

1 AN ACT concerning alternative dispute resolution.

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 Collaborative Process Act.

6 Section 5. Definitions. In this Act:

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

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

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

15 (2) "Collaborative process participation agreement" means
16 a written agreement by persons acting with informed consent to
17 participate in a collaborative process, in which the persons
18 agree to discharge their collaborative process lawyer and law
19 firm if the collaborative process fails.

20 (3) "Collaborative process" means a procedure intended to
21 resolve a collaborative process matter without intervention by
22 a court in which persons:

23 (A) sign a collaborative process participation

1 agreement; and

2 (B) are represented by collaborative process lawyers.

3 (4) "Collaborative process lawyer" means a lawyer who
4 represents a party in a collaborative process and helps carry
5 out the process of the agreement, but is not a party to the
6 agreement.

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

13 (A) marriage, divorce, dissolution, annulment, legal
14 separation, and property distribution;

15 (B) significant decision making and parenting time of
16 children;

17 (C) maintenance and child support;

18 (D) adoption;

19 (E) parentage; and

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

21 "Collaborative process matter" does not include any
22 dispute, transaction, claim, problem, or issue that: (i) is the
23 subject of a pending action under the Juvenile Court Act of
24 1987; (ii) is under investigation by the Illinois Department of
25 Children and Family Services pursuant to the Abused and
26 Neglected Child Reporting Act; or (iii) resulted in a currently

1 open case with the Illinois Department of Children and Family
2 Services.

3 (6) "Law firm" means:

4 (A) lawyers who practice law together in a partnership,
5 professional corporation, sole proprietorship, limited
6 liability company, or association; and

7 (B) lawyers employed in a legal services organization,
8 law school or the legal department of a corporation or
9 other organization.

10 (7) "Nonparty participant" means a person, other than a
11 party and the party's collaborative process lawyer, that
12 participates in a collaborative process.

13 (8) "Party" means a person other than a collaborative
14 process lawyer that signs a collaborative process
15 participation agreement and whose consent is necessary to
16 resolve a collaborative process matter.

17 (9) "Person" means an individual, corporation, business
18 trust, estate, trust, partnership, limited liability company,
19 association, joint venture, public corporation, government or
20 governmental subdivision, agency, or instrumentality, or any
21 other legal or commercial entity.

22 (10) "Proceeding" means a judicial or other adjudicative
23 process before a court, including related prehearing and
24 post-hearing motions, conferences, and discovery.

25 (11) "Prospective party" means a person that discusses with
26 a prospective collaborative process lawyer the possibility of

1 signing a collaborative process participation agreement.

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

5 (13) "Related to a collaborative process matter" means
6 involving the same parties, transaction or occurrence, nucleus
7 of operative fact, dispute, claim, or issue as the
8 collaborative process matter.

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

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

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

14 Section 10. Applicability. This Act applies to a
15 collaborative process participation agreement that meets the
16 requirements of Section 15 signed on or after the effective
17 date of this Act.

18 Section 15. Collaborative process participation agreement;
19 requirements.

20 (a) A collaborative process participation agreement must:

21 (1) be in a record;

22 (2) be signed by the parties;

23 (3) state the parties' intention to resolve a
24 collaborative process matter through a collaborative

1 process under this Act;

2 (4) state the parties' agreement to discharge their
3 collaborative process lawyers and law firms if the
4 collaborative process fails.

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

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

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

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

14 Section 20. Beginning and concluding the collaborative
15 process.

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

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

20 (c) A collaborative process is concluded by:

21 (1) resolution of a collaborative process matter as
22 evidenced by a signed record of the parties;

23 (2) resolution of a part of the collaborative process
24 matter, evidenced by a signed record of the parties, in
25 which the parties agree that the remaining parts of the

1 matter will not be resolved in the process; or

2 (3) termination of the process.

3 (d) A collaborative process terminates:

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

6 (2) when a party:

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

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

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

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

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

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

21 (4) when the process no longer meets the definition of
22 collaborative process matter.

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

26 (f) A party may terminate a collaborative process with or

1 without cause.

2 (g) A collaborative process continues, despite the
3 discharge or withdrawal of a collaborative process lawyer, if
4 not later than 30 days after the date that the notice of the
5 discharge or withdrawal of a collaborative process lawyer
6 required by subsection (e) is sent to the parties:

7 (1) the unrepresented party engages a successor
8 collaborative process lawyer; and

9 (2) in a signed record:

10 (A) the parties consent to continue the process by
11 reaffirming the collaborative process participation
12 agreement;

13 (B) the agreement is amended to identify the
14 successor collaborative process lawyer; and

15 (C) the successor collaborative process lawyer
16 confirms the lawyer's representation of a party in the
17 collaborative process.

18 (h) A collaborative process does not conclude if, with the
19 consent of the parties, a party requests a court to approve a
20 resolution of the collaborative process matter or any part
21 thereof as evidenced by a signed record.

22 (i) A collaborative process participation agreement may
23 provide additional methods of concluding a collaborative
24 process.

25 Section 25. Proceedings pending before a court; status

1 report.

2 (a) Persons in a proceeding pending before a court may sign
3 a collaborative process participation agreement to seek to
4 resolve a collaborative process matter related to the
5 proceeding. The parties shall file promptly with the court a
6 notice of the agreement after it is signed. Subject to
7 subsection (c) and Sections 30 and 35, the filing operates as
8 an application for a stay of the proceeding.

9 (b) The parties shall file promptly with the court notice
10 in a record when a collaborative process concludes. The stay of
11 the proceeding, if granted, under subsection (a) is lifted when
12 the notice is filed. The notice may not specify any reason for
13 termination of the process.

14 (c) A court in which a proceeding is stayed under
15 subsection (a) may require the parties and collaborative
16 process lawyers to provide a status report on the collaborative
17 process and the proceeding. A status report may include only
18 information on: (i) whether the process is ongoing or
19 concluded; or (ii) the anticipated duration of the
20 collaborative process.

21 (d) A court may not consider a communication made in
22 violation of subsection (c).

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

1 Section 30. Emergency order. Nothing in the collaborative
2 process may prohibit a party from seeking an emergency order to
3 protect the health, safety, welfare, or interest of a party or
4 person identified as protected in Section 201 of the Illinois
5 Domestic Violence Act of 1986, or may prohibit a party or
6 nonparty participant from making a report of abuse, neglect,
7 abandonment, or exploitation of a child or adult under the law
8 of this State.

9 Section 35. Approval of agreement by the court. A court may
10 approve an agreement resulting from a collaborative process. An
11 agreement resulting from the collaborative process shall be
12 presented to the court for approval if the agreement is to be
13 enforceable.

14 Section 40. Disclosure of information. Voluntary informal
15 disclosure of information related to a matter is a defining
16 characteristic of the collaborative process. Except as
17 provided by law other than this Act, during the collaborative
18 process, on the request of another party, a party shall make
19 timely, full, candid, and informal disclosure of information
20 related to the collaborative process matter without formal
21 discovery. A party also shall update promptly previously
22 disclosed information that has materially changed. The parties
23 may define the scope of disclosure during the collaborative

1 process.

2 Section 45. Standards of professional responsibility and
3 mandatory reporting not affected. This Act does not affect:

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

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

10 Section 50. Confidentiality of collaborative process
11 communication. A collaborative process communication is
12 confidential to the extent agreed by the parties in a signed
13 record or as provided by law of this State other than this Act.

14 Section 55. Privilege against disclosure for collaborative
15 process communication; admissibility; discovery.

16 (a) Subject to Sections 60 and 65, a collaborative process
17 communication is privileged under subsection (b), is not
18 subject to discovery, and is not admissible in evidence.

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

20 (1) A party may refuse to disclose, and may prevent any
21 other person from disclosing, a collaborative process
22 communication.

23 (2) A nonparty participant may refuse to disclose, and

1 may prevent any other person from disclosing, a
2 collaborative process communication of the nonparty
3 participant.

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

8 Section 60. Waiver and preclusion of privilege.

9 (a) A privilege under Section 55 may be waived in a record
10 or orally during a proceeding if it is expressly waived by all
11 parties and, in the case of the privilege of a nonparty
12 participant, it is also expressly waived by the nonparty
13 participant.

14 (b) A person that makes a disclosure or representation
15 about a collaborative process communication which prejudices
16 another person in a proceeding may not assert a privilege under
17 Section 55, but this preclusion applies only to the extent
18 necessary for the person prejudiced to respond to the
19 disclosure or representation.

20 Section 65. Limits of privilege.

21 (a) There is no privilege under Section 55 for a
22 collaborative process communication that is:

23 (1) available to the public under the Freedom of
24 Information Act or made during a session of a collaborative

1 process that is open, or is required by law to be open, to
2 the public;

3 (2) a threat or statement of a plan to inflict bodily
4 injury or commit a crime of violence as defined in Section
5 1-10 of the Alcoholism and Other Drug Abuse and Dependency
6 Act;

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

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

13 (b) The privileges under Section 55 for a collaborative
14 process communication do not apply to the extent that a
15 communication is:

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

19 (2) sought or offered to prove or disprove abuse,
20 neglect, abandonment, or exploitation of a child or adult.

21 (c) There is no privilege under Section 55 if a court
22 finds, after a hearing in camera, that the party seeking
23 discovery or the proponent of the evidence has shown the
24 evidence is not otherwise available, the need for the evidence
25 substantially outweighs the interest in protecting
26 confidentiality, and the collaborative process communication

1 is sought or offered in:

2 (1) a court proceeding involving a felony or
3 misdemeanor; or

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

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

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

16 (f) The privileges under Section 55 do not apply if the
17 parties agree in advance in a signed record, or if a record of
18 a proceeding reflects agreement by the parties, that all or
19 part of a collaborative process is not privileged. This
20 subsection does not apply to a collaborative process
21 communication made by a person that did not receive actual
22 notice of the agreement before the communication was made.

23 Section 70. Authority of the Illinois Supreme Court. This
24 Act is subject to the supervisory authority of the Illinois
25 Supreme Court.