

1 A bill to be entitled  
2 An act relating to collaborative process; creating part II  
3 of ch. 44, F.S.; providing a short title; providing  
4 purposes; providing definitions; providing that a  
5 collaborative process in which parties attempt to resolve  
6 a matter pursuant to a collaborative participation  
7 agreement without court intervention begins with a  
8 collaborative participation agreement among the parties;  
9 providing that a collaborative participation agreement  
10 tolls statutes of limitations periods during the time it  
11 remains in effect; providing that collaborative  
12 communications are confidential unless otherwise provided;  
13 providing exceptions; providing that information that is  
14 otherwise admissible or subject to discovery does not  
15 become inadmissible or protected from discovery by reason  
16 of its disclosure or use in a collaborative process;  
17 providing that a party that discloses or makes a  
18 representation about a privileged collaborative  
19 communication waives that privilege but only to the extent  
20 necessary for the other party to respond to the disclosure  
21 or representation; providing for sanctions for breaches of  
22 confidentiality; providing limitations periods for seeking  
23 such sanctions; providing immunity from sanctions for  
24 certain actions; providing a directive to the Division of  
25 Statutory Revision; amending ss. 44.1011, 44.102, and  
26 44.106, F.S.; conforming provisions to changes made by  
27 this act; providing an effective date.  
28

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

30  
 31 Section 1. Part II of chapter 44, Florida Statutes,  
 32 consisting of sections 44.501, 44.502, 44.503, 44.504, 44.505,  
 33 44.506, and 44.507, is created to read:

34 PART II

35 COLLABORATIVE PROCESS

36 44.501 Short title.--This part may be cited as the  
 37 "Collaborative Process Act."

38 44.502 Purposes.--It is the policy of the state to  
 39 encourage the peaceful resolution of disputes and the early  
 40 settlement of pending litigation through voluntary settlement  
 41 procedures. The collaborative process is a unique nonadversarial  
 42 method that preserves a working relationship between the parties  
 43 and reduces the emotional and financial toll of litigation.

44 44.503 Definitions.--As used in this part, the term:

45 (1) "Collaborative attorney" means an attorney licensed to  
 46 practice law in the state who satisfies any training and other  
 47 requirements mandated by the Supreme Court to enable the  
 48 attorney to represent clients in the collaborative process.

49 (2) "Collaborative communication" means any oral or  
 50 written statement, or a nonverbal act, that is made:

51 (a) Following the execution by the parties of a  
 52 collaborative participation agreement until the time the  
 53 collaborative process terminates or final agreement is reached;  
 54 and

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

57       (3) "Collaborative participant" means the parties,  
58 collaborative attorneys, and nonparty participants in the  
59 collaborative process.

60       (4) "Collaborative participation agreement" means a  
61 written contract entered into pursuant to this part and the  
62 requirements adopted by the Supreme Court pertaining to the  
63 collaborative process.

64       (5) "Collaborative process" means a process in which  
65 parties, represented by collaborative attorneys, attempt to  
66 resolve a matter pursuant to a collaborative participation  
67 agreement without court intervention.

68       (6) "Court" means a tribunal of competent jurisdiction  
69 acting in an adjudicative capacity in which a judicial officer,  
70 after the presentation of evidence, testimony, and legal  
71 argument, renders a binding decision affecting a party's  
72 interests in a matter.

73       (7) "Matter" means a dispute, transaction, claim, problem,  
74 or issue for resolution described in a collaborative  
75 participation agreement.

76       (8) "Nonparty participant" means a person, other than a  
77 party or collaborative attorney, who is retained or serves as an  
78 advisor to a party in the collaborative process.

79       (9) "Party" means a person who enters into a collaborative  
80 participation agreement and whose consent is necessary to  
81 resolve the matter.

82       (10) "Person" means an individual, corporation,  
83 partnership, association, governmental subdivision, agency, or  
84 any other legal or commercial entity.

HB 395

2009

85           (11) "Proceeding" means a judicial, administrative, or  
86 other adjudicative process before a tribunal, including related  
87 prehearing and posthearing motions, conferences, and discovery.

88           44.504 Commencement of collaborative process.--The  
89 collaborative process shall commence, whether or not a  
90 proceeding is pending, when the parties enter into a  
91 collaborative participation agreement.

92           44.505 Tolling of statutes of limitations.--The execution  
93 of a collaborative participation agreement shall toll all legal  
94 time periods applicable to legal rights and issues under law  
95 between the parties for the amount of time the collaborative  
96 participation agreement remains in effect. This section applies  
97 to all applicable statutes of limitations, filing deadlines, and  
98 other time limitations imposed by law.

99           44.506 Confidentiality; privilege; exceptions.--

100           (1) Except as provided in this section and unless the  
101 parties agree otherwise in writing, all collaborative  
102 communications shall be confidential. A collaborative  
103 participant shall not disclose a collaborative communication to  
104 any person other than another collaborative participant. A  
105 violation of this section during the collaborative process may  
106 be sanctioned as agreed to in writing by the parties or a party  
107 may terminate the collaborative process. Once the collaborative  
108 process has terminated, a violation of this section may be  
109 sanctioned as provided in s. 44.507.

110           (2) A collaborative party has a privilege to refuse to  
111 testify and to prevent any other person from testifying in a

HB 395

2009

112 subsequent proceeding regarding collaborative process  
113 communications.

114 (3) (a) Notwithstanding subsections (1) and (2), there  
115 shall be no confidentiality or privilege attached to a signed  
116 written agreement reached during a collaborative process, unless  
117 the parties agree otherwise in writing, or for any collaborative  
118 communication:

119 1. That is willfully used to plan a crime, commit or  
120 attempt to commit a crime, conceal ongoing criminal activity, or  
121 threaten violence;

122 2. That requires a mandatory report pursuant to chapter 39  
123 or chapter 415 solely for the purpose of making the mandatory  
124 report to the entity requiring the report;

125 3. Offered to report, prove, or disprove professional  
126 malpractice or misconduct occurring during the collaborative  
127 process, solely for the purpose of the professional malpractice,  
128 misconduct, or ethics proceeding; or

129 4. Offered for the limited purpose of establishing or  
130 refuting enforceability of an agreement reached during the  
131 collaborative process.

132 (b) A collaborative process communication disclosed under  
133 any provision of subparagraph (a)2., subparagraph (a)3., or  
134 subparagraph (a)4. remains confidential and is not discoverable  
135 or admissible for any other purpose, unless otherwise permitted  
136 by this section.

137 (4) Information that is otherwise admissible or subject to  
138 discovery does not become inadmissible or protected from

HB 395

2009

139 discovery by reason of its disclosure or use in a collaborative  
140 process.

141 (5) A party that discloses or makes a representation about  
142 a privileged collaborative communication waives that privilege,  
143 but only to the extent necessary for the other party to respond  
144 to the disclosure or representation.

145 44.507 Confidentiality; sanctions.--

146 (1) Once the collaborative process has terminated, if a  
147 collaborative participant knowingly and willfully discloses a  
148 collaborative communication in violation of s. 44.506, the  
149 participant making such a disclosure shall be subject to the  
150 following:

151 (a) Equitable relief.

152 (b) Compensatory damages.

153 (c) Attorney's fees and costs incurred during the  
154 collaborative process.

155 (d) Reasonable attorney's fees and costs incurred by the  
156 application for remedies under this section.

157 (2) Notwithstanding any other law, an application for  
158 relief filed under this section may not be commenced later than  
159 2 years after the date on which the party had a reasonable  
160 opportunity to discover the breach of confidentiality but in no  
161 case more than 4 years after the date of the breach.

162 (3) Any collaborative participant shall not be subject to  
163 a civil action under this section for lawful compliance with the  
164 provisions of s. 119.07.

165 Section 2. The Division of Statutory Revision of the  
166 Office of Legislative Services is directed to redesignate

167 chapter 44, Florida Statutes, as "Alternatives to Judicial  
168 Action" and to designate ss. 44.1011-44.406, Florida Statutes,  
169 as Part I of chapter 44, Florida Statutes, entitled  
170 "Arbitration."

171 Section 3. Section 44.1011, Florida Statutes, is amended  
172 to read:

173 44.1011 Definitions.--As used in this part ~~chapter~~:

174 (1) "Arbitration" means a process whereby a neutral third  
175 person or panel, called an arbitrator or arbitration panel,  
176 considers the facts and arguments presented by the parties and  
177 renders a decision which may be binding or nonbinding as  
178 provided in this part ~~chapter~~.

179 (2) "Mediation" means a process whereby a neutral third  
180 person called a mediator acts to encourage and facilitate the  
181 resolution of a dispute between two or more parties. It is an  
182 informal and nonadversarial process with the objective of  
183 helping the disputing parties reach a mutually acceptable and  
184 voluntary agreement. In mediation, decisionmaking authority  
185 rests with the parties. The role of the mediator includes, but  
186 is not limited to, assisting the parties in identifying issues,  
187 fostering joint problem solving, and exploring settlement  
188 alternatives. "Mediation" includes:

189 (a) "Appellate court mediation," which means mediation  
190 that occurs during the pendency of an appeal of a civil case.

191 (b) "Circuit court mediation," which means mediation of  
192 civil cases, other than family matters, in circuit court. If a  
193 party is represented by counsel, the counsel of record must

194 appear unless stipulated to by the parties or otherwise ordered  
195 by the court.

196 (c) "County court mediation," which means mediation of  
197 civil cases within the jurisdiction of county courts, including  
198 small claims. Negotiations in county court mediation are  
199 primarily conducted by the parties. Counsel for each party may  
200 participate. However, presence of counsel is not required.

201 (d) "Family mediation" which means mediation of family  
202 matters, including married and unmarried persons, before and  
203 after judgments involving dissolution of marriage; property  
204 division; shared or sole parental responsibility; or child  
205 support, custody, and visitation involving emotional or  
206 financial considerations not usually present in other circuit  
207 civil cases. Negotiations in family mediation are primarily  
208 conducted by the parties. Counsel for each party may attend the  
209 mediation conference and privately communicate with their  
210 clients. However, presence of counsel is not required, and, in  
211 the discretion of the mediator, and with the agreement of the  
212 parties, mediation may proceed in the absence of counsel unless  
213 otherwise ordered by the court.

214 (e) "Dependency or in need of services mediation," which  
215 means mediation of dependency, child in need of services, or  
216 family in need of services matters. Negotiations in dependency  
217 or in need of services mediation are primarily conducted by the  
218 parties. Counsel for each party may attend the mediation  
219 conference and privately communicate with their clients.  
220 However, presence of counsel is not required and, in the  
221 discretion of the mediator and with the agreement of the

222 parties, mediation may proceed in the absence of counsel unless  
 223 otherwise ordered by the court.

224 Section 4. Paragraph (a) of subsection (2) of section  
 225 44.102, Florida Statutes, is amended to read:

226 44.102 Court-ordered mediation.--

227 (2) A court, under rules adopted by the Supreme Court:

228 (a) Must, upon request of one party, refer to mediation  
 229 any filed civil action for monetary damages, provided the  
 230 requesting party is willing and able to pay the costs of the  
 231 mediation or the costs can be equitably divided between the  
 232 parties, unless:

233 1. The action is a landlord and tenant dispute that does  
 234 not include a claim for personal injury.

235 2. The action is filed for the purpose of collecting a  
 236 debt.

237 3. The action is a claim of medical malpractice.

238 4. The action is governed by the Florida Small Claims  
 239 Rules.

240 5. The court determines that the action is proper for  
 241 referral to nonbinding arbitration under this part ~~chapter~~.

242 6. The parties have agreed to binding arbitration.

243 7. The parties have agreed to an expedited trial pursuant  
 244 to s. 45.075.

245 8. The parties have agreed to voluntary trial resolution  
 246 pursuant to s. 44.104.

247 Section 5. Section 44.106, Florida Statutes, is amended to  
 248 read:

HB 395

2009

249           44.106 Standards and procedures for mediators and  
250 arbitrators; fees.--The Supreme Court shall establish minimum  
251 standards and procedures for qualifications, certification,  
252 professional conduct, discipline, and training for mediators and  
253 arbitrators who are appointed pursuant to this part ~~chapter~~. The  
254 Supreme Court is authorized to set fees to be charged to  
255 applicants for certification and renewal of certification. The  
256 revenues generated from these fees shall be used to offset the  
257 costs of administration of the certification process. The  
258 Supreme Court may appoint or employ such personnel as are  
259 necessary to assist the court in exercising its powers and  
260 performing its duties under this part ~~chapter~~.

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