

By Senator Geller

31-126-05

1 A bill to be entitled
2 An act relating to the parent-child privilege;
3 creating s. 90.5045, F.S.; creating a
4 parent-child privilege to prevent disclosure of
5 communications that were made by children
6 younger than a specified age to their parents
7 or by parents older than a specified age to
8 their children and intended to be made in
9 confidence; defining the term "parent";
10 prescribing proceedings in which the privilege
11 does not exist; providing for waiver of the
12 privilege; requiring that a guardian ad litem
13 be appointed to represent a minor child prior
14 to the court's approving the child's waiver of
15 the privilege; providing an effective date.

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17 Be It Enacted by the Legislature of the State of Florida:

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19 Section 1. Section 90.5045, Florida Statutes, is
20 created to read:

21 90.5045 Parent-child privilege.--

22 (1) Because of the family relationship that exists
23 between parents and their children, there is a privilege to
24 refuse to disclose, and to prevent another from disclosing,
25 communications that were intended to be made in confidence
26 between:

27 (a) A child who at the time of making the
28 communication was 25 years of age or younger and that child's
29 parent.

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1 (b) A parent who at the time of making the
2 communication was 65 years of age or older and that parent's
3 child.

4 (2) The privilege may be claimed by either the child
5 or the parent, or by the guardian or conservator of the child
6 or parent. The authority of a child or the child's parent, or
7 guardian or conservator of the child or parent, to claim the
8 privilege is presumed in the absence of contrary evidence.

9 (3) As used in this section, the term "parent" means a
10 woman who gives birth to a child or a man whose consent to the
11 adoption of the child would be required under s. 63.062(1). If
12 a child has been legally adopted, the term "parent" means the
13 adoptive mother or father of the child. The term does not
14 include an individual whose parental relationship to the child
15 has been legally terminated and does not include an alleged or
16 prospective parent, unless the parental status falls within
17 the terms of s. 39.503(1) or s. 63.062(1).

18 (4) There is no privilege under this section:

19 (a) In any proceeding brought by or on behalf of the
20 child against the child's parent.

21 (b) In any proceeding brought by or on behalf of the
22 child's parent against the child.

23 (c) In a criminal proceeding in which the child is
24 charged with a crime committed at any time against the person
25 or property of the child's parent or the person or property of
26 any other child of the child's parent.

27 (d) In a criminal proceeding in which the child's
28 parent is charged with a crime committed at any time against
29 the person or property of the child or the person or property
30 of a child of the child.

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1 (e) In any criminal or other governmental
2 investigation involving allegations of abuse, neglect,
3 abandonment, or nonsupport of a child by a parent of that
4 child.

5 (f) In any criminal or other governmental
6 investigation involving allegations of sexual or physical
7 abuse of a parent by a child of that parent.

8 (g) In any proceeding governed by the Florida Family
9 Law Rules of Procedure or the Florida Juvenile Rules of
10 Procedure.

11 (5) This privilege may be waived if either the parent
12 or the child expressly consents to the disclosure of the
13 communications. However, if the child has not reached majority
14 or been otherwise emancipated, the child's stated consent is
15 invalid or ineffective unless it is approved by a court of
16 competent jurisdiction. The court may only approve such
17 child's consent after appointing a guardian ad litem to
18 represent the child and after the guardian ad litem makes a
19 recommendation to the court that the waiver of the privilege
20 would be in the best interests of the child.

21 Section 2. This act shall take effect July 1, 2005.

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24 SENATE SUMMARY

25 Creates a parent-child privilege to prevent disclosure of
26 communications that were made by children of a specified
27 age to their parents or by parents of a specified age to
28 their children and were intended to be made in
29 confidence. Defines the term "parent." Prescribes
30 proceedings in which the privilege does not exist.
31 Provides for waiver of the privilege. Requires that a
 guardian ad litem be appointed to represent a minor child
 prior to the court's approving the child's waiver of the
 privilege.