



Sen. Michael Noland

Filed: 3/7/2013

09800SB0031sam001

LRB098 04157 HEP 42400 a

1 AMENDMENT TO SENATE BILL 31

2 AMENDMENT NO. _____. Amend Senate Bill 31 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Uniform Collaborative Law Act.

6 Section 2. Definitions. In this Act:

7 (1) "Collaborative law communication" means a statement,
8 whether oral or in a record, or verbal or nonverbal, that:

9 (A) is made to conduct, participate in, continue, or
10 reconvene a collaborative law process; and

11 (B) occurs after the parties sign a collaborative law
12 participation agreement and before the collaborative law
13 process is concluded.

14 (2) "Collaborative law participation agreement" means an
15 agreement by persons to participate in a collaborative law
16 process.

1 (3) "Collaborative law process" means a procedure intended
2 to resolve a collaborative matter without intervention by a
3 tribunal in which persons:

4 (A) sign a collaborative law participation agreement;
5 and

6 (B) are represented by collaborative lawyers.

7 (4) "Collaborative lawyer" means a lawyer who represents a
8 party in a collaborative law process.

9 (5) "Collaborative matter" means a dispute, transaction,
10 claim, problem, or issue for resolution, including a dispute,
11 claim, or issue in a proceeding, which is described in a
12 collaborative law participation agreement and arises under the
13 family or domestic relations law of this State, including:

14 (A) marriage, divorce, dissolution, annulment, and
15 property distribution;

16 (B) child custody, visitation, and parenting time;

17 (C) alimony, maintenance, and child support;

18 (D) adoption;

19 (E) parentage; and

20 (F) premarital, marital, and post-marital agreements.

21 (6) "Law firm" means:

22 (A) lawyers who practice law together in a partnership,
23 professional corporation, sole proprietorship, limited
24 liability company, or association; and

25 (B) lawyers employed in a legal services organization,
26 or the legal department of a corporation or other

1 organization.

2 (7) "Nonparty participant" means a person, other than a
3 party and the party's collaborative lawyer, that participates
4 in a collaborative law process.

5 (8) "Party" means a person that signs a collaborative law
6 participation agreement and whose consent is necessary to
7 resolve a collaborative matter.

8 (9) "Person" means an individual, corporation, business
9 trust, estate, trust, partnership, limited liability company,
10 association, joint venture, public corporation, government or
11 governmental subdivision, agency, or instrumentality, or any
12 other legal or commercial entity.

13 (10) "Proceeding" means:

14 (A) a judicial, administrative, arbitral, or other
15 adjudicative process before a tribunal, including related
16 prehearing and post-hearing motions, conferences, and
17 discovery; or

18 (B) a legislative hearing or similar process.

19 (11) "Prospective party" means a person that discusses with
20 a prospective collaborative lawyer the possibility of signing a
21 collaborative law participation agreement.

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

25 (13) "Related to a collaborative matter" means involving
26 the same parties, transaction or occurrence, nucleus of

1 operative fact, dispute, claim, or issue as the collaborative
2 matter.

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

5 (A) to execute or adopt a tangible symbol; or

6 (B) to attach to or logically associate with the record
7 an electronic symbol, sound, or process.

8 (15) "Tribunal" means:

9 (A) a court, arbitrator, administrative agency, or
10 other body acting in an adjudicative capacity which, after
11 presentation of evidence or legal argument, has
12 jurisdiction to render a decision affecting a party's
13 interests in a matter; or

14 (B) a legislative body conducting a hearing or similar
15 process.

16 Section 3. Applicability. This Act applies to a
17 collaborative law participation agreement that meets the
18 requirements of Section 4 signed on or after the effective date
19 of this Act.

20 Section 4. Collaborative law participation agreement;
21 requirements.

22 (a) A collaborative law participation agreement must:

23 (1) be in a record;

24 (2) be signed by the parties;

1 (3) state the parties' intention to resolve a
2 collaborative matter through a collaborative law process
3 under this Act;

4 (4) describe the nature and scope of the matter;

5 (5) identify the collaborative lawyer who represents
6 each party in the process; and

7 (6) contain a statement by each collaborative lawyer
8 confirming the lawyer's representation of a party in the
9 collaborative law process.

10 (b) Parties may agree to include in a collaborative law
11 participation agreement additional provisions not inconsistent
12 with this Act.

13 Section 5. Beginning and concluding collaborative law
14 process.

15 (a) A collaborative law process begins when the parties
16 sign a collaborative law participation agreement.

17 (b) A tribunal may not order a party to participate in a
18 collaborative law process over that party's objection.

19 (c) A collaborative law process is concluded by a:

20 (1) resolution of a collaborative matter as evidenced
21 by a signed record;

22 (2) resolution of a part of the collaborative matter,
23 evidenced by a signed record, in which the parties agree
24 that the remaining parts of the matter will not be resolved
25 in the process; or

1 (3) termination of the process.

2 (d) A collaborative law process terminates:

3 (1) when a party gives notice to other parties in a
4 record that the process is ended;

5 (2) when a party:

6 (A) begins a proceeding related to a collaborative
7 matter without the agreement of all parties; or

8 (B) in a pending proceeding related to the matter:

9 (i) initiates a pleading, motion, order to
10 show cause, or request for a conference with the
11 tribunal;

12 (ii) requests that the proceeding be put on the
13 tribunal's active calendar; or

14 (iii) takes similar action requiring notice to
15 be sent to the parties; or

16 (3) except as otherwise provided by subsection (g),
17 when a party discharges a collaborative lawyer or a
18 collaborative lawyer withdraws from further representation
19 of a party.

20 (e) A party's collaborative lawyer shall give prompt notice
21 to all other parties in a record of a discharge or withdrawal.

22 (f) A party may terminate a collaborative law process with
23 or without cause.

24 (g) Notwithstanding the discharge or withdrawal of a
25 collaborative lawyer, a collaborative law process continues,
26 if not later than 30 days after the date that the notice of the

1 discharge or withdrawal of a collaborative lawyer required by
2 subsection (e) is sent to the parties:

3 (1) the unrepresented party engages a successor
4 collaborative lawyer; and

5 (2) in a signed record:

6 (A) the parties consent to continue the process by
7 reaffirming the collaborative law participation
8 agreement;

9 (B) the agreement is amended to identify the
10 successor collaborative lawyer; and

11 (C) the successor collaborative lawyer confirms
12 the lawyer's representation of a party in the
13 collaborative process.

14 (h) A collaborative law process does not conclude if, with
15 the consent of the parties, a party requests a tribunal to
16 approve a resolution of the collaborative matter or any part
17 thereof as evidenced by a signed record.

18 (i) A collaborative law participation agreement may
19 provide additional methods of concluding a collaborative law
20 process.

21 Section 6. Proceedings pending before tribunal; status
22 report.

23 (a) Persons in a proceeding pending before a tribunal may
24 sign a collaborative law participation agreement to seek to
25 resolve a collaborative matter related to the proceeding. The

1 parties shall file promptly with the tribunal a notice of the
2 agreement after it is signed. Subject to subsection (c) and
3 Sections 7 and 8, the filing operates as an application for a
4 stay of the proceeding.

5 (b) The parties shall file promptly with the tribunal
6 notice in a record when a collaborative law process concludes.
7 The stay of the proceeding under subsection (a) is lifted when
8 the notice is filed. The notice may not specify any reason for
9 termination of the process.

10 (c) A tribunal in which a proceeding is stayed under
11 subsection (a) may require the parties and collaborative
12 lawyers to provide a status report on the collaborative law
13 process and the proceeding. A status report may include only
14 information on whether the process is ongoing or concluded. It
15 may not include a report, assessment, evaluation,
16 recommendation, finding, or other communication regarding a
17 collaborative law process or collaborative law matter.

18 (d) A tribunal may not consider a communication made in
19 violation of subsection (c).

20 (e) A tribunal shall provide parties notice and an
21 opportunity to be heard before dismissing a proceeding in which
22 a notice of collaborative process is filed based on delay or
23 failure to prosecute.

24 Section 7. Emergency order. During a collaborative law
25 process, a tribunal may issue emergency orders to protect the

1 health, safety, welfare, or interest of a party or person
2 identified as protected in Section 201 of the Illinois Domestic
3 Violence Act of 1986.

4 Section 8. Approval of agreement by tribunal. A tribunal
5 may approve an agreement resulting from a collaborative law
6 process.

7 Section 9. Disqualification of collaborative lawyer and
8 lawyers in associated law firm.

9 (a) Except as otherwise provided in subsection (c), a
10 collaborative lawyer is disqualified from appearing before a
11 tribunal to represent a party in a proceeding related to the
12 collaborative matter.

13 (b) Except as otherwise provided in subsection (c) and
14 Sections 10 and 11, a lawyer in a law firm with which the
15 collaborative lawyer is associated is disqualified from
16 appearing before a tribunal to represent a party in a
17 proceeding related to the collaborative matter if the
18 collaborative lawyer is disqualified from doing so under
19 subsection (a).

20 (c) A collaborative lawyer or a lawyer in a law firm with
21 which the collaborative lawyer is associated may represent a
22 party:

23 (1) to ask a tribunal to approve an agreement resulting
24 from the collaborative law process; or

1 (2) to seek or defend an emergency order to protect the
2 health, safety, welfare, or interest of a party or person
3 identified in Section 201 of the Illinois Domestic Violence
4 Act of 1986 if a successor lawyer is not immediately
5 available to represent that person.

6 (d) If subsection (c)(2) applies, a collaborative lawyer,
7 or lawyer in a law firm with which the collaborative lawyer is
8 associated, may represent a party or person identified in
9 Section 201 of the Illinois Domestic Violence Act of 1986 only
10 until the person is represented by a successor lawyer or
11 reasonable measures are taken to protect the health, safety,
12 welfare, or interest of the person.

13 Section 10. Low income parties.

14 (a) The disqualification of Section 9(a) applies to a
15 collaborative lawyer representing a party with or without fee.

16 (b) After a collaborative law process concludes, another
17 lawyer in a law firm with which a collaborative lawyer
18 disqualified under Section 9(a) is associated may represent a
19 party without fee in the collaborative matter or a matter
20 related to the collaborative matter if:

21 (1) the party has an annual income that qualifies the
22 party for free legal representation under the criteria
23 established by the law firm for free legal representation;

24 (2) the collaborative law participation agreement so
25 provides; and

1 (3) the collaborative lawyer is isolated from any
2 participation in the collaborative matter or a matter
3 related to the collaborative matter through procedures
4 within the law firm which are reasonably calculated to
5 isolate the collaborative lawyer from such participation.

6 Section 11. (Blank).

7 Section 12. Disclosure of information. Except as provided
8 by law other than this Act, during the collaborative law
9 process, on the request of another party, a party shall make
10 timely, full, candid, and informal disclosure of information
11 related to the collaborative matter without formal discovery. A
12 party also shall update promptly previously disclosed
13 information that has materially changed. The parties may define
14 the scope of disclosure during the collaborative law process.

15 Section 13. Standards of professional responsibility and
16 mandatory reporting not affected. This Act does not affect:

17 (1) the professional responsibility obligations and
18 standards applicable to a lawyer or other licensed
19 professional; or

20 (2) the obligation of a person to report abuse or
21 neglect, abandonment, or exploitation of a child or adult
22 under the law of this State.

1 Section 14. Appropriateness of collaborative law process.
2 Before a prospective party signs a collaborative law
3 participation agreement, a prospective collaborative lawyer
4 shall:

5 (1) assess with the prospective party factors the
6 lawyer reasonably believes relate to whether a
7 collaborative law process is appropriate for the
8 prospective party's matter;

9 (2) provide the prospective party with information
10 that the lawyer reasonably believes is sufficient for the
11 party to make an informed decision about the material
12 benefits and risks of a collaborative law process as
13 compared to the material benefits and risks of other
14 reasonably available alternatives for resolving the
15 proposed collaborative matter, such as litigation,
16 mediation, arbitration, or expert evaluation; and

17 (3) advise the prospective party that:

18 (A) after signing an agreement if a party initiates
19 a proceeding or seeks tribunal intervention in a
20 pending proceeding related to the collaborative
21 matter, the collaborative law process terminates;

22 (B) participation in a collaborative law process
23 is voluntary and any party has the right to terminate
24 unilaterally a collaborative law process with or
25 without cause; and

26 (C) the collaborative lawyer and any lawyer in a

1 law firm with which the collaborative lawyer is
2 associated may not appear before a tribunal to
3 represent a party in a proceeding related to the
4 collaborative matter, except as authorized by Section
5 9(c), 10(b), or 11(b).

6 Section 15. Coercive or violent relationship.

7 (a) Before a prospective party signs a collaborative law
8 participation agreement, a prospective collaborative lawyer
9 shall make reasonable inquiry whether the prospective party has
10 a history of a coercive or violent relationship with another
11 prospective party.

12 (b) Throughout a collaborative law process, a
13 collaborative lawyer reasonably and continuously shall assess
14 whether the party the collaborative lawyer represents has a
15 history of a coercive or violent relationship with another
16 party.

17 (c) If a collaborative lawyer reasonably believes that the
18 party the lawyer represents or the prospective party who
19 consults the lawyer has a history of a coercive or violent
20 relationship with another party or prospective party, the
21 lawyer may not begin or continue a collaborative law process
22 unless:

23 (1) the party or the prospective party requests
24 beginning or continuing a process; and

25 (2) the collaborative lawyer reasonably believes that

1 the safety of the party or prospective party can be
2 protected adequately during a process.

3 Section 16. Confidentiality of collaborative law
4 communication. A collaborative law communication is
5 confidential to the extent agreed by the parties in a signed
6 record or as provided by law of this State other than this Act.

7 Section 17. Privilege against disclosure for collaborative
8 law communication; admissibility; discovery.

9 (a) Subject to Sections 18 and 19, a collaborative law
10 communication is privileged under subsection (b), is not
11 subject to discovery, and is not admissible in evidence.

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

13 (1) A party may refuse to disclose, and may prevent any
14 other person from disclosing, a collaborative law
15 communication.

16 (2) A nonparty participant may refuse to disclose, and
17 may prevent any other person from disclosing, a
18 collaborative law communication of the nonparty
19 participant.

20 (c) Evidence or information that is otherwise admissible or
21 subject to discovery does not become inadmissible or protected
22 from discovery solely because of its disclosure or use in a
23 collaborative law process.

1 Section 18. Waiver and preclusion of privilege.

2 (a) A privilege under Section 17 may be waived in a record
3 or orally during a proceeding if it is expressly waived by all
4 parties and, in the case of the privilege of a nonparty
5 participant, it is also expressly waived by the nonparty
6 participant.

7 (b) A person that makes a disclosure or representation
8 about a collaborative law communication which prejudices
9 another person in a proceeding may not assert a privilege under
10 Section 17, but this preclusion applies only to the extent
11 necessary for the person prejudiced to respond to the
12 disclosure or representation.

13 Section 19. Limits of privilege.

14 (a) There is no privilege under Section 17 for a
15 collaborative law communication that is:

16 (1) available to the public under the Freedom of
17 Information Act or made during a session of a collaborative
18 law process that is open, or is required by law to be open,
19 to the public;

20 (2) a threat or statement of a plan to inflict bodily
21 injury or commit a crime of violence;

22 (3) intentionally used to plan a crime, commit or
23 attempt to commit a crime, or conceal an ongoing crime or
24 ongoing criminal activity; or

25 (4) in an agreement resulting from the collaborative

1 law process, evidenced by a record signed by all parties to
2 the agreement.

3 (b) The privileges under Section 17 for a collaborative law
4 communication do not apply to the extent that a communication
5 is:

6 (1) sought or offered to prove or disprove a claim or
7 complaint of professional misconduct or malpractice
8 arising from or related to a collaborative law process; or

9 (2) sought or offered to prove or disprove abuse,
10 neglect, abandonment, or exploitation of a child or adult,
11 unless a child protective services agency or adult
12 protective services agency is a party to or otherwise
13 participates in the process.

14 (c) There is no privilege under Section 17 if a tribunal
15 finds, after a hearing in camera, that the party seeking
16 discovery or the proponent of the evidence has shown the
17 evidence is not otherwise available, the need for the evidence
18 substantially outweighs the interest in protecting
19 confidentiality, and the collaborative law communication is
20 sought or offered in:

21 (1) a court proceeding involving a felony or
22 misdemeanor; or

23 (2) a proceeding seeking rescission or reformation of a
24 contract arising out of the collaborative law process or in
25 which a defense to avoid liability on the contract is
26 asserted.

1 (d) If a collaborative law communication is subject to an
2 exception under subsection (b) or (c), only the part of the
3 communication necessary for the application of the exception
4 may be disclosed or admitted.

5 (e) Disclosure or admission of evidence excepted from the
6 privilege under subsection (b) or (c) does not make the
7 evidence or any other collaborative law communication
8 discoverable or admissible for any other purpose.

9 (f) The privileges under Section 17 do not apply if the
10 parties agree in advance in a signed record, or if a record of
11 a proceeding reflects agreement by the parties, that all or
12 part of a collaborative law process is not privileged. This
13 subsection does not apply to a collaborative law communication
14 made by a person that did not receive actual notice of the
15 agreement before the communication was made.

16 Section 20. Authority of tribunal in case of noncompliance.

17 (a) If an agreement fails to meet the requirements of
18 Section 4, or a lawyer fails to comply with Section 14 or 15, a
19 tribunal may nonetheless find that the parties intended to
20 enter into a collaborative law participation agreement if they:

21 (1) signed a record indicating an intention to enter
22 into a collaborative law participation agreement; and

23 (2) reasonably believed they were participating in a
24 collaborative law process.

25 (b) If a tribunal makes the findings specified in

1 subsection (a), and the interests of justice require, the
2 tribunal may:

3 (1) enforce an agreement evidenced by a record
4 resulting from the process in which the parties
5 participated;

6 (2) apply the disqualification provisions of Sections
7 5, 6, 9, 10, and 11; and

8 (3) apply a privilege under Section 17.

9 Section 21. Uniformity of application and construction. In
10 applying and construing this uniform Act, consideration must be
11 given to the need to promote uniformity of the law with respect
12 to its subject matter among states that enact it.

13 Section 22. Relation to electronic signatures in global and
14 national commerce act. This Act modifies, limits, and
15 supersedes the federal Electronic Signatures in Global and
16 National Commerce Act, 15 U.S.C. Section 7001, et seq., but
17 does not modify, limit, or supersede Section 101(c) of that
18 Act, 15 U.S.C Section 7001(c), or authorize electronic delivery
19 of any of the notices described in Section 103(b) of that Act,
20 15 U.S.C. Section 7003(b).

21 Section 23. (Blank).

22 Section 24. (Blank).

1 Section 25. Supreme Court authority not limited. Nothing in
2 this Act shall be construed to limit the power of the Supreme
3 Court to regulate the practice of law in this State. Supreme
4 Court Rules shall govern in the event that there is a conflict
5 between any provision of this Act and a Supreme Court Rule.".