

**SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION**

S.F. No. 3441

(SENATE AUTHORS: GUSTAFSON)

DATE
02/12/2024

D-PG
11538

Introduction and first reading
Referred to Judiciary and Public Safety

OFFICIAL STATUS

1.1 A bill for an act
1.2 relating to witnesses; prohibiting domestic abuse advocates from disclosing certain
1.3 information; amending Minnesota Statutes 2022, section 595.02, subdivision 1.

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

1.5 Section 1. Minnesota Statutes 2022, section 595.02, subdivision 1, is amended to read:

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

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

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

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

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

2.19 (e) A public officer shall not be allowed to disclose communications made to the officer
2.20 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 for
2.22 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 worker
2.25 engaged in a psychological or social assessment or treatment of an individual at the
2.26 individual's request shall not, without the consent of the professional's client, be allowed to
2.27 disclose any information or opinion based thereon which the professional has acquired in
2.28 attending the client in a professional capacity, and which was necessary to enable the
2.29 professional to act in that capacity. Nothing in this clause exempts licensed social workers
2.30 from compliance with the provisions of section 626.557 and chapter 260E.

2.31 (h) An interpreter for a person disabled in communication shall not, without the consent
2.32 of the person, be allowed to disclose any communication if the communication would, if
2.33 the interpreter were not present, be privileged. For purposes of this section, a "person disabled
2.34 in communication" means a person who, because of a hearing, speech or other communication

3.1 disorder, or because of the inability to speak or comprehend the English language, is unable
3.2 to understand the proceedings in which the person is required to participate. The presence
3.3 of an interpreter as an aid to communication does not destroy an otherwise existing privilege.

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

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

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

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

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

3.32 (k) Sexual assault counselors may not be allowed to disclose any opinion or information
3.33 received from or about the victim without the consent of the victim. However, a counselor
3.34 may be compelled to identify or disclose information in investigations or proceedings related

4.1 to neglect or termination of parental rights if the court determines good cause exists. In
 4.2 determining whether to compel disclosure, the court shall weigh the public interest and need
 4.3 for disclosure against the effect on the victim, the treatment relationship, and the treatment
 4.4 services if disclosure occurs. Nothing in this clause exempts sexual assault counselors from
 4.5 compliance with the provisions of section 626.557 and chapter 260E.

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

4.10 (l) A domestic abuse advocate ~~may~~ shall not, without the consent of the victim, be
 4.11 ~~compelled~~ allowed to disclose any opinion or information received from or about the victim
 4.12 ~~without the consent of the victim unless ordered by the court~~ which the advocate acquired
 4.13 in attending the victim in a professional capacity. ~~In determining whether to compel~~
 4.14 ~~disclosure, the court shall weigh the public interest and need for disclosure against the effect~~
 4.15 ~~on the victim, the relationship between the victim and domestic abuse advocate, and the~~
 4.16 ~~services if disclosure occurs.~~ Nothing in this paragraph exempts domestic abuse advocates
 4.17 from compliance with the provisions of section 626.557 and chapter 260E.

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

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

4.33 (n) A child under ten years of age is a competent witness unless the court finds that the
 4.34 child lacks the capacity to remember or to relate truthfully facts respecting which the child

5.1 is examined. A child describing any act or event may use language appropriate for a child
5.2 of that age.

5.3 (o) A communication assistant for a telecommunications relay system for persons who
5.4 have communication disabilities shall not, without the consent of the person making the
5.5 communication, be allowed to disclose communications made to the communication assistant
5.6 for the purpose of relaying.

5.7 **EFFECTIVE DATE.** This section is effective July 1, 2024.