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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2014	.	
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The Committee on Children, Families, and Elder Affairs (Altman) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. The Legislature finds and declares that the purpose of this part is to:

(1) Create a system of practice of a collaborative law process for proceedings under chapters 61 and 742, Florida Statutes.

(2) Encourage the peaceful resolution of disputes and the



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11 early settlement of pending litigation through voluntary
12 settlement procedures.

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

16 Section 2. Part III of chapter 61, Florida Statutes,
17 consisting of ss. 61.55-61.58, is created and entitled the
18 "Collaborative Law Act."

19 Section 3. Section 61.55, Florida Statutes, is created to
20 read:

21 61.55 Purpose.—The purpose of this part is to create a
22 uniform system of practice for the collaborative law process in
23 this state. It is the policy of this state to encourage the
24 peaceful resolution of disputes and the early settlement of
25 pending litigation through a voluntary settlement process. The
26 collaborative law process is a unique nonadversarial process
27 that preserves a working relationship between the parties and
28 reduces the emotional and financial toll of litigation.

29 Section 4. Section 61.56, Florida Statutes, is created to
30 read:

31 61.56 Definitions.—As used in this part, the term:

32 (1) "Collaborative attorney" means an attorney who
33 represents a party in a collaborative law process.

34 (2) "Collaborative law communication" means an oral or
35 written statement, including a statement made in a record, or
36 nonverbal conduct, which:

37 (a) Is made in the conduct of or in the course of
38 participating in, continuing, or reconvening a collaborative law
39 process; or



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40 (b) Occurs after the parties sign a collaborative law
41 participation agreement and before the collaborative law process
42 is concluded.

43 (3) "Collaborative law participation agreement" means an
44 agreement between persons to participate in a collaborative law
45 process.

46 (4) "Collaborative law process" means a process intended to
47 resolve a collaborative matter without intervention by a
48 tribunal in which persons sign a collaborative law participation
49 agreement and are represented by collaborative attorneys.

50 (5) "Collaborative matter" means a dispute, transaction,
51 claim, problem, or issue for resolution including a dispute,
52 claim, or issue in a proceeding that is described in a
53 collaborative law participation agreement and arises under
54 chapter 61 or chapter 742, including, but not limited to:

55 (a) Marriage, divorce, dissolution, annulment, and marital
56 property distribution.

57 (b) Child custody, visitation, parenting plans, and
58 parenting time.

59 (c) Alimony, maintenance, and child support.

60 (d) Parental relocation with a child.

61 (e) Parentage.

62 (f) Premarital, marital, and postmarital agreements.

63 (6) "Law firm" means:

64 (a) An attorney or attorneys who practice law in a
65 partnership, professional corporation, sole proprietorship,
66 limited liability company, or association; or

67 (b) An attorney or attorneys employed in a legal services
68 organization, the legal department of a corporation or other



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69 organization, or the legal department of a governmental entity,
70 subdivision, agency, or instrumentality.

71 (7) "Nonparty participant" means a person, other than a
72 party and the party's collaborative attorney, who participates
73 in a collaborative law process.

74 (8) "Party" means a person who signs a collaborative law
75 participation agreement and whose consent is necessary to
76 resolve a collaborative matter.

77 (9) "Person" means an individual; a corporation; a business
78 trust; estate; trust; partnership; a limited liability company;
79 association; joint venture; public corporation; a government or
80 governmental subdivision, agency, or instrumentality; or any
81 other legal or commercial entity.

82 (10) "Proceeding" means a judicial, administrative,
83 arbitral, or other adjudicative process before a tribunal,
84 including related prehearing and posthearing motions,
85 conferences, and discovery.

86 (11) "Prospective party" means a person who discusses with
87 a prospective collaborative attorney the possibility of signing
88 a collaborative law participation agreement.

89 (12) "Record" means information that is inscribed on a
90 tangible medium or that is stored in an electronic or other
91 medium and is retrievable in perceivable form.

92 (13) "Related to a collaborative matter" means involving
93 the same parties, transaction or occurrence, nucleus of
94 operative fact, dispute, claim, or issue as the collaborative
95 matter.

96 (14) "Sign" means, with present intent to authenticate or
97 adopt a record:



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98 (a) To execute or adopt a tangible symbol; or
99 (b) To attach to or logically associate with the record an
100 electronic symbol, sound, or process.

101 (15) "Tribunal" means a court, arbitrator, administrative
102 agency, or other body acting in an adjudicative capacity that,
103 after presentation of evidence or legal argument, has
104 jurisdiction to render a decision affecting a party's interests
105 in a matter.

106 Section 5. Section 61.57, Florida Statutes, is created to
107 read:

108 61.57 Beginning and concluding a collaborative law
109 process.-

110 (1) The collaborative law process commences, regardless of
111 whether a legal proceeding is pending, when the parties enter
112 into a collaborative participation agreement.

113 (2) A tribunal may not order a party to participate in a
114 collaborative law process over that party's objection.

115 (3) A collaborative law process is concluded by a:

116 (a) Resolution of a collaborative matter as evidenced by a
117 signed record;

118 (b) Resolution of a part of the collaborative matter,
119 evidenced by a signed record, in which the parties agree that
120 the remaining parts of the collaborative matter will not be
121 resolved in the process; or

122 (c) Termination of the process.

123 (4) A collaborative law process terminates when a party:

124 (a) Gives notice to other parties in a record that the
125 collaborative law process is concluded;

126 (b) Begins a proceeding related to a collaborative matter



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127 without the agreement of all parties;
128 (c) Initiates a pleading, motion, order to show cause, or
129 request for a conference with a tribunal in a pending proceeding
130 related to the collaborative matter;
131 (d) Requests that the proceeding be put on the tribunal's
132 active calendar in a pending proceeding related to the
133 collaborative matter;
134 (e) Takes similar action requiring notice to be sent to the
135 parties in a pending proceeding related to the collaborative
136 matter; or
137 (f) Discharges a collaborative attorney or a collaborative
138 attorney withdraws from further representation of a party,
139 except as otherwise provided by subsection (7).
140 (5) A party's collaborative attorney shall give prompt
141 notice to all other parties in a record of a discharge or
142 withdrawal.
143 (6) A party may terminate a collaborative law process with
144 or without cause.
145 (7) Notwithstanding the discharge or withdrawal of a
146 collaborative attorney, a collaborative law process continues
147 if, not later than 30 days after the date that the notice of the
148 discharge or withdrawal of a collaborative attorney required by
149 subsection (5) is sent to the parties:
150 (a) The unrepresented party engages a successor
151 collaborative attorney;
152 (b) The parties consent to continue the collaborative law
153 process by reaffirming the collaborative law participation
154 agreement in a signed record;
155 (c) The collaborative law participation agreement is



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156 amended to identify the successor collaborative attorney in a
157 signed record; and

158 (d) The successor collaborative attorney confirms the
159 attorney's representation of a party in the collaborative law
160 participation agreement in a signed record.

161 (8) A collaborative law process does not conclude if, with
162 the consent of the parties, a party requests a tribunal to
163 approve a resolution of the collaborative matter or any part
164 thereof as evidenced by a signed record.

165 (9) A collaborative law participation agreement may provide
166 additional methods for concluding a collaborative law process.

167 Section 6. Section 61.58, Florida Statutes, is created to
168 read:

169 61.58 Confidentiality of a collaborative law
170 communication.—Except as provided in this section, a
171 collaborative law communication is confidential to the extent
172 agreed by the parties in a signed record or as otherwise
173 provided by law.

174 (1) PRIVILEGE AGAINST DISCLOSURE FOR COLLABORATIVE LAW
175 COMMUNICATION; ADMISSIBILITY; DISCOVERY.—

176 (a) Subject to subsections (2) and (3), a collaborative law
177 communication is privileged as provided under paragraph (b), is
178 not subject to discovery, and is not admissible into evidence.

179 (b) In a proceeding, the following privileges apply:

180 1. A party may refuse to disclose, and may prevent another
181 person from disclosing, a collaborative law communication.

182 2. A nonparty participant may refuse to disclose, and may
183 prevent another person from disclosing, a collaborative law
184 communication of a nonparty participant.



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185 (c) Evidence or information that is otherwise admissible or
186 subject to discovery does not become inadmissible or protected
187 from discovery solely because of its disclosure or use in a
188 collaborative law process.

189 (2) WAIVER AND PRECLUSION OF PRIVILEGE.—

190 (a) A privilege under subsection (1) may be waived orally
191 or in a record during a proceeding if it is expressly waived by
192 all parties and, in the case of the privilege of a nonparty
193 participant, if it is expressly waived by the nonparty
194 participant.

195 (b) A person who makes a disclosure or representation about
196 a collaborative law communication that prejudices another person
197 in a proceeding may not assert a privilege under subsection (1).
198 This preclusion applies only to the extent necessary for the
199 person prejudiced to respond to the disclosure or
200 representation.

201 (3) LIMITS OF PRIVILEGE.—

202 (a) A privilege under subsection (1) does not apply for a
203 collaborative law communication that is:

204 1. Available to the public under chapter 119 or made during
205 a session of a collaborative law process that is open, or is
206 required by law to be open, to the public;

207 2. A threat or statement of a plan to inflict bodily injury
208 or commit a crime of violence;

209 3. Intentionally used to plan a crime, commit or attempt to
210 commit a crime, or conceal an ongoing crime or ongoing criminal
211 activity; or

212 4. In an agreement resulting from the collaborative law
213 process, as evidenced by a record signed by all parties to the



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214 agreement.

215 (b) The privilege under subsection (1) for a collaborative
216 law communication does not apply to the extent that such
217 communication is:

218 1. Sought or offered to prove or disprove a claim or
219 complaint of professional misconduct or malpractice arising from
220 or related to a collaborative law process; or

221 2. Sought or offered to prove or disprove abuse, neglect,
222 abandonment, or exploitation of a child or adult unless the
223 Department of Children and Families is a party to or otherwise
224 participates in the process.

225 (c) A privilege under subsection (1) does not apply if a
226 tribunal finds, after a hearing in camera, that the party
227 seeking discovery or the proponent of the evidence has shown
228 that the evidence is not otherwise available, the need for the
229 evidence substantially outweighs the interest in protecting
230 confidentiality, and the collaborative law communication is
231 sought or offered in:

232 1. A court proceeding involving a felony; or

233 2. A proceeding seeking rescission or reformation of a
234 contract arising out of the collaborative law process or in
235 which a defense is asserted to avoid liability on the contract.

236 (d) If a collaborative law communication is subject to an
237 exception under paragraph (b) or paragraph (c), only the part of
238 the communication necessary for the application of the exception
239 may be disclosed or admitted.

240 (e) Disclosure or admission of evidence excepted from the
241 privilege under paragraph (b) or paragraph (c) does not make the
242 evidence or any other collaborative law communication



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243 discoverable or admissible for any other purpose.

244 (f) The privilege under subsection (1) does not apply if
245 the parties agree in advance in a signed record, or if a record
246 of a proceeding reflects agreement by the parties, that all or
247 part of a collaborative law process is not privileged. This
248 paragraph does not apply to a collaborative law communication
249 made by a person who did not receive actual notice of the
250 collaborative participation agreement before the communication
251 was made.

252 Section 7. Sections 61.55-61.58, Florida Statutes, as
253 created by this act, shall not take effect until 30 days after
254 approval and publication by the Florida Supreme Court of:

255 (1) The Rules of Professional Conduct, governing:

256 (a) The mandatory disqualification of a collaborative
257 attorney, and attorneys in the same law firm, from appearing
258 before a tribunal to represent a party to a collaborative law
259 process in a proceeding related to the collaborative law matter.

260 (b) Limited exceptions to mandatory disqualification to
261 seek emergency orders for the protection of the health, safety,
262 welfare, or interest of a party until such time as a successor
263 collaborative attorney is available and for continued
264 representation of government entities, subject to certain
265 conditions.

266 (2) The Family Law Rules of Procedure, governing:

267 (a) Required elements of a collaborative law participation
268 agreement defining the commencement, procedures, and termination
269 of the collaborative law process.

270 (b) The stay of ongoing proceedings upon referral to a
271 collaborative law process and related status reports.



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272 Section 8. Except as otherwise expressly provided in this act,
273 this act shall take effect July 1, 2014.

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275 ===== T I T L E A M E N D M E N T =====

276 And the title is amended as follows:

277 Delete everything before the enacting clause
278 and insert:

279 A bill to be entitled
280 An act relating to family law; providing legislative
281 findings; creating Part III of ch. 61, F.S., entitled
282 the "Collaborative Law Act"; creating s. 61.55, F.S.;
283 declaring the purpose of the act; creating s. 61.56,
284 F.S.; defining terms; creating s. 61.57, F.S.;
285 declaring that a collaborative law process commences
286 when the parties enter into a collaborative
287 participation agreement; providing that a tribunal may
288 not order a party to participate in a collaborative
289 law process over the party's objection; providing
290 conditions under which a collaborative law process is
291 concluded; creating s. 61.58, F.S.; providing for
292 confidentiality of communications made during the
293 collaborative law process; providing exceptions;
294 providing that the effective date of specified
295 provisions are contingent upon approval and
296 publication of Florida Supreme Court rules governing
297 specified subjects; providing effective dates.