

By Senator Lee

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

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

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25 Section 1. This act may be cited as the "Collaborative Law
26 Process Act."

27 Section 2. The Division of Law Revision and Information is
28 directed to create part III of chapter 61, Florida Statutes,
29 consisting of ss. 61.55-61.58, Florida Statutes, to be entitled

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30 the "Collaborative Law Process Act."

31 Section 3. The Legislature finds and declares that the
32 purpose of part III of chapter 61, Florida Statutes, is to:

33 (1) Create a uniform system of practice for a collaborative
34 law process for proceedings under chapters 61 and 742, Florida
35 Statutes.

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

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

42 Section 4. Section 61.55, Florida Statutes, is created to
43 read:

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

52 Section 5. Section 61.56, Florida Statutes, is created to
53 read:

54 61.56 Definitions.—As used in this part, the term:

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

57 (2) "Collaborative law communication" means an oral or
58 written statement, including a statement made in a record, or

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59 nonverbal conduct that:

60 (a) Is made in the conduct of or in the course of
61 participating in, continuing, or reconvening for a collaborative
62 law process; and

63 (b) Occurs after the parties sign a collaborative law
64 participation agreement and before the collaborative law process
65 is concluded or terminated.

66 (3) "Collaborative law participation agreement" means an
67 agreement between persons to participate in a collaborative law
68 process.

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

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

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

81 (b) Child custody, visitation, parenting plan, and
82 parenting time.

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

84 (d) Parental relocation with a child.

85 (e) Parentage and paternity.

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

87 (6) "Law firm" means:

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88 (a) One or more attorneys who practice law in a
89 partnership, professional corporation, sole proprietorship,
90 limited liability company, or association; or

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

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

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

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

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

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

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

116 (13) "Related to a collaborative matter" means involving

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117 the same parties, transaction or occurrence, nucleus of
118 operative fact, dispute, claim, or issue as the collaborative
119 matter.

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

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

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

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

130 Section 6. Section 61.57, Florida Statutes, is created to
131 read:

132 61.57 Beginning, concluding, and terminating a
133 collaborative law process.-

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

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

139 (3) A collaborative law process is concluded by any of the
140 following:

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 collaborative matter will not be

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146 resolved in the collaborative law process; or
147 (c) Termination of the collaborative law process.
148 (4) A collaborative law process terminates when a party:
149 (a) Gives notice to the other parties in a record that the
150 collaborative law process is concluded;
151 (b) Begins a proceeding related to a collaborative matter
152 without the consent of all parties;
153 (c) Initiates a pleading, a motion, an order to show cause,
154 or a request for a conference with a tribunal in a pending
155 proceeding related to a collaborative matter;
156 (d) Requests that the proceeding be put on the tribunal's
157 active calendar in a pending proceeding related to a
158 collaborative matter;
159 (e) Takes similar action requiring notice to be sent to the
160 parties in a pending proceeding related to a collaborative
161 matter; or
162 (f) Discharges a collaborative attorney or a collaborative
163 attorney withdraws from further representation of a party,
164 except as otherwise provided in subsection (7).
165 (5) A party's collaborative attorney shall give prompt
166 notice to all other parties in a record of a discharge or
167 withdrawal.
168 (6) A party may terminate a collaborative law process with
169 or without cause.
170 (7) Notwithstanding the discharge or withdrawal of a
171 collaborative attorney, the collaborative law process continues
172 if, not later than 30 days after the date that the notice of the
173 discharge or withdrawal of a collaborative attorney required by
174 subsection (5) is sent to the parties:

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175 (a) The unrepresented party engages a successor
176 collaborative attorney;

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

180 (c) The collaborative law participation agreement is
181 amended to identify the successor collaborative attorney in a
182 signed record; and

183 (d) The successor collaborative attorney confirms his or
184 her representation of a party in the collaborative law
185 participation agreement in a signed record.

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

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

192 Section 7. Section 61.58, Florida Statutes, is created to
193 read:

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

199 (1) PRIVILEGE AGAINST DISCLOSURE FOR COLLABORATIVE LAW
200 COMMUNICATION; ADMISSIBILITY; DISCOVERY.—

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

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

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

207 2. A nonparty participant may refuse to disclose, and may
208 prevent another person from disclosing, a collaborative law
209 communication of a nonparty participant.

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

214 (2) WAIVER AND PRECLUSION OF PRIVILEGE.—

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

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

226 (3) LIMITS OF PRIVILEGE.—

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

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

232 2. A threat, or statement of a plan, to inflict bodily

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233 injury or commit a crime of violence;

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

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

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

243 1. Sought or offered to prove or disprove a claim or
244 complaint of professional misconduct or malpractice arising from
245 or relating to a collaborative law process; or

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

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

257 1. A proceeding involving a felony; or

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

261 (d) If a collaborative law communication is subject to an

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262 exception under paragraph (b) or paragraph (c), only the part of
263 the collaborative law communication necessary for the
264 application of the exception may be disclosed or admitted.

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

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

277 Section 8. Sections 61.55-61.58, Florida Statutes, as
278 created by this act, shall not take effect until 30 days after
279 the Florida Supreme Court adopts rules of procedure and
280 professional responsibility consistent with this act.

281 Section 9. Except as otherwise expressly provided in this
282 act, this act shall take effect July 1, 2016.