

By Senator Lee

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1  
2 A bill to be entitled  
3 An act relating to family law; creating part III of  
4 ch. 61, F.S., entitled the "Collaborative Process  
5 Act"; creating s. 61.51, F.S.; declaring the purpose  
6 of the act; creating s. 61.52, F.S.; defining terms;  
7 creating s. 61.53, F.S.; declaring that a  
8 collaborative process commences when the parties enter  
9 into a collaborative participation agreement; creating  
10 s. 61.54, F.S.; stating that the execution of a  
11 collaborative participation agreement tolls all legal  
12 time periods applicable under law between the parties  
13 for the amount of time the agreement remains in  
14 effect; creating s. 61.55, F.S.; stating that all  
15 collaborative communications are confidential;  
16 providing exceptions; creating s. 61.56, F.S.;  
17 providing sanctions; creating s. 61.57, F.S.;  
18 disqualifying an attorney from further representing a  
19 party if the collaborative process terminates without  
20 an agreement; providing an effective date.

21  
22 Be It Enacted by the Legislature of the State of Florida:

23  
24 Section 1. Part III of chapter 61, Florida Statutes,  
25 consisting of ss. 61.51-61.57, Florida Statutes, is created and  
26 entitled the "Collaborative Process Act."

27 Section 2. Section 61.51, Florida Statutes, is created to  
28 read:

29 61.51 Purpose.—The general purpose of this part is to

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30 create a uniform system of practice of the collaborative process  
31 in this state. It is the policy of this state to encourage the  
32 peaceful resolution of disputes and the early settlement of  
33 pending litigation through voluntary settlement procedures. The  
34 collaborative process is a unique nonadversarial method that  
35 preserves a working relationship between the parties and reduces  
36 the emotional and financial toll of litigation.

37 Section 3. Section 61.52, Florida Statutes, is created to  
38 read:

39 61.52 Definitions.—As used in this part, the term:

40 (1) "Collaborative attorney" means an attorney licensed to  
41 practice law in this state by the Florida Supreme Court who  
42 satisfies any training and other requirements mandated by the  
43 Florida Supreme Court which enable the attorney to represent  
44 clients in the collaborative process.

45 (2) "Collaborative communication" means any oral or written  
46 statement or any nonverbal act that is made following the  
47 execution by the parties of a collaborative participation  
48 agreement for the purpose of conducting, participating in,  
49 continuing, or otherwise furthering the collaborative process,  
50 until the time the collaborative process terminates or a final  
51 agreement is reached.

52 (3) "Collaborative participant" means a party,  
53 collaborative attorney, or nonparty participant in the  
54 collaborative process.

55 (4) "Collaborative participation agreement" means a written  
56 contract entered into pursuant to this act and the requirements  
57 adopted by the Florida Supreme Court pertaining to the  
58 collaborative process.

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59       (5) "Collaborative process" means a process in which  
60 parties, represented by collaborative attorneys, attempt to  
61 resolve a matter pursuant to a collaborative participation  
62 agreement without court intervention.

63       (6) "Court" means a tribunal of competent jurisdiction  
64 acting in an adjudicative capacity in which a judicial officer,  
65 after presentation of evidence, testimony, and legal argument,  
66 renders a binding decision affecting a party's interests in a  
67 matter.

68       (7) "Matter" means a dispute, transaction, claim, problem,  
69 or issue for resolution described in a collaborative  
70 participation agreement.

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

74       (9) "Party" means a person who enters into a collaborative  
75 participation agreement and whose consent is necessary to  
76 resolve the matter disputed in the agreement.

77       (10) "Proceeding" means a judicial, administrative, or  
78 other adjudicative process before a tribunal, including related  
79 prehearing and post-hearing motions, conferences, and discovery.

80       Section 4. Section 61.53, Florida Statutes, is created to  
81 read:

82       61.53 Commencement of collaborative process.—The  
83 collaborative process commences, whether or not a proceeding is  
84 pending, when the parties enter into a collaborative  
85 participation agreement.

86       Section 5. Section 61.54, Florida Statutes, is created to  
87 read:

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88       61.54 Tolling of statutes of limitations.—The execution of  
89 a collaborative participation agreement tolls all legal time  
90 periods applicable to legal rights and issues under law between  
91 the parties for the amount of time the collaborative  
92 participation agreement remains in effect. This section applies  
93 to all applicable statutes of limitations, filing deadlines, and  
94 other time limitations imposed by law.

95       Section 6. Section 61.55, Florida Statutes, is created to  
96 read:

97       61.55 Confidentiality; privilege; exceptions.—

98       (1) Except as provided in this section and unless the  
99 parties agree otherwise in writing, all collaborative  
100 communications are confidential. A collaborative participant may  
101 not disclose a collaborative communication to a person other  
102 than another collaborative participant. A violation of this  
103 section during the collaborative process may be sanctioned as  
104 agreed to by the parties, or a party may terminate the  
105 collaborative process. A violation of this section after the  
106 collaborative process terminates may be sanctioned as provided  
107 in s. 61.56.

108       (2) A party has a privilege to refuse to testify and to  
109 prevent any other person from testifying in a subsequent  
110 proceeding regarding collaborative communications.

111       (3) (a) Notwithstanding subsections (1) and (2),  
112 confidentiality or privilege does not attach to a signed written  
113 agreement reached during a collaborative process unless the  
114 parties agree otherwise, in writing, or to any collaborative  
115 communication that:

116       1. Is willfully used to plan a crime, commit or attempt to

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117 commit a crime, conceal ongoing criminal activity, or threaten  
118 violence;

119 2. Requires a mandatory report pursuant to chapter 39 or  
120 chapter 415 solely for the purpose of making the mandatory  
121 report to the entity requiring the report;

122 3. Is offered to report, prove, or disprove professional  
123 malpractice or misconduct occurring during the collaborative  
124 process, solely for the purpose of the professional malpractice,  
125 misconduct, or ethics proceeding; or

126 4. Is offered for the limited purpose of establishing or  
127 refuting enforceability of an agreement reached during the  
128 collaborative process.

129 (b) A collaborative communication that is disclosed under  
130 subparagraph (a)2., subparagraph (a)3., or subparagraph (a)4.  
131 remains confidential and is not discoverable or admissible for  
132 any other purpose unless otherwise authorized by this section.

133 (4) Information that is otherwise admissible or subject to  
134 discovery does not become inadmissible or protected from  
135 discovery by reason of its disclosure or use in a collaborative  
136 process.

137 (5) A party that discloses or makes a representation about  
138 a privileged collaborative communication waives that privilege,  
139 but only to the extent necessary for the other party to respond  
140 to the disclosure or representation.

141 Section 7. Section 61.56, Florida Statutes, is created to  
142 read:

143 61.56 Confidentiality; sanctions.—

144 (1) After the collaborative process terminates, a  
145 collaborative participant that knowingly and willfully discloses

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146 a collaborative communication in violation of s. 61.55 is  
147 subject to all of the following:

148 (a) Equitable relief.

149 (b) Compensatory damages.

150 (c) Attorney fees and costs incurred during the  
151 collaborative process.

152 (d) Reasonable attorney fees and costs incurred by the  
153 application for remedies under this section.

154 (2) Notwithstanding any other law, an application for  
155 relief filed under this section may not be commenced later than  
156 2 years after the date on which the party has a reasonable  
157 opportunity to discover the breach of confidentiality, but in no  
158 case more than 4 years after the date of the breach.

159 (3) A collaborative participant is not subject to a civil  
160 action under this section for lawful compliance with s. 119.07.

161 Section 8. Section 61.57, Florida Statutes, is created to  
162 read:

163 61.57 Disqualification.—If the collaborative process  
164 terminates without an agreement, the collaborative attorneys are  
165 disqualified from further representing the collaborative  
166 participants in the dissolution of marriage that is the subject  
167 of the collaborative process.

168 Section 9. This act shall take effect July 1, 2014.