



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB2735

Introduced 2/16/2016, 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; 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.

LRB099 18363 HEP 42738 b

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.

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

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

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

6 (10) "Proceeding" means:

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

11 (B) a legislative hearing or similar process.

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

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

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

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

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

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

1 (15) "Tribunal" means:

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

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

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

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

15 (a) A collaborative law participation agreement must:

16 (1) be in a record;

17 (2) be signed by the parties;

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

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

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

24 (6) contain a statement by each collaborative lawyer

1 confirming the lawyer's representation of a party in the
2 collaborative law process.

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

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

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

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

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

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

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

19 (3) termination of the process.

20 (d) A collaborative law process terminates:

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

23 (2) when a party:

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

- 1 (B) in a pending proceeding related to the matter:
- 2 (i) initiates a pleading, motion, order to
- 3 show cause, or request for a conference with the
- 4 tribunal;
- 5 (ii) requests that the proceeding be put on the
- 6 tribunal's active calendar; or
- 7 (iii) takes similar action requiring notice to
- 8 be sent to the parties; or
- 9 (3) except as otherwise provided by subsection (g),
- 10 when a party discharges a collaborative lawyer or a
- 11 collaborative lawyer withdraws from further representation
- 12 of a party.
- 13 (e) A party's collaborative lawyer shall give prompt notice
- 14 to all other parties in a record of a discharge or withdrawal.
- 15 (f) A party may terminate a collaborative law process with
- 16 or without cause.
- 17 (g) Notwithstanding the discharge or withdrawal of a
- 18 collaborative lawyer, a collaborative law process continues,
- 19 if not later than 30 days after the date that the notice of the
- 20 discharge or withdrawal of a collaborative lawyer required by
- 21 subsection (e) is sent to the parties:
- 22 (1) the unrepresented party engages a successor
- 23 collaborative lawyer; and
- 24 (2) in a signed record:
- 25 (A) the parties consent to continue the process by
- 26 reaffirming the collaborative law participation

1 agreement;

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

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

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

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

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

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

23 (b) The parties shall file promptly with the tribunal
24 notice in a record when a collaborative law process concludes.
25 The stay of the proceeding under subsection (a) is lifted when

1 the notice is filed. The notice may not specify any reason for
2 termination of the process.

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

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

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

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

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

1 process shall be presented to a tribunal for approval if the
2 agreement is to be enforceable by the courts, an administrative
3 agency, or any other tribunal.

4 Section 9. Disqualification of collaborative lawyer and
5 lawyers in associated law firm.

6 (a) Participation in a collaborative law process is a
7 voluntary act. Except as otherwise provided in subsection (c),
8 a collaborative lawyer is disqualified from appearing before a
9 tribunal to represent a party in a proceeding related to the
10 collaborative matter.

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

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

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

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

1 available to represent that person.

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

9 Section 10. (Blank).

10 Section 11. (Blank).

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

22 Section 13. Standards of professional responsibility and

1 mandatory reporting not affected. This Act does not affect:

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

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

8 Section 14. Appropriateness of collaborative law process.

9 Before a prospective party signs a collaborative law
10 participation agreement, a prospective collaborative lawyer
11 shall:

12 (1) assess with the prospective party factors
13 reasonable under the circumstances related to whether a
14 collaborative law process is appropriate for the
15 prospective party's matter;

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

24 (3) advise the prospective party that:

25 (A) after signing an agreement if a party initiates

1 a proceeding or seeks tribunal intervention in a
2 pending proceeding related to the collaborative
3 matter, the collaborative law process terminates;

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

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

14 Section 15. (Blank).

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

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

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

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

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

5 (2) A nonparty participant may refuse to disclose, and
6 may prevent any other person from disclosing, a
7 collaborative law communication of the nonparty
8 participant.

9 (c) Evidence or information that is otherwise admissible or
10 subject to discovery does not become inadmissible or protected
11 from discovery solely because of its disclosure or use in a
12 collaborative law process.

13 Section 18. Waiver and preclusion of privilege.

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

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

1 Section 19. Limits of privilege.

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

4 (1) available to the public under the Freedom of
5 Information Act or made during a session of a collaborative
6 law process that is open, or is required by law to be open,
7 to the public;

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

10 (3) intentionally used to plan a crime, commit or
11 attempt to commit a crime, or conceal an ongoing crime or
12 ongoing criminal activity; or

13 (4) in an agreement resulting from the collaborative
14 law process, evidenced by a record signed by all parties to
15 the agreement.

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

19 (1) sought or offered to prove or disprove a claim or
20 complaint of professional misconduct or malpractice
21 arising from or related to a collaborative law process; or

22 (2) sought or offered to prove or disprove abuse,
23 neglect, abandonment, or exploitation of a child or adult,
24 unless a child protective services agency or adult
25 protective services agency is a party to or otherwise
26 participates in the process.

1 (c) There is no privilege under Section 17 if a tribunal
2 finds, after a hearing in camera, that the party seeking
3 discovery or the proponent of the evidence has shown the
4 evidence is not otherwise available, the need for the evidence
5 substantially outweighs the interest in protecting
6 confidentiality, and the collaborative law communication is
7 sought or offered in:

8 (1) a court proceeding involving a felony or
9 misdemeanor; or

10 (2) a proceeding seeking rescission or reformation of a
11 contract arising out of the collaborative law process or in
12 which a defense to avoid liability on the contract is
13 asserted.

14 (d) If a collaborative law communication is subject to an
15 exception under subsection (b) or (c), only the part of the
16 communication necessary for the application of the exception
17 may be disclosed or admitted.

18 (e) Disclosure or admission of evidence excepted from the
19 privilege under subsection (b) or (c) does not make the
20 evidence or any other collaborative law communication
21 discoverable or admissible for any other purpose.

22 (f) The privileges under Section 17 do not apply if the
23 parties agree in advance in a signed record, or if a record of
24 a proceeding reflects agreement by the parties, that all or
25 part of a collaborative law process is not privileged. This
26 subsection does not apply to a collaborative law communication

1 made by a person that did not receive actual notice of the
2 agreement before the communication was made.

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

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

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

10 (2) reasonably believed they were participating in a
11 collaborative law process.

12 (b) If a tribunal makes the findings specified in
13 subsection (a), and the interests of justice require, the
14 tribunal may:

15 (1) enforce an agreement evidenced by a record
16 resulting from the process in which the parties
17 participated;

18 (2) apply the disqualification provisions of Sections
19 5, 6, and 9; and

20 (3) apply a privilege under Section 17.

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

1 Section 22. Relation to electronic signatures in global and
2 national commerce act. This Act modifies, limits, and
3 supersedes the federal Electronic Signatures in Global and
4 National Commerce Act, 15 U.S.C. Section 7001, et seq., but
5 does not modify, limit, or supersede Section 101(c) of that
6 Act, 15 U.S.C. Section 7001(c), or authorize electronic
7 delivery of any of the notices described in Section 103(b) of
8 that Act, 15 U.S.C. Section 7003(b).

9 Section 23. (Blank).

10 Section 24. (Blank).

11 Section 25. Authority of Supreme Court. This Act is subject
12 to the supervisory authority of the Supreme Court.