

A bill to be entitled

An act relating to family law; providing legislative findings and intent; providing a short title; providing a directive to the Division of Law Revision and Information; 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.; specifying when a collaborative process commences; 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 certain provisions of the act are contingent upon approval and publication of court rules governing specified subjects; amending ss. 39.4075, 44.1011, 44.102, 44.106, 718.401, and 984.18, F.S.; conforming provisions to change made by the act; 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 of a collaborative

27 law process for proceedings under chapters 61 and 742, Florida
 28 Statutes.

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

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

35 Section 2. Sections 44.51-44.54, Florida Statutes, may be
 36 cited as the "Collaborative Law Act."

37 Section 3. The Division of Law Revision and Information is
 38 directed to redesignate chapter 44, Florida Statutes, as
 39 "Alternatives to Judicial Action" and to divide the chapter into
 40 part I, consisting of ss. 44.1011-44.406, Florida Statutes,
 41 entitled "Arbitration and Mediation" and part II, consisting of
 42 ss. 44.51-44.54, Florida Statutes, entitled "Collaborative Law."

43 Section 4. Section 44.51, Florida Statutes, is created to
 44 read:

45 44.51 Purpose.—The general purpose of this part is to
 46 create a uniform system of practice for the collaborative law
 47 process in this state. It is the policy of this state to
 48 encourage the peaceful resolution of disputes and the early
 49 settlement of pending litigation through a voluntary settlement
 50 process. The collaborative law process is a unique
 51 nonadversarial process that preserves a working relationship
 52 between the parties and reduces the emotional and financial toll

53 of litigation.

54 Section 5. Section 44.52, Florida Statutes, is created to
55 read:

56 44.52 Definitions.—As used in this part, the term:

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

59 (2) "Collaborative law communication" means an oral or
60 written statement, whether in a record, verbal, or nonverbal,
61 which:

62 (a) Is made in the conduct of or in the course of
63 participating in, continuing, or reconvening a collaborative law
64 process.

65 (b) Occurs after the parties sign a collaborative law
66 participation agreement and before the collaborative law process
67 is concluded.

68 (3) "Collaborative law participation agreement" means an
69 agreement by persons to participate in a collaborative law
70 process.

71 (4) "Collaborative law process" means a process intended
72 to resolve a collaborative matter without intervention by a
73 tribunal in which persons sign a collaborative law participation
74 agreement and are represented by collaborative attorneys.

75 (5) "Collaborative matter" means a dispute, transaction,
76 claim, problem, or issue for resolution including a dispute,
77 claim, or issue in a proceeding that is described in a
78 collaborative law participation agreement and arises under

79 chapter 61 or chapter 742, including, but not limited to:

80 (a) Marriage, divorce, dissolution, annulment, and marital
 81 property distribution.

82 (b) Child custody, visitation, parenting plans, and
 83 parenting time.

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

85 (d) Parental relocation with a child.

86 (e) Parentage.

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

88 (6) "Law firm" means:

89 (a) An attorney or attorneys who practice law in a
 90 partnership, professional corporation, sole proprietorship,
 91 limited liability company, or association; or

92 (b) An attorney or attorneys employed in a legal services
 93 organization, the legal department of a corporation or other
 94 organization, or the legal department of a governmental entity,
 95 subdivision, agency, or instrumentality.

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

99 (8) "Party" means a person who signs a collaborative law
 100 participation agreement and whose consent is necessary to
 101 resolve a collaborative matter.

102 (9) "Person" means an individual; corporation; business
 103 trust; estate; trust; partnership; limited liability company;
 104 association; joint venture; public corporation; government or

105 governmental subdivision, agency, or instrumentality; or any
 106 other legal or commercial entity.

107 (10) "Proceeding" means a judicial, administrative,
 108 arbitral, or other adjudicative process before a tribunal,
 109 including related prehearing and posthearing motions,
 110 conferences, and discovery.

111 (11) "Prospective party" means a person who discusses with
 112 a prospective collaborative attorney the possibility of signing
 113 a collaborative law participation agreement.

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

117 (13) "Related to a collaborative matter" means involving
 118 the same parties, transaction or occurrence, nucleus of
 119 operative fact, dispute, claim, or issue as the collaborative
 120 matter.

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

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

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

126 (15) "Tribunal" means a court, arbitrator, administrative
 127 agency, or other body acting in an adjudicative capacity that,
 128 after presentation of evidence or legal argument, has
 129 jurisdiction to render a decision affecting a party's interests
 130 in a matter.

131 Section 6. Section 44.53, Florida Statutes, is created to
132 read:

133 44.53 Beginning and concluding a collaborative law
134 process.—

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

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

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

141 (a) Resolution of a collaborative matter as evidenced by a
142 signed record;

143 (b) Resolution of a part of the collaborative matter,
144 evidenced by a signed record, in which the parties agree that
145 the remaining parts of the matter will not be resolved in the
146 process; or

147 (c) Termination of the process.

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

149 (a) Gives notice to other parties in a record that the
150 process is ended;

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

153 (c) Initiates a pleading, motion, order to show cause, or
154 request for a conference with a tribunal in a pending proceeding
155 related to the matter;

156 (d) Requests that the proceeding be put on the tribunal's

157 active calendar in a pending proceeding related to the matter;

158 (e) Takes similar action requiring notice to be sent to
159 the parties in a pending proceeding related to the matter; or

160 (f) Discharges a collaborative lawyer or a collaborative
161 lawyer withdraws from further representation of a party, except
162 as otherwise provided by subsection (7).

163 (5) A party's collaborative lawyer shall give prompt
164 notice to all other parties in a record of a discharge or
165 withdrawal.

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

168 (7) Notwithstanding the discharge or withdrawal of a
169 collaborative lawyer, a collaborative law process continues if,
170 within 30 days after the date that the notice of the discharge
171 or withdrawal of a collaborative lawyer required by subsection
172 (5) is sent to the parties:

173 (a) The unrepresented party engages a successor
174 collaborative lawyer;

175 (b) The parties consent in a signed record to continue the
176 process by reaffirming the collaborative law participation
177 agreement;

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

180 (d) The successor collaborative lawyer confirms in a
181 signed record the lawyer's representation of a party in the
182 collaborative.

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

187 (9) A collaborative law participation agreement may
 188 provide additional methods of concluding a collaborative law
 189 process.

190 Section 7. Section 44.54, Florida Statutes, is created to
 191 read:

192 44.54 Confidentiality of a collaborative law
 193 communication.—Except as provided in this section, a
 194 collaborative law communication is confidential to the extent
 195 agreed by the parties in a signed record or as otherwise
 196 provided by law.

197 (1) PRIVILEGE AGAINST DISCLOSURE FOR COLLABORATIVE LAW
 198 COMMUNICATION; ADMISSIBILITY; DISCOVERY.—

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

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

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

205 2. A nonparty participant may refuse to disclose, and may
 206 prevent any other person from disclosing, a collaborative law
 207 communication of the nonparty participant.

208 (c) Evidence or information that is otherwise admissible

209 or subject to discovery does not become inadmissible or
 210 protected from discovery solely because of its disclosure or use
 211 in a collaborative law process.

212 (2) WAIVER AND PRECLUSION OF PRIVILEGE.—

213 (a) A privilege under subsection (1) may be waived in a
 214 record or orally during a proceeding if it is expressly waived
 215 by all parties and, in the case of the privilege of a nonparty
 216 participant, if it is also expressly waived by the nonparty
 217 participant.

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

224 (3) LIMITS OF PRIVILEGE.—

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

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

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

232 3. Intentionally used to plan a crime, commit or attempt
 233 to commit a crime, or conceal an ongoing crime or ongoing
 234 criminal activity; or

235 4. In an agreement resulting from the collaborative law
 236 process, evidenced by a record signed by all parties to the
 237 agreement.

238 (b) The privilege under subsection (1) for a collaborative
 239 law communication does not apply to the extent that a
 240 communication is:

241 1. Sought or offered to prove or disprove a claim or
 242 complaint of professional misconduct or malpractice arising from
 243 or related to a collaborative law process; or

244 2. Sought or offered to prove or disprove abuse, neglect,
 245 abandonment, or exploitation of a child or adult, unless the
 246 Department of Children and Families is a party to or otherwise
 247 participates in the process.

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

255 1. A court proceeding involving a felony; or

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

259 (d) If a collaborative law communication is subject to an
 260 exception under paragraph (b) or paragraph (c), only the part of

261 the communication necessary for the application of the exception
 262 may be disclosed or admitted.

263 (e) Disclosure or admission of evidence excepted from the
 264 privilege under paragraph (b) or paragraph (c) does not make the
 265 evidence or any other collaborative law communication
 266 discoverable or admissible for any other purpose.

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

274 Section 8. Sections 44.51-44.54, Florida Statutes, as
 275 created by this act, shall not take effect until 30 days after
 276 approval and publication by the Supreme Court of:

277 (1) Rules of Professional Conduct, governing:

278 (a) The mandatory disqualification of a collaborative
 279 attorney, and attorneys in the same firm, from appearing before
 280 a tribunal to represent a party to a collaborative law process
 281 in a proceeding related to the collaborative law matter.

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

287 (2) Family Law Rules of Procedure, governing:
 288 (a) Required elements of a collaborative law participation
 289 agreement defining the commencement, procedures, and termination
 290 of the collaborative law process.

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

293 Section 9. Subsection (1) of section 39.4075, Florida
 294 Statutes, is amended to read:

295 39.4075 Referral of a dependency case to mediation.—

296 (1) At any stage in a dependency proceeding, any party may
 297 request the court to refer the parties to mediation in
 298 accordance with part I of chapter 44 and rules and procedures
 299 developed by the Supreme Court.

300 Section 10. Section 44.1011, Florida Statutes, is amended
 301 to read:

302 44.1011 Definitions.—As used in this part ~~chapter~~:

303 (1) "Arbitration" means a process whereby a neutral third
 304 person or panel, called an arbitrator or arbitration panel,
 305 considers the facts and arguments presented by the parties and
 306 renders a decision which may be binding or nonbinding as
 307 provided in this part ~~chapter~~.

308 (2) "Mediation" means a process whereby a neutral third
 309 person called a mediator acts to encourage and facilitate the
 310 resolution of a dispute between two or more parties. It is an
 311 informal and nonadversarial process with the objective of
 312 helping the disputing parties reach a mutually acceptable and

313 voluntary agreement. In mediation, decisionmaking authority
314 rests with the parties. The role of the mediator includes, but
315 is not limited to, assisting the parties in identifying issues,
316 fostering joint problem solving, and exploring settlement
317 alternatives. "Mediation" includes:

318 (a) "Appellate court mediation," which means mediation
319 that occurs during the pendency of an appeal of a civil case.

320 (b) "Circuit court mediation," which means mediation of
321 civil cases, other than family matters, in circuit court. If a
322 party is represented by counsel, the counsel of record must
323 appear unless stipulated to by the parties or otherwise ordered
324 by the court.

325 (c) "County court mediation," which means mediation of
326 civil cases within the jurisdiction of county courts, including
327 small claims. Negotiations in county court mediation are
328 primarily conducted by the parties. Counsel for each party may
329 participate. However, presence of counsel is not required.

330 (d) "Family mediation" which means mediation of family
331 matters, including married and unmarried persons, before and
332 after judgments involving dissolution of marriage; property
333 division; shared or sole parental responsibility; or child
334 support, custody, and visitation involving emotional or
335 financial considerations not usually present in other circuit
336 civil cases. Negotiations in family mediation are primarily
337 conducted by the parties. Counsel for each party may attend the
338 mediation conference and privately communicate with their

339 clients. However, presence of counsel is not required, and, in
 340 the discretion of the mediator, and with the agreement of the
 341 parties, mediation may proceed in the absence of counsel unless
 342 otherwise ordered by the court.

343 (e) "Dependency or in need of services mediation," which
 344 means mediation of dependency, child in need of services, or
 345 family in need of services matters. Negotiations in dependency
 346 or in need of services mediation are primarily conducted by the
 347 parties. Counsel for each party may attend the mediation
 348 conference and privately communicate with their clients.
 349 However, presence of counsel is not required and, in the
 350 discretion of the mediator and with the agreement of the
 351 parties, mediation may proceed in the absence of counsel unless
 352 otherwise ordered by the court.

353 Section 11. Paragraph (a) of subsection (2) of section
 354 44.102, Florida Statutes, is amended to read:

355 44.102 Court-ordered mediation.—

356 (2) A court, under rules adopted by the Supreme Court:

357 (a) Must, upon request of one party, refer to mediation
 358 any filed civil action for monetary damages, provided the
 359 requesting party is willing and able to pay the costs of the
 360 mediation or the costs can be equitably divided between the
 361 parties, unless:

362 1. The action is a landlord and tenant dispute that does
 363 not include a claim for personal injury.

364 2. The action is filed for the purpose of collecting a

365 debt.

366 3. The action is a claim of medical malpractice.

367 4. The action is governed by the Florida Small Claims
368 Rules.

369 5. The court determines that the action is proper for
370 referral to nonbinding arbitration under this part ~~chapter~~.

371 6. The parties have agreed to binding arbitration.

372 7. The parties have agreed to an expedited trial pursuant
373 to s. 45.075.

374 8. The parties have agreed to voluntary trial resolution
375 pursuant to s. 44.104.

376 Section 12. Section 44.106, Florida Statutes, is amended
377 to read:

378 44.106 Standards and procedures for mediators and
379 arbitrators; fees.—The Supreme Court shall establish minimum
380 standards and procedures for qualifications, certification,
381 professional conduct, discipline, and training for mediators and
382 arbitrators who are appointed pursuant to this part ~~chapter~~. The
383 Supreme Court is authorized to set fees to be charged to
384 applicants for certification and renewal of certification. The
385 revenues generated from these fees shall be used to offset the
386 costs of administration of the certification process. The
387 Supreme Court may appoint or employ such personnel as are
388 necessary to assist the court in exercising its powers and
389 performing its duties under this part ~~chapter~~.

390 Section 13. Paragraph (f) of subsection (1) of section

391 718.401, Florida Statutes, is amended to read:

392 718.401 Leaseholds.—

393 (1) A condominium may be created on lands held under lease
394 or may include recreational facilities or other common elements
395 or commonly used facilities on a leasehold if, on the date the
396 first unit is conveyed by the developer to a bona fide
397 purchaser, the lease has an unexpired term of at least 50 years.
398 However, if the condominium constitutes a nonresidential
399 condominium or commercial condominium, or a timeshare
400 condominium created pursuant to chapter 721, the lease shall
401 have an unexpired term of at least 30 years. If rent under the
402 lease is payable by the association or by the unit owners, the
403 lease shall include the following requirements:

404 (f)1. A lease of recreational or other commonly used
405 facilities entered into by the association or unit owners prior
406 to the time when the control of the association is turned over
407 to unit owners other than the developer shall grant to the
408 lessee an option to purchase the leased property, payable in
409 cash, on any anniversary date of the beginning of the lease term
410 after the 10th anniversary, at a price then determined by
411 agreement. If there is no agreement as to the price, then the
412 price shall be determined by arbitration conducted pursuant to
413 part I of chapter 44 or chapter 682. This paragraph shall be
414 applied to contracts entered into on, before, or after January
415 1, 1977, regardless of the duration of the lease.

416 2. If the lessor wishes to sell his or her interest and

417 has received a bona fide offer to purchase it, the lessor shall
418 send the association and each unit owner a copy of the executed
419 offer. For 90 days following receipt of the offer by the
420 association or unit owners, the association or unit owners have
421 the option to purchase the interest on the terms and conditions
422 in the offer. The option shall be exercised, if at all, by
423 notice in writing given to the lessor within the 90-day period.
424 If the association or unit owners do not exercise the option,
425 the lessor shall have the right, for a period of 60 days after
426 the 90-day period has expired, to complete the transaction
427 described in the offer to purchase. If for any reason such
428 transaction is not concluded within the 60 days, the offer shall
429 have been abandoned, and the provisions of this subsection shall
430 be reimposed.

431 3. The option shall be exercised upon approval by owners
432 of two-thirds of the units served by the leased property.

433 4. The provisions of this paragraph do not apply to a
434 nonresidential condominium and do not apply if the lessor is the
435 Government of the United States or this state or any political
436 subdivision thereof or, in the case of an underlying land lease,
437 a person or entity which is not the developer or directly or
438 indirectly owned or controlled by the developer and did not
439 obtain, directly or indirectly, ownership of the leased property
440 from the developer.

441 Section 14. Subsection (1) of section 984.18, Florida
442 Statutes, is amended to read:

CS/HB 1397

2014

443 984.18 Referral of child-in-need-of-services cases to
444 mediation.—

445 (1) At any stage in a child-in-need-of-services
446 proceeding, the case staffing committee or any party may request
447 the court to refer the parties to mediation in accordance with
448 part I of chapter 44 and rules and procedures developed by the
449 Supreme Court.

450 Section 15. Except as otherwise expressly provided in this
451 act, this act shall take effect July 1, 2014.