

By Senator Rich

34-00422A-09

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1 A bill to be entitled
2 An act relating to the collaborative process to
3 resolve disputes arising under part I of ch. 61 and
4 ch. 742, F.S.; providing a short title; providing the
5 purposes of the Collaborative Process Act; providing
6 definitions; tolling statutes of limitations and other
7 periods of time established by law or agreement to
8 enforce a legal or contractual right; providing for
9 confidentiality of communications made during the
10 collaborative process; providing exceptions;
11 authorizing sanctions for disclosure of confidential
12 communications; providing an effective date.

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

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16 Section 1. Short title.—This act may be cited as the
17 "Collaborative Process Act."

18 Section 2. Purposes of the collaborative process.—The
19 purpose of the Collaborative Process Act is to:

20 (1) Create a uniform system of practice of the
21 collaborative process in proceedings under part I of chapter 61
22 and chapter 742, Florida Statutes.

23 (2) Encourage the peaceful resolution of disputes and the
24 early settlement of pending litigation through voluntary
25 settlement procedures.

26 (3) Preserve the working relationship between parties to a
27 dispute through a nonadversarial method that reduces the
28 emotional and financial toll of litigation.

29 Section 3. Definitions.—As used in the Collaborative

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30 Process Act, the term:

31 (1) "Collaborative attorney" means an attorney licensed to
32 practice law in the State of Florida by the Florida Supreme
33 Court who satisfies any training and other requirements mandated
34 by the Florida Supreme Court to enable the attorney to represent
35 clients in the collaborative process.

36 (2) "Collaborative communication" means any oral or written
37 statement or a nonverbal act that is made:

38 (a) After the parties execute a collaborative participation
39 agreement and before the collaborative process terminates or
40 final agreement is reached; and

41 (b) For the purposes of conducting, participating in,
42 continuing, or otherwise furthering the collaborative process.

43 (3) "Collaborative participation agreement" means a written
44 contract entered into pursuant to the Collaborative Process Act
45 and the requirements promulgated by the Florida Supreme Court
46 pertaining to the collaborative process.

47 (4) "Collaborative process" means a process in which
48 parties, represented by collaborative attorneys, attempt to
49 resolve a matter, subject to part I of chapter 61 or chapter
50 742, Florida Statutes, pursuant to a collaborative participation
51 agreement without court intervention.

52 (5) "Matter" means a dispute, transaction, claim, problem,
53 or issue for resolution described in a collaborative
54 participation agreement.

55 (6) "Party" means a person who enters into a collaborative
56 participation agreement and whose consent is necessary to
57 resolve a matter.

58 (7) "Person" means an individual, corporation, partnership,

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59 association, governmental subdivision, agency, or any other
60 legal or commercial entity.

61 Section 4. Collaborative process; commencement; tolling of
62 time periods.-

63 (1) The collaborative process commences when the parties
64 enter into a collaborative participation agreement. The
65 initiation of a proceeding is not a prerequisite to the
66 commencement of the collaborative process.

67 (2) All time periods during which a person must enforce or
68 exercise his or her legal rights are tolled while a
69 collaborative participation agreement remains in effect. This
70 subsection applies to statutes of limitation, filing deadlines,
71 any other time limits imposed by law, and deadlines to exercise
72 contractual rights.

73 Section 5. Confidentiality; privilege; exceptions.-

74 (1) Collaborative communications are confidential, except
75 as provided in this section or agreed to in writing by the
76 parties.

77 (2) Except as provided in this section, a collaborative
78 party has a privilege to refuse to testify, and to prevent
79 another person from testifying, in a proceeding regarding a
80 collaborative communication that was made in the collaborative
81 process.

82 (3) The following collaborative communications are not
83 confidential under this section:

84 (a) A signed written agreement reached during a
85 collaborative process, unless otherwise agreed to by the
86 parties.

87 (b) A communication that must be disclosed under chapter

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88 119, Florida Statutes.

89 (c) A communication regarding a plan to commit a crime,
90 conceal ongoing criminal activity, or threaten violence.

91 (d) A communication relating to information that must be
92 reported pursuant to chapter 39 or chapter 415, Florida
93 Statutes, which is disclosed solely to the entity to which such
94 information must be reported.

95 (e) A communication that is disclosed solely in a
96 professional malpractice, misconduct, or ethics proceeding.

97 (f) A communication that is disclosed solely in a
98 proceeding to enforce an agreement made during the collaborative
99 process.

100 (4) A party who discloses collaborative communications in
101 violation of this section during the collaborative process may
102 be sanctioned, as agreed by the parties.

103 (5) A party who knowingly and willfully discloses
104 collaborative communications in violation of this section after
105 the termination of the collaborative process is liable to the
106 other party for:

107 (a) Equitable relief;

108 (b) Compensatory damages; and

109 (c) Attorney's fees and costs incurred during the
110 collaborative process.

111 (6) An action to enforce subsection (5) must be initiated
112 not later than 2 years after the party had a reasonable
113 opportunity to discover the breach of confidentiality, but in no
114 case more than 4 years after the date of the breach.

115 Section 6. This act shall take effect July 1, 2009.