

By Senator Lee

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1                   A bill to be entitled  
2       An act relating to family law; providing legislative  
3       findings; providing a directive to the Division of Law  
4       Revision and Information; creating s. 61.55, F.S.;  
5       providing a purpose; creating s. 61.56, F.S.; defining  
6       terms; creating s. 61.57, F.S.; providing that a  
7       collaborative law process commences when the parties  
8       enter into a collaborative law participation  
9       agreement; prohibiting a tribunal from ordering a  
10      party to participate in a collaborative law process  
11      over the party's objection; providing the conditions  
12      under which a collaborative law process concludes,  
13      terminates, or continues; creating s. 61.58, F.S.;  
14      providing for confidentiality of communications made  
15      during the collaborative law process; providing  
16      exceptions; providing that specified provisions do not  
17      take effect until 30 days after the Florida Supreme  
18      Court adopts rules of procedure and professional  
19      responsibility; providing a contingent effective date;  
20      providing effective dates.

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

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

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

29       (2) Encourage the peaceful resolution of disputes and the

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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. The Division of Law Revision and Information is  
36 directed to create part III of chapter 61, Florida Statutes,  
37 consisting of ss. 61.55-61.58, to be entitled the "Collaborative  
38 Law Process Act."

39 Section 3. Section 61.55, Florida Statutes, is created to  
40 read:

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

49 Section 4. Section 61.56, Florida Statutes, is created to  
50 read:

51 61.56 Definitions.—As used in this part, the term:

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

54 (2) "Collaborative law communication" means an oral or  
55 written statement, including a statement made in a record, or  
56 nonverbal conduct that:

57 (a) Is made in the conduct of or in the course of  
58 participating in, continuing, or reconvening for a collaborative

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59 law process; and

60 (b) Occurs after the parties sign a collaborative law  
61 participation agreement and before the collaborative law process  
62 is concluded or terminated.

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

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

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

76 (a) Marriage, divorce, dissolution, annulment, and marital  
77 property distribution.

78 (b) Child custody, visitation, parenting plan, and  
79 parenting time.

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

81 (d) Parental relocation with a child.

82 (e) Parentage and paternity.

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

84 (6) "Law firm" means:

85 (a) One or more attorneys who practice law in a  
86 partnership, professional corporation, sole proprietorship,  
87 limited liability company, or association; or

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88           (b) One or more attorneys employed in a legal services  
89 organization, the legal department of a corporation or other  
90 organization, or the legal department of a governmental entity,  
91 subdivision, agency, or instrumentality.

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

95           (8) "Party" means a person who signs a collaborative law  
96 participation agreement and whose consent is necessary to  
97 resolve a collaborative matter.

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

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

107           (11) "Prospective party" means a person who discusses with  
108 a prospective collaborative attorney the possibility of signing  
109 a collaborative law participation agreement.

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

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

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

119 (a) Execute or adopt a tangible symbol; or

120 (b) Attach to or logically associate with the record an  
121 electronic symbol, sound, or process.

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

127 Section 5. Section 61.57, Florida Statutes, is created to  
128 read:

129 61.57 Beginning, concluding, and terminating a  
130 collaborative law process.-

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

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

136 (3) A collaborative law process is concluded by any of the  
137 following:

138 (a) Resolution of a collaborative matter as evidenced by a  
139 signed record;

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

144 (c) Termination of the collaborative law process.

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

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

148 (b) Begins a proceeding related to a collaborative matter  
149 without the consent of all parties;

150 (c) Initiates a pleading, motion, order to show cause, or  
151 request for a conference with a tribunal in a pending proceeding  
152 related to a collaborative matter;

153 (d) Requests that the proceeding be put on the tribunal's  
154 active calendar in a pending proceeding related to a  
155 collaborative matter;

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

159 (f) Discharges a collaborative attorney or a collaborative  
160 attorney withdraws from further representation of a party,  
161 except as otherwise provided in subsection (7).

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

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

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

172 (a) The unrepresented party engages a successor  
173 collaborative attorney;

174 (b) The parties consent to continue the collaborative law

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175 process by reaffirming the collaborative law participation  
176 agreement in a signed record;

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

180 (d) The successor collaborative attorney confirms his or  
181 her representation of a party in the collaborative law  
182 participation agreement in a signed record.

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 a collaborative matter or any part  
186 thereof as evidenced by a signed record.

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

189 Section 6. Section 61.58, Florida Statutes, is created to  
190 read:

191 61.58 Confidentiality of a collaborative law  
192 communication.—Except as provided in this section, a  
193 collaborative law communication is confidential to the extent  
194 agreed by the parties in a signed record or as otherwise  
195 provided by law.

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

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

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

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

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204       2. A nonparty participant may refuse to disclose, and may  
205 prevent another person from disclosing, a collaborative law  
206 communication of a nonparty participant.

207       (c) Evidence or information that is otherwise admissible or  
208 subject to discovery does not become inadmissible or protected  
209 from discovery solely because of its disclosure or use in a  
210 collaborative law process.

211       (2) WAIVER AND PRECLUSION OF PRIVILEGE.—

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

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

223       (3) LIMITS OF PRIVILEGE.—

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

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

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

231       3. Intentionally used to plan a crime, commit or attempt to  
232 commit a crime, or conceal an ongoing crime or ongoing criminal



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233 activity; or

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

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

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

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

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

254 1. A court proceeding involving a felony; or

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

258 (d) If a collaborative law communication is subject to an  
259 exception under paragraph (b) or paragraph (c), only the part of  
260 the collaborative law communication necessary for the  
261 application of the exception may be disclosed or admitted.

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

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

274 Section 7. Sections 61.55-61.58, Florida Statutes, as  
275 created by this act, shall not take effect until 30 days after  
276 the Florida Supreme Court adopts rules of procedure and  
277 professional responsibility consistent with this act.

278 Section 8. Except as otherwise expressly provided in this  
279 act, this act shall take effect July 1, 2015.