

SB0031



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB0031

Introduced 1/10/2013, by Sen. Michael Noland

SYNOPSIS AS INTRODUCED:

New Act

Creates the Uniform Collaborative Law Act. Defines terms. Provides that the provisions of the Act are applicable to collaborative law participation agreements that meet the requirements of the Act signed on or after the effective date of the Act. Contains provisions concerning: requirements of collaborative law agreements; the beginning and conclusion of the collaborative law process; proceedings before a tribunal; disqualification of collaborative lawyers; disclosure of information; standards of professional responsibility and mandatory reporting; procedures for protecting parties from violent or coercive behavior; confidentiality; privileges; the authority of a tribunal if a collaborative agreement does not meet the requirements of the Act; uniformity of application and construction; and the Act's relation to the federal Electronic Signatures in Global and National Commerce Act.

LRB098 04157 HEP 34180 b

A BILL FOR

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

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.

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

20 (A) sign a collaborative law participation agreement;
21 and

22 (B) are represented by collaborative lawyers.

23 (4) "Collaborative lawyer" means a lawyer who represents a

1 party in a collaborative law process.

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

7 (A) marriage, divorce, dissolution, annulment, and
8 property distribution;

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

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

11 (D) adoption;

12 (E) parentage; and

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

14 (6) "Law firm" means:

15 (A) lawyers who practice law together in a partnership,
16 professional corporation, sole proprietorship, limited
17 liability company, or association; and

18 (B) lawyers employed in a legal services organization,
19 or the legal department of a corporation or other
20 organization, or the legal department of a government or
21 governmental subdivision, agency, or instrumentality.

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

25 (8) "Party" means a person that signs a collaborative law
26 participation agreement and whose consent is necessary to

1 resolve a collaborative matter.

2 (9) "Person" means an individual, corporation, business
3 trust, estate, trust, partnership, limited liability company,
4 association, joint venture, public corporation, government or
5 governmental subdivision, agency, or instrumentality, or any
6 other legal or commercial entity.

7 (10) "Proceeding" means:

8 (A) a judicial, administrative, arbitral, or other
9 adjudicative process before a tribunal, including related
10 prehearing and post-hearing motions, conferences, and
11 discovery; or

12 (B) a legislative hearing or similar process.

13 (11) "Prospective party" means a person that discusses with
14 a prospective collaborative lawyer the possibility of signing a
15 collaborative law participation agreement.

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

19 (13) "Related to a collaborative matter" means involving
20 the same parties, transaction or occurrence, nucleus of
21 operative fact, dispute, claim, or issue as the collaborative
22 matter.

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

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

26 (B) to attach to or logically associate with the record

1 an electronic symbol, sound, or process.

2 (15) "Tribunal" means:

3 (A) a court, arbitrator, administrative agency, or
4 other body acting in an adjudicative capacity which, after
5 presentation of evidence or legal argument, has
6 jurisdiction to render a decision affecting a party's
7 interests in a matter; or

8 (B) a legislative body conducting a hearing or similar
9 process.

10 Section 3. Applicability. This Act applies to a
11 collaborative law participation agreement that meets the
12 requirements of Section 4 signed on or after the effective date
13 of this Act.

14 Section 4. Collaborative law participation agreement;
15 requirements.

16 (a) A collaborative law participation agreement must:

17 (1) be in a record;

18 (2) be signed by the parties;

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

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

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

1 (6) contain a statement by each collaborative lawyer
2 confirming the lawyer's representation of a party in the
3 collaborative law process.

4 (b) Parties may agree to include in a collaborative law
5 participation agreement additional provisions not inconsistent
6 with this Act.

7 Section 5. Beginning and concluding collaborative law
8 process.

9 (a) A collaborative law process begins when the parties
10 sign a collaborative law participation agreement.

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

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

14 (1) resolution of a collaborative matter as evidenced
15 by a signed record;

16 (2) resolution of a part of the collaborative matter,
17 evidenced by a signed record, in which the parties agree
18 that the remaining parts of the matter will not be resolved
19 in the process; or

20 (3) termination of the process.

21 (d) A collaborative law process terminates:

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

24 (2) when a party:

25 (A) begins a proceeding related to a collaborative

1 matter without the agreement of all parties; or

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

3 (i) initiates a pleading, motion, order to
4 show cause, or request for a conference with the
5 tribunal;

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

8 (iii) takes similar action requiring notice to
9 be sent to the parties; or

10 (3) except as otherwise provided by subsection (g),
11 when a party discharges a collaborative lawyer or a
12 collaborative lawyer withdraws from further representation
13 of a party.

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

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

18 (g) Notwithstanding the discharge or withdrawal of a
19 collaborative lawyer, a collaborative law process continues,
20 if not later than 30 days after the date that the notice of the
21 discharge or withdrawal of a collaborative lawyer required by
22 subsection (e) is sent to the parties:

23 (1) the unrepresented party engages a successor
24 collaborative lawyer; and

25 (2) in a signed record:

26 (A) the parties consent to continue the process by

1 reaffirming the collaborative law participation
2 agreement;

3 (B) the agreement is amended to identify the
4 successor collaborative lawyer; and

5 (C) the successor collaborative lawyer confirms
6 the lawyer's representation of a party in the
7 collaborative process.

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

12 (i) A collaborative law participation agreement may
13 provide additional methods of concluding a collaborative law
14 process.

15 Section 6. Proceedings pending before tribunal; status
16 report.

17 (a) Persons in a proceeding pending before a tribunal may
18 sign a collaborative law participation agreement to seek to
19 resolve a collaborative matter related to the proceeding. The
20 parties shall file promptly with the tribunal a notice of the
21 agreement after it is signed. Subject to subsection (c) and
22 Sections 7 and 8, the filing operates as an application for a
23 stay of the proceeding.

24 (b) The parties shall file promptly with the tribunal
25 notice in a record when a collaborative law process concludes.

1 The stay of the proceeding under subsection (a) is lifted when
2 the notice is filed. The notice may not specify any reason for
3 termination of the process.

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

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

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

18 Section 7. Emergency order. During a collaborative law
19 process, a tribunal may issue emergency orders to protect the
20 health, safety, welfare, or interest of a party or person
21 identified as protected in Section 201 of the Illinois Domestic
22 Violence Act of 1986.

23 Section 8. Approval of agreement by tribunal. A tribunal
24 may approve an agreement resulting from a collaborative law

1 process.

2 Section 9. Disqualification of collaborative lawyer and
3 lawyers in associated law firm.

4 (a) Except as otherwise provided in subsection (c), a
5 collaborative lawyer is disqualified from appearing before a
6 tribunal to represent a party in a proceeding related to the
7 collaborative matter.

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

15 (c) A collaborative lawyer or a lawyer in a law firm with
16 which the collaborative lawyer is associated may represent a
17 party:

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

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

25 (d) If subsection (c)(2) applies, a collaborative lawyer,

1 or lawyer in a law firm with which the collaborative lawyer is
2 associated, may represent a party or person identified in
3 Section 201 of the Illinois Domestic Violence Act of 1986 only
4 until the person is represented by a successor lawyer or
5 reasonable measures are taken to protect the health, safety,
6 welfare, or interest of the person.

7 Section 10. Low income parties.

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

10 (b) After a collaborative law process concludes, another
11 lawyer in a law firm with which a collaborative lawyer
12 disqualified under Section 9(a) is associated may represent a
13 party without fee in the collaborative matter or a matter
14 related to the collaborative matter if:

15 (1) the party has an annual income that qualifies the
16 party for free legal representation under the criteria
17 established by the law firm for free legal representation;

18 (2) the collaborative law participation agreement so
19 provides; and

20 (3) the collaborative lawyer is isolated from any
21 participation in the collaborative matter or a matter
22 related to the collaborative matter through procedures
23 within the law firm which are reasonably calculated to
24 isolate the collaborative lawyer from such participation.

1 Section 11. Governmental entity as party.

2 (a) The disqualification of Section 9(a) applies to a
3 collaborative lawyer representing a party that is a government
4 or governmental subdivision, agency, or instrumentality.

5 (b) After a collaborative law process concludes, another
6 lawyer in a law firm with which the collaborative lawyer is
7 associated may represent a government or governmental
8 subdivision, agency, or instrumentality in the collaborative
9 matter or a matter related to the collaborative matter if:

10 (1) the collaborative law participation agreement so
11 provides; and

12 (2) the collaborative lawyer is isolated from any
13 participation in the collaborative matter or a matter
14 related to the collaborative matter through procedures
15 within the law firm which are reasonably calculated to
16 isolate the collaborative lawyer from such participation.

17 Section 12. Disclosure of information. Except as provided
18 by law other than this Act, during the collaborative law
19 process, on the request of another party, a party shall make
20 timely, full, candid, and informal disclosure of information
21 related to the collaborative matter without formal discovery. A
22 party also shall update promptly previously disclosed
23 information that has materially changed. The parties may define
24 the scope of disclosure during the collaborative law process.

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

3 (1) the professional responsibility obligations and
4 standards applicable to a lawyer or other licensed
5 professional; or

6 (2) the obligation of a person to report abuse or
7 neglect, abandonment, or exploitation of a child or adult
8 under the law of this State.

9 Section 14. Appropriateness of collaborative law process.
10 Before a prospective party signs a collaborative law
11 participation agreement, a prospective collaborative lawyer
12 shall:

13 (1) assess with the prospective party factors the
14 lawyer reasonably believes relate to whether a
15 collaborative law process is appropriate for the
16 prospective party's matter;

17 (2) provide the prospective party with information
18 that the lawyer reasonably believes is sufficient for the
19 party to make an informed decision about the material
20 benefits and risks of a collaborative law process as
21 compared to the material benefits and risks of other
22 reasonably available alternatives for resolving the
23 proposed collaborative matter, such as litigation,
24 mediation, arbitration, or expert evaluation; and

25 (3) advise the prospective party that:

1 (A) after signing an agreement if a party initiates
2 a proceeding or seeks tribunal intervention in a
3 pending proceeding related to the collaborative
4 matter, the collaborative law process terminates;

5 (B) participation in a collaborative law process
6 is voluntary and any party has the right to terminate
7 unilaterally a collaborative law process with or
8 without cause; and

9 (C) the collaborative lawyer and any lawyer in a
10 law firm with which the collaborative lawyer is
11 associated may not appear before a tribunal to
12 represent a party in a proceeding related to the
13 collaborative matter, except as authorized by Section
14 9(c), 10(b), or 11(b).

15 Section 15. Coercive or violent relationship.

16 (a) Before a prospective party signs a collaborative law
17 participation agreement, a prospective collaborative lawyer
18 shall make reasonable inquiry whether the prospective party has
19 a history of a coercive or violent relationship with another
20 prospective party.

21 (b) Throughout a collaborative law process, a
22 collaborative lawyer reasonably and continuously shall assess
23 whether the party the collaborative lawyer represents has a
24 history of a coercive or violent relationship with another
25 party.

1 (c) If a collaborative lawyer reasonably believes that the
2 party the lawyer represents or the prospective party who
3 consults the lawyer has a history of a coercive or violent
4 relationship with another party or prospective party, the
5 lawyer may not begin or continue a collaborative law process
6 unless:

7 (1) the party or the prospective party requests
8 beginning or continuing a process; and

9 (2) the collaborative lawyer reasonably believes that
10 the safety of the party or prospective party can be
11 protected adequately during a process.

12 Section 16. Confidentiality of collaborative law
13 communication. A collaborative law communication is
14 confidential to the extent agreed by the parties in a signed
15 record or as provided by law of this State other than this Act.

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

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

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

22 (1) A party may refuse to disclose, and may prevent any
23 other person from disclosing, a collaborative law
24 communication.

1 (2) A nonparty participant may refuse to disclose, and
2 may prevent any other person from disclosing, a
3 collaborative law communication of the nonparty
4 participant.

5 (c) Evidence or information that is otherwise admissible or
6 subject to discovery does not become inadmissible or protected
7 from discovery solely because of its disclosure or use in a
8 collaborative law process.

9 Section 18. Waiver and preclusion of privilege.

10 (a) A privilege under Section 17 may be waived in a record
11 or orally during a proceeding if it is expressly waived by all
12 parties and, in the case of the privilege of a nonparty
13 participant, it is also expressly waived by the nonparty
14 participant.

15 (b) A person that makes a disclosure or representation
16 about a collaborative law communication which prejudices
17 another person in a proceeding may not assert a privilege under
18 Section 17, but this preclusion applies only to the extent
19 necessary for the person prejudiced to respond to the
20 disclosure or representation.

21 Section 19. Limits of privilege.

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

24 (1) available to the public under the Freedom of

1 Information Act or made during a session of a collaborative
2 law process that is open, or is required by law to be open,
3 to the public;

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

6 (3) intentionally used to plan a crime, commit or
7 attempt to commit a crime, or conceal an ongoing crime or
8 ongoing criminal activity; or

9 (4) in an agreement resulting from the collaborative
10 law process, evidenced by a record signed by all parties to
11 the agreement.

12 (b) The privileges under Section 17 for a collaborative law
13 communication do not apply to the extent that a communication
14 is:

15 (1) sought or offered to prove or disprove a claim or
16 complaint of professional misconduct or malpractice
17 arising from or related to a collaborative law process; or

18 (2) sought or offered to prove or disprove abuse,
19 neglect, abandonment, or exploitation of a child or adult,
20 unless a child protective services agency or adult
21 protective services agency is a party to or otherwise
22 participates in the process.

23 (c) There is no privilege under Section 17 if a tribunal
24 finds, after a hearing in camera, that the party seeking
25 discovery or the proponent of the evidence has shown the
26 evidence is not otherwise available, the need for the evidence

1 substantially outweighs the interest in protecting
2 confidentiality, and the collaborative law communication is
3 sought or offered in:

4 (1) a court proceeding involving a felony or
5 misdemeanor; or

6 (2) a proceeding seeking rescission or reformation of a
7 contract arising out of the collaborative law process or in
8 which a defense to avoid liability on the contract is
9 asserted.

10 (d) If a collaborative law communication is subject to an
11 exception under subsection (b) or (c), only the part of the
12 communication necessary for the application of the exception
13 may be disclosed or admitted.

14 (e) Disclosure or admission of evidence excepted from the
15 privilege under subsection (b) or (c) does not make the
16 evidence or any other collaborative law communication
17 discoverable or admissible for any other purpose.

18 (f) The privileges under Section 17 do not apply if the
19 parties agree in advance in a signed record, or if a record of
20 a proceeding reflects agreement by the parties, that all or
21 part of a collaborative law process is not privileged. This
22 subsection does not apply to a collaborative law communication
23 made by a person that did not receive actual notice of the
24 agreement before the communication was made.

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

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

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

7 (2) reasonably believed they were participating in a
8 collaborative law process.

9 (b) If a tribunal makes the findings specified in
10 subsection (a), and the interests of justice require, the
11 tribunal may:

12 (1) enforce an agreement evidenced by a record
13 resulting from the process in which the parties
14 participated;

15 (2) apply the disqualification provisions of Sections
16 5, 6, 9, 10, and 11; and

17 (3) apply a privilege under Section 17.

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

22 Section 22. Relation to electronic signatures in global and
23 national commerce act. This Act modifies, limits, and
24 supersedes the federal Electronic Signatures in Global and

1 National Commerce Act, 15 U.S.C. Section 7001, et seq., but
2 does not modify, limit, or supersede Section 101(c) of that
3 Act, 15 U.S.C Section 7001(c), or authorize electronic delivery
4 of any of the notices described in Section 103(b) of that Act,
5 15 U.S.C. Section 7003(b).

6 Section 23. (Blank).

7 Section 24. (Blank).