

A bill to be entitled

An act relating to the parent-child privilege; creating s. 90.5045, F.S.; creating a parent-child privilege to prevent disclosure of communications that were made by children younger than a specified age to their parents or by parents older than a specified age to their children and intended to be made in confidence; defining the term "parent"; prescribing proceedings in which the privilege does not exist; providing for waiver of the privilege; requiring 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; providing an effective date.

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

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

90.5045 Parent-child privilege.--

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

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

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

(2) The privilege may be claimed by either the child or

HB 167

2007

29 the parent, or by the guardian or conservator of the child or  
30 parent. The authority of a child or the child's parent, or  
31 guardian or conservator of the child or parent, to claim the  
32 privilege is presumed in the absence of contrary evidence.

33 (3) As used in this section, the term "parent" means a  
34 woman who gives birth to a child or a man whose consent to the  
35 adoption of the child would be required under s. 63.062(1). If a  
36 child has been legally adopted, the term "parent" means the  
37 adoptive mother or father of the child. The term does not  
38 include an individual whose parental relationship to the child  
39 has been legally terminated and does not include an alleged or  
40 prospective parent, unless the parental status falls within the  
41 terms of s. 39.503(1) or s. 63.062(1).

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

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

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

47 (c) In a criminal proceeding in which the child is charged  
48 with a crime committed at any time against the person or  
49 property of the child's parent or the person or property of any  
50 other child of the child's parent.

51 (d) In a criminal proceeding in which the child's parent  
52 is charged with a crime committed at any time against the person  
53 or property of the child or the person or property of a child of  
54 the child.

55 (e) In any criminal or other governmental investigation  
56 involving allegations of abuse, neglect, abandonment, or

HB 167

2007

57 nonsupport of a child by a parent of that child.

58 (f) In any criminal or other governmental investigation  
59 involving allegations of sexual or physical abuse of a parent by  
60 a child of that parent.

61 (g) In any proceeding governed by the Florida Family Law  
62 Rules of Procedure or the Florida Rules of Juvenile Procedure.

63 (5) This privilege may be waived if either the parent or  
64 the child expressly consents to the disclosure of the  
65 communication. However, if the child has not reached the age of  
66 majority or been otherwise emancipated, the child's stated  
67 consent is invalid or ineffective unless it is approved by a  
68 court of competent jurisdiction. The court may approve such  
69 child's consent only after appointing a guardian ad litem to  
70 represent the child and after the guardian ad litem makes a  
71 recommendation to the court that the waiver of the privilege  
72 would be in the best interests of the child.

73 Section 2. This act shall take effect July 1, 2007.