in those
3.8 circumstances in which not to do so would violate the law or would result in clear and
3.9 imminent danger to the client or others;

3.10 (2) when the communications reveal the contemplation or ongoing commission
3.11 of a crime; or

3.12 (3) when the consulting person waives the privilege by bringing suit or filing charges
3.13 against the licensed professional whom that person consulted.

3.14 (j) A parent or the parent's minor child may not be examined as to any communication
3.15 made in confidence by the minor to the minor's parent. A communication is confidential if
3.16 made out of the presence of persons not members of the child's immediate family living
3.17 in the same household. This exception may be waived by express consent to disclosure
3.18 by a parent entitled to claim the privilege or by the child who made the communication
3.19 or by failure of the child or parent to object when the contents of a communication are
3.20 demanded. This exception does not apply to a civil action or proceeding by one spouse
3.21 against the other or by a parent or child against the other, nor to a proceeding to commit
3.22 either the child or parent to whom the communication was made or to place the person or
3.23 property or either under the control of another because of an alleged mental or physical
3.24 condition, nor to a criminal action or proceeding in which the parent is charged with a
3.25 crime committed against the person or property of the communicating child, the parent's
3.26 spouse, or a child of either the parent or the parent's spouse, or in which a child is charged
3.27 with a crime or act of delinquency committed against the person or property of a parent
3.28 or a child of a parent, nor to an action or proceeding for termination of parental rights,
3.29 nor any other action or proceeding on a petition alleging child abuse, child neglect,
3.30 abandonment or nonsupport by a parent.

3.31 (k) Sexual assault counselors may not be allowed to disclose any opinion or
3.32 information received from or about the victim without the consent of the victim. However,
3.33 a counselor may be compelled to identify or disclose information in investigations or
3.34 proceedings related to neglect or termination of parental rights if the court determines good
3.35 cause exists. In determining whether to compel disclosure, the court shall weigh the public
3.36 interest and need for disclosure against the effect on the victim, the treatment relationship,

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4.1 and the treatment services if disclosure occurs. Nothing in this clause exempts sexual
4.2 assault counselors from compliance with the provisions of sections 626.556 and 626.557.

4.3 "Sexual assault counselor" for the purpose of this section means a person who has
4.4 undergone at least 40 hours of crisis counseling training and works under the direction
4.5 of a supervisor in a crisis center, whose primary purpose is to render advice, counseling,
4.6 or assistance to victims of sexual assault.

4.7 (l) A domestic abuse advocate may not be compelled to disclose any opinion or
4.8 information received from or about the victim without the consent of the victim unless
4.9 ordered by the court. In determining whether to compel disclosure, the court shall weigh
4.10 the public interest and need for disclosure against the effect on the victim, the relationship
4.11 between the victim and domestic abuse advocate, and the services if disclosure occurs.
4.12 Nothing in this paragraph exempts domestic abuse advocates from compliance with the
4.13 provisions of sections 626.556 and 626.557.

4.14 For the purposes of this section, "domestic abuse advocate" means an employee or
4.15 supervised volunteer from a community-based battered women's shelter and domestic
4.16 abuse program eligible to receive grants under section 611A.32; that provides information,
4.17 advocacy, crisis intervention, emergency shelter, or support to victims of domestic abuse
4.18 and who is not employed by or under the direct supervision of a law enforcement agency,
4.19 a prosecutor's office, or by a city, county, or state agency.

4.20 (m) A person cannot be examined as to any communication or document, including
4.21 work notes, made or used in the course of or because of mediation pursuant to an
4.22 agreement to mediate or a collaborative law process pursuant to an agreement to
4.23 participate in collaborative law. This does not apply to the parties in the dispute in an
4.24 application to a court by a party to have a mediated settlement agreement set aside or
4.25 reformed. A communication or document otherwise not privileged does not become
4.26 privileged because of this paragraph. This paragraph is not intended to limit the privilege
4.27 accorded to communication during mediation or collaborative law by the common law.

4.28 (n) A child under ten years of age is a competent witness unless the court finds that
4.29 the child lacks the capacity to remember or to relate truthfully facts respecting which the
4.30 child is examined. A child describing any act or event may use language appropriate for
4.31 a child of that age.

4.32 (o) A communication assistant for a telecommunications relay system for
4.33 communication-impaired persons shall not, without the consent of the person making the
4.34 communication, be allowed to disclose communications made to the communication
4.35 assistant for the purpose of relaying.