

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative La Rosa offered the following:

Amendment (with title amendment)

5 Remove everything after the enacting clause and insert:

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

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

11 (2) Encourage the peaceful resolution of disputes and the
12 early settlement of pending litigation through voluntary
13 settlement procedures.

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

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17 Section 2. Sections 44.51-44.54 may be known by the
18 popular name the "Collaborative Law Act."

19 Section 3. Section 44.51, Florida Statutes, is created to
20 read:

21 44.51 Purpose.—The general purpose of this part is to
22 create a uniform system of practice for the collaborative law
23 process in this state. It is the policy of this state to
24 encourage the peaceful resolution of disputes and the early
25 settlement of pending litigation through a voluntary settlement
26 process. The collaborative law process is a unique
27 nonadversarial process that preserves a working relationship
28 between the parties and reduces the emotional and financial toll
29 of litigation.

30 Section 4. Section 44.52, Florida Statutes, is created to
31 read:

32 44.52 Definitions.—As used in this part, the term:

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

35 (2) "Collaborative law communication" means an oral or
36 written statement, whether in a record, verbal, or nonverbal,
37 which:

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

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

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

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

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

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

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

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

61 (d) Parental relocation with a child.

62 (e) Parentage.

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

64 (6) "Law firm" means:

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

68 (b) An attorney or attorneys employed in a legal services
69 organization, the legal department of a corporation or other
70 organization, or the legal department of a governmental entity,
71 subdivision, agency, or instrumentality.

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

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

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

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

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

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

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

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

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

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

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

107 Section 5. Section 44.53, Florida Statutes, is created to
108 read:

109 44.53 Beginning and concluding a collaborative law
110 process.—

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

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

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- 116 (3) A collaborative law process is concluded by a:
117 (a) Resolution of a collaborative matter as evidenced by a
118 signed record;
119 (b) Resolution of a part of the collaborative matter,
120 evidenced by a signed record, in which the parties agree that
121 the remaining parts of the matter will not be resolved in the
122 process; or
123 (c) Termination of the process.
124 (4) A collaborative law process terminates when a party:
125 (a) Gives notice to other parties in a record that the
126 process is ended;
127 (b) Begins a proceeding related to a collaborative matter
128 without the agreement of all parties;
129 (c) Initiates a pleading, motion, order to show cause, or
130 request for a conference with a tribunal in a pending proceeding
131 related to the matter;
132 (d) Requests that the proceeding be put on the tribunal's
133 active calendar in a pending proceeding related to the matter;
134 (e) Takes similar action requiring notice to be sent to
135 the parties in a pending proceeding related to the matter; or
136 (f) Discharges a collaborative lawyer or a collaborative
137 lawyer withdraws from further representation of a party, except
138 as otherwise provided by subsection (7).
139 (5) A party's collaborative lawyer shall give prompt
140 notice to all other parties in a record of a discharge or
141 withdrawal.

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

144 (7) Notwithstanding the discharge or withdrawal of a
145 collaborative lawyer, a collaborative law process continues, if
146 not later than 30 days after the date that the notice of the
147 discharge or withdrawal of a collaborative lawyer required by
148 subsection (5) is sent to the parties:

149 (a) The unrepresented party engages a successor
150 collaborative lawyer;

151 (b) The parties consent to continue the process by
152 reaffirming the collaborative law participation agreement in a
153 signed record;

154 (c) The agreement is amended to identify the successor
155 collaborative lawyer in a signed record; and

156 (d) The successor collaborative lawyer confirms the
157 lawyer's representation of a party in the collaborative in a
158 signed record.

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

163 (9) A collaborative law participation agreement may
164 provide additional methods of concluding a collaborative law
165 process.

166 Section 6. Section 44.54, Florida Statutes, is created to
167 read:

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168 44.54 Confidentiality of a collaborative law
169 communication.—Except as provided in this section, a
170 collaborative law communication is confidential to the extent
171 agreed by the parties in a signed record or as otherwise
172 provided by law.

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

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

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

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

181 2. A nonparty participant may refuse to disclose, and may
182 prevent any other person from disclosing, a collaborative law
183 communication of the nonparty participant.

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

188 (2) WAIVER AND PRECLUSION OF PRIVILEGE.—

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

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

200 (3) LIMITS OF PRIVILEGE.—

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

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

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

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

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

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

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

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

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

231 1. A court proceeding involving a felony; or
232 2. A proceeding seeking rescission or reformation of a
233 contract arising out of the collaborative law process or in
234 which a defense is asserted to avoid liability on the contract.

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

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

243 (f) The privilege under subsection (1) does not apply if
244 the parties agree in advance in a signed record, or if a record
245 of a proceeding reflects agreement by the parties, that all or

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246 part of a collaborative law process is not privileged. This
247 subsection does not apply to a collaborative law communication
248 made by a person who did not receive actual notice of the
249 agreement before the communication was made.

250 Section 7. Sections 44.51-44.54, Florida Statutes, as
251 created by this act, shall not take effect until 30 days after
252 approval and publication by the Supreme Court of:

253 (1) Rules of Professional Conduct, governing:

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

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

263 (2) Family Law Rules of Procedure, governing:

264 (a) Required elements of a collaborative law participation
265 agreement defining the commencement, procedures, and termination
266 of the collaborative law process.

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

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

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

Remove everything before the enacting clause and insert:
An act relating to family law; creating the "Collaborative Law Act"; creating s. 44.51, F.S.; declaring the purpose of the act; creating s. 44.52, F.S.; defining terms; creating s. 44.53, F.S.; declaring that a collaborative process commences when the parties enter into a collaborative participation agreement; providing that a tribunal may not order a party to participate in a collaborative law process over the party's objection; providing conditions under which a collaborative law process is concluded; creating s. 44.54, F.S.; providing for confidentiality of communications made during the collaborative law process; providing exceptions; providing that the effective date of specified provisions are contingent upon approval and publication of court rules governing specified subjects; providing effective dates.