

A bill to be entitled

An act relating to the Florida Uniform Collaborative Law Act; providing legislative findings and purpose; creating s. 90.5022, F.S.; providing a short title; providing definitions; providing for confidentiality of communications made during the collaborative process and related privilege against disclosure; 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.

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

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

(1) Create a uniform system of practice for the collaborative process in proceedings under chapter 61 and chapter 742, Florida Statutes.

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

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

Section 2. Section 90.5022, Florida Statutes, is created

27 to read:

28 90.5022 Collaborative law communications privilege.-

29 (1) SHORT TITLE.-This section may be cited as the "Florida
 30 Uniform Collaborative Law Act."

31 (2) DEFINITIONS.-As used in this section, the term:

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

34 (b) "Collaborative law communication" means a statement,
 35 whether oral or in a record, or verbal or nonverbal, that:

36 1. Is made to conduct, participate in, continue, or
 37 reconvene a collaborative law process.

38 2. Occurs after the parties sign a collaborative law
 39 participation agreement and before the collaborative law process
 40 is concluded.

41 (c) "Collaborative law participation agreement" means an
 42 agreement by persons to participate in a collaborative law
 43 process.

44 (d) "Collaborative law process" means a procedure intended
 45 to resolve a collaborative matter without intervention by a
 46 tribunal in which persons:

47 1. Sign a collaborative law participation agreement.

48 2. Are represented by collaborative attorneys.

49 (e) "Collaborative matter" means a dispute, transaction,
 50 claim, problem, or issue for resolution including a dispute,
 51 claim, or issue in a proceeding that is described in a
 52 collaborative law participation agreement and arises under

53 chapter 61 or chapter 742, including, but not limited to:
 54 1. Marriage, divorce, dissolution, annulment, and marital
 55 property distribution.
 56 2. Child custody, visitation, parenting plans, and
 57 parenting time.
 58 3. Alimony, maintenance, and child support.
 59 4. Parental relocation with a child.
 60 5. Parentage.
 61 6. Premarital, marital, and postmarital agreements.
 62 (f) "Law firm" means:
 63 1. Attorneys who practice law together in a partnership,
 64 professional corporation, sole proprietorship, limited liability
 65 company, or association; or
 66 2. Attorneys employed in a legal services organization,
 67 the legal department of a corporation or other organization, or
 68 the legal department of a government or governmental
 69 subdivision, agency, or instrumentality.
 70 (g) "Nonparty participant" means a person, other than a
 71 party and the party's collaborative attorney, who participates
 72 in a collaborative law process.
 73 (h) "Party" means a person who signs a collaborative law
 74 participation agreement and whose consent is necessary to
 75 resolve a collaborative matter.
 76 (i) "Person" means an individual; corporation; business
 77 trust; estate; trust; partnership; limited liability company;
 78 association; joint venture; public corporation; government or

79 governmental subdivision, agency, or instrumentality; or any
 80 other legal or commercial entity.

81 (j) "Proceeding" means:

82 1. A judicial, administrative, arbitral, or other
 83 adjudicative process before a tribunal, including related
 84 prehearing and posthearing motions, conferences, and discovery;
 85 or

86 2. A legislative hearing or similar process.

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

90 (l) "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 (m) "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 (n) "Sign" means, with present intent to authenticate or
 98 adopt a record:

99 1. To execute or adopt a tangible symbol; or

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

102 (o) "Tribunal" means:

103 1. A court, arbitrator, administrative agency, or other
 104 body acting in an adjudicative capacity that, after presentation

105 of evidence or legal argument, has jurisdiction to render a
 106 decision affecting a party's interests in a matter; or

107 2. A legislative body conducting a hearing or similar
 108 process.

109 (3) CONFIDENTIALITY OF COLLABORATIVE LAW COMMUNICATION.—A
 110 collaborative law communication is confidential to the extent
 111 agreed by the parties in a signed record or as provided by law
 112 of this state other than this section.

113 (4) PRIVILEGE AGAINST DISCLOSURE FOR COLLABORATIVE LAW
 114 COMMUNICATION; ADMISSIBILITY; DISCOVERY.—

115 (a) Subject to subsections (5) and (6), a collaborative
 116 law communication is privileged under paragraph (b), is not
 117 subject to discovery, and is not admissible in evidence.

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

119 1. A party may refuse to disclose, and may prevent any
 120 other person from disclosing, a collaborative law communication.

121 2. A nonparty participant may refuse to disclose, and may
 122 prevent any other person from disclosing, a collaborative law
 123 communication of the nonparty participant.

124 (c) Evidence or information that is otherwise admissible
 125 or subject to discovery does not become inadmissible or
 126 protected from discovery solely because of its disclosure or use
 127 in a collaborative law process.

128 (5) WAIVER AND PRECLUSION OF PRIVILEGE.—

129 (a) A privilege under subsection (4) may be waived in a
 130 record or orally during a proceeding if it is expressly waived

131 by all parties and, in the case of the privilege of a nonparty
 132 participant, it is also expressly waived by the nonparty
 133 participant.

134 (b) A person who makes a disclosure or representation
 135 about a collaborative law communication that prejudices another
 136 person in a proceeding may not assert a privilege under
 137 subsection (4). This preclusion applies only to the extent
 138 necessary for the person prejudiced to respond to the disclosure
 139 or representation.

140 (6) LIMITS OF PRIVILEGE.—

141 (a) A privilege under subsection (4) does not apply for a
 142 collaborative law communication that is:

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

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

148 3. Intentionally used to plan a crime, commit or attempt
 149 to commit a crime, or conceal an ongoing crime or ongoing
 150 criminal activity; or

151 4. In an agreement resulting from the collaborative law
 152 process, evidenced by a record signed by all parties to the
 153 agreement.

154 (b) The privilege under subsection (4) for a collaborative
 155 law communication does not apply to the extent that a
 156 communication is:

157 1. Sought or offered to prove or disprove a claim or
158 complaint of professional misconduct or malpractice arising from
159 or related to a collaborative law process; or

160 2. Sought or offered to prove or disprove abuse, neglect,
161 abandonment, or exploitation of a child or adult, unless the
162 Department of Children and Families is a party to or otherwise
163 participates in the process.

164 (c) A privilege under subsection (4) does not apply if a
165 tribunal finds, after a hearing in camera, that the party
166 seeking discovery or the proponent of the evidence has shown
167 that the evidence is not otherwise available, the need for the
168 evidence substantially outweighs the interest in protecting
169 confidentiality, and the collaborative law communication is
170 sought or offered in:

171 1. A court proceeding involving a felony; or

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

175 (d) If a collaborative law communication is subject to an
176 exception under paragraph (b) or paragraph (c), only the part of
177 the communication necessary for the application of the exception
178 may be disclosed or admitted.

179 (e) Disclosure or admission of evidence excepted from the
180 privilege under paragraph (b) or paragraph (c) does not make the
181 evidence or any other collaborative law communication
182 discoverable or admissible for any other purpose.

183 (f) A privilege under subsection (4) does not apply if the
 184 parties agree in advance in a signed record, or if a record of a
 185 proceeding reflects agreement by the parties, that all or part
 186 of a collaborative law process is not privileged. This
 187 subsection does not apply to a collaborative law communication
 188 made by a person who did not receive actual notice of the
 189 agreement before the communication was made.

190 (7) UNIFORMITY OF APPLICATION AND CONSTRUCTION.—In
 191 applying and construing this uniform act, consideration must be
 192 given to the need to promote uniformity of the law with respect
 193 to its subject matter among states that enact it.

194 (8) RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
 195 NATIONAL COMMERCE ACT.—This section modifies, limits, and
 196 supersedes the federal Electronic Signatures in Global and
 197 National Commerce Act, 15 U.S.C. ss. 7001 et seq. (2009), but
 198 does not modify, limit, or supersede s. 101(c) of that act, 15
 199 U.S.C. s. 7001(c), or authorize electronic delivery of any of
 200 the notices described in s. 103(b) of that act, 15 U.S.C. s.
 201 7003(b).

202 Section 3. Subsections (4), (5), and (6) of s. 90.5022,
 203 Florida Statutes, as created by this act, establishing a
 204 privilege for collaborative communications, shall not take
 205 effect until 30 days after approval and publication by the
 206 Supreme Court of:

207 (1) Rules of Professional Conduct, governing:

208 (a) Required elements of a collaborative law participation

209 agreement.

210 (b) The mandatory disqualification of a collaborative
211 attorney, and attorneys in the same firm, from appearing before
212 a tribunal to represent a party to a collaborative law process
213 in a proceeding related to the collaborative law matter.

214 (c) Limited exceptions to mandatory disqualification to
215 seek emergency orders for the protection of the health, safety,
216 welfare, or interest of a party until such time as a successor
217 attorney is available and for continued representation of
218 government entities, subject to certain conditions.

219 (d) A mandate for timely, full, candid, and informal
220 disclosure of information related to the collaborative matter
221 without formal discovery and prompt update of materially changed
222 information.

223 (e) Required assessment of the appropriateness of
224 collaborative law under the applicable facts and client
225 disclosure concerning the risks and benefits of collaborative
226 law, including, in particular, the effect of mandatory
227 disqualification.

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

229 (a) The commencement, conclusion, and termination of the
230 collaborative law process.

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

233 (c) The issuance of emergency orders by a court.

234 (d) Approval of collaborative law agreements by a court.

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235 | (e) Procedures for identifying and addressing violent or
236 | coercive relationships and, where appropriate, not using
237 | collaborative law in those contexts.

238 | Section 4. Except as otherwise expressly provided in this
239 | act, this act shall take effect July 1, 2014.