

By the Committee on Children, Families, and Elder Affairs; and
Senator Lee

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1 A bill to be entitled
2 An act relating to family law; providing legislative
3 findings; creating Part III of ch. 61, F.S., entitled
4 the "Collaborative Law Act"; creating s. 61.55, F.S.;
5 declaring the purpose of the act; creating s. 61.56,
6 F.S.; defining terms; creating s. 61.57, F.S.;
7 declaring that a collaborative law process commences
8 when the parties enter into a collaborative law
9 participation agreement; providing that a tribunal may
10 not order a party to participate in a collaborative
11 law process over the party's objection; providing
12 conditions under which a collaborative law process is
13 concluded; creating s. 61.58, F.S.; providing for
14 confidentiality of communications made during the
15 collaborative law process; providing exceptions;
16 providing that the effective date of specified
17 provisions are contingent upon approval and
18 publication of Florida Supreme Court rules governing
19 specified subjects; providing effective dates.

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

22
23 Section 1. The Legislature finds and declares that the
24 purpose of this part is to:

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

28 (2) Encourage the peaceful resolution of disputes and the
29 early settlement of pending litigation through voluntary

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30 settlement procedures.

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

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

37 Section 3. Section 61.55, Florida Statutes, is created to
38 read:

39 61.55 Purpose.—The purpose of this part is to create a
40 uniform system of practice for the collaborative law process in
41 this state. It is the policy of this state to encourage the
42 peaceful resolution of disputes and the early settlement of
43 pending litigation through a voluntary settlement process. The
44 collaborative law process is a unique nonadversarial process
45 that preserves a working relationship between the parties and
46 reduces the emotional and financial toll of litigation.

47 Section 4. Section 61.56, Florida Statutes, is created to
48 read:

49 61.56 Definitions.—As used in this part, the term:

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

52 (2) "Collaborative law communication" means an oral or
53 written statement, including a statement made in a record, or
54 nonverbal conduct, which:

55 (a) Is made in the conduct of or in the course of
56 participating in, continuing, or reconvening a collaborative law
57 process; or

58 (b) Occurs after the parties sign a collaborative law

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59 participation agreement and before the collaborative law process
60 is concluded.

61 (3) "Collaborative law participation agreement" means an
62 agreement between persons to participate in a collaborative law
63 process.

64 (4) "Collaborative law process" means a process intended to
65 resolve a collaborative matter without intervention by a
66 tribunal in which persons sign a collaborative law participation
67 agreement and are represented by collaborative attorneys.

68 (5) "Collaborative matter" means a dispute, transaction,
69 claim, problem, or issue for resolution including a dispute,
70 claim, or issue in a proceeding that is described in a
71 collaborative law participation agreement and arises under
72 chapter 61 or chapter 742, including, but not limited to:

73 (a) Marriage, divorce, dissolution, annulment, and marital
74 property distribution.

75 (b) Child custody, visitation, parenting plans, and
76 parenting time.

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

78 (d) Parental relocation with a child.

79 (e) Parentage.

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

81 (6) "Law firm" means:

82 (a) An attorney or attorneys who practice law in a
83 partnership, professional corporation, sole proprietorship,
84 limited liability company, or association; or

85 (b) An attorney or attorneys employed in a legal services
86 organization, the legal department of a corporation or other
87 organization, or the legal department of a governmental entity,

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88 subdivision, agency, or instrumentality.

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

92 (8) "Party" means a person who signs a collaborative law
93 participation agreement and whose consent is necessary to
94 resolve a collaborative matter.

95 (9) "Person" means an individual; a corporation; a business
96 trust; estate; trust; partnership; a limited liability company;
97 association; joint venture; public corporation; a government or
98 governmental subdivision, agency, or instrumentality; or any
99 other legal or commercial entity.

100 (10) "Proceeding" means a judicial, administrative,
101 arbitral, or other adjudicative process before a tribunal,
102 including related prehearing and posthearing motions,
103 conferences, and discovery.

104 (11) "Prospective party" means a person who discusses with
105 a prospective collaborative attorney the possibility of signing
106 a collaborative law participation agreement.

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

110 (13) "Related to a collaborative matter" means involving
111 the same parties, transaction or occurrence, nucleus of
112 operative fact, dispute, claim, or issue as the collaborative
113 matter.

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

116 (a) To execute or adopt a tangible symbol; or

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117 (b) To attach to or logically associate with the record an
118 electronic symbol, sound, or process.

119 (15) "Tribunal" means a court, arbitrator, administrative
120 agency, or other body acting in an adjudicative capacity that,
121 after presentation of evidence or legal argument, has
122 jurisdiction to render a decision affecting a party's interests
123 in a matter.

124 Section 5. Section 61.57, Florida Statutes, is created to
125 read:

126 61.57 Beginning and concluding a collaborative law
127 process.—

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

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

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

134 (a) Resolution of a collaborative matter as evidenced by a
135 signed record;

136 (b) Resolution of a part of the collaborative matter,
137 evidenced by a signed record, in which the parties agree that
138 the remaining parts of the collaborative matter will not be
139 resolved in the process; or

140 (c) Termination of the process.

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

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

144 (b) Begins a proceeding related to a collaborative matter
145 without the agreement of all parties;

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146 (c) Initiates a pleading, motion, order to show cause, or
147 request for a conference with a tribunal in a pending proceeding
148 related to the collaborative matter;

149 (d) Requests that the proceeding be put on the tribunal's
150 active calendar in a pending proceeding related to the
151 collaborative matter;

152 (e) Takes similar action requiring notice to be sent to the
153 parties in a pending proceeding related to the collaborative
154 matter; or

155 (f) Discharges a collaborative attorney or a collaborative
156 attorney withdraws from further representation of a party,
157 except as otherwise provided in subsection (7).

158 (5) A party's collaborative attorney shall give prompt
159 notice to all other parties in a record of a discharge or
160 withdrawal.

161 (6) A party may terminate a collaborative law process with
162 or without cause.

163 (7) Notwithstanding the discharge or withdrawal of a
164 collaborative attorney, a collaborative law process continues
165 if, not later than 30 days after the date that the notice of the
166 discharge or withdrawal of a collaborative attorney required by
167 subsection (5) is sent to the parties:

168 (a) The unrepresented party engages a successor
169 collaborative attorney;

170 (b) The parties consent to continue the collaborative law
171 process by reaffirming the collaborative law participation
172 agreement in a signed record;

173 (c) The collaborative law participation agreement is
174 amended to identify the successor collaborative attorney in a

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175 signed record; and

176 (d) The successor collaborative attorney confirms the
177 attorney's representation of a party in the collaborative law
178 participation agreement in a signed record.

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

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

185 Section 6. Section 61.58, Florida Statutes, is created to
186 read:

187 61.58 Confidentiality of a collaborative law
188 communication.—Except as provided in this section, a
189 collaborative law communication is confidential to the extent
190 agreed by the parties in a signed record or as otherwise
191 provided by law.

192 (1) PRIVILEGE AGAINST DISCLOSURE FOR COLLABORATIVE LAW
193 COMMUNICATION; ADMISSIBILITY; DISCOVERY.—

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

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

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

200 2. A nonparty participant may refuse to disclose, and may
201 prevent another person from disclosing, a collaborative law
202 communication of a nonparty participant.

203 (c) Evidence or information that is otherwise admissible or

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204 subject to discovery does not become inadmissible or protected
205 from discovery solely because of its disclosure or use in a
206 collaborative law process.

207 (2) WAIVER AND PRECLUSION OF PRIVILEGE.—

208 (a) A privilege under subsection (1) may be waived orally
209 or in a record during a proceeding if it is expressly waived by
210 all parties and, in the case of the privilege of a nonparty
211 participant, if it is expressly waived by the nonparty
212 participant.

213 (b) A person who makes a disclosure or representation about
214 a collaborative law communication that prejudices another person
215 in a proceeding may not assert a privilege under subsection (1).
216 This preclusion applies only to the extent necessary for the
217 person prejudiced to respond to the disclosure or
218 representation.

219 (3) LIMITS OF PRIVILEGE.—

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

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

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

227 3. Intentionally used to plan a crime, commit or attempt to
228 commit a crime, or conceal an ongoing crime or ongoing criminal
229 activity; or

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

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233 (b) The privilege under subsection (1) for a collaborative
234 law communication does not apply to the extent that such
235 communication is:

236 1. Sought or offered to prove or disprove a claim or
237 complaint of professional misconduct or malpractice arising from
238 or related to a collaborative law process; or

239 2. Sought or offered to prove or disprove abuse, neglect,
240 abandonment, or exploitation of a child or adult unless the
241 Department of Children and Families is a party to or otherwise
242 participates in the process.

243 (c) A privilege under subsection (1) does not apply if a
244 tribunal finds, after a hearing in camera, that the party
245 seeking discovery or the proponent of the evidence has shown
246 that the evidence is not otherwise available, the need for the
247 evidence substantially outweighs the interest in protecting
248 confidentiality, and the collaborative law communication is
249 sought or offered in:

250 1. A court proceeding involving a felony; or

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

254 (d) If a collaborative law communication is subject to an
255 exception under paragraph (b) or paragraph (c), only the part of
256 the communication necessary for the application of the exception
257 may be disclosed or admitted.

258 (e) Disclosure or admission of evidence excepted from the
259 privilege under paragraph (b) or paragraph (c) does not make the
260 evidence or any other collaborative law communication
261 discoverable or admissible for any other purpose.

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262 (f) The privilege under subsection (1) does not apply if
263 the parties agree in advance in a signed record, or if a record
264 of a proceeding reflects agreement by the parties, that all or
265 part of a collaborative law process is not privileged. This
266 paragraph does not apply to a collaborative law communication
267 made by a person who did not receive actual notice of the
268 collaborative law participation agreement before the
269 communication was made.

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

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

274 (a) The mandatory disqualification of a collaborative
275 attorney, and attorneys in the same law firm, from appearing
276 before a tribunal to represent a party to a collaborative law
277 process in a proceeding related to the collaborative matter.

278 (b) Limited exceptions to mandatory disqualification to
279 seek emergency orders for the protection of the health, safety,
280 welfare, or interest of a party until such time as a successor
281 collaborative attorney is available and for continued
282 representation of government entities, subject to certain
283 conditions.

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

285 (a) Required elements of a collaborative law participation
286 agreement defining the commencement, procedures, and termination
287 of the collaborative law process.

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

290 Section 8. Except as otherwise expressly provided in this

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291 act, this act shall take effect July 1, 2014.