



Rep. Robyn Gabel

**Filed: 3/8/2013**

09800HB1029ham001

LRB098 05549 HEP 42402 a

1 AMENDMENT TO HOUSE BILL 1029

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 1029 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.".