



Sen. Michael Noland

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LRB098 04157 HEP 44140 a

1 AMENDMENT TO SENATE BILL 31

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

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

7 Section 2. Definitions. In this Act:

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

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

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

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

1 process.

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

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

7 (B) are represented by collaborative lawyers.

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

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

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

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

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

19 (D) adoption;

20 (E) parentage; and

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

22 (6) "Law firm" means:

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

26 (B) lawyers employed in a legal services organization,

1 or the legal department of a corporation or other
2 organization.

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

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

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

14 (10) "Proceeding" means:

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

19 (B) a legislative hearing or similar process.

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

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

26 (13) "Related to a collaborative matter" means involving

1 the same parties, transaction or occurrence, nucleus of
2 operative fact, dispute, claim, or issue as the collaborative
3 matter.

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

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

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

9 (15) "Tribunal" means:

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

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

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

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

23 (a) A collaborative law participation agreement must:

24 (1) be in a record;

1 (2) be signed by the parties;

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

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

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

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

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

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

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

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

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

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

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

1 in the process; or

2 (3) termination of the process.

3 (d) A collaborative law 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 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 tribunal;

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

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

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

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

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

25 (g) Notwithstanding the discharge or withdrawal of a
26 collaborative lawyer, a collaborative law process continues,

1 if not later than 30 days after the date that the notice of the
2 discharge or withdrawal of a collaborative lawyer required by
3 subsection (e) is sent to the parties:

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

6 (2) in a signed record:

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

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

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

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

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

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

24 (a) Persons in a proceeding pending before a tribunal may
25 sign a collaborative law participation agreement to seek to

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

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

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

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

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

25 Section 7. Emergency order. During a collaborative law

1 process, a tribunal may issue emergency orders to protect the
2 health, safety, welfare, or interest of a party or person
3 identified as protected in Section 201 of the Illinois Domestic
4 Violence Act of 1986.

5 Section 8. Approval of agreement by tribunal. A tribunal
6 may approve an agreement resulting from a collaborative law
7 process. An agreement resulting from the collaborative law
8 process shall be presented to a tribunal for approval if the
9 agreement is to be enforceable by the courts, an administrative
10 agency, or any other tribunal.

11 Section 9. Disqualification of collaborative lawyer and
12 lawyers in associated law firm.

13 (a) Participation in a collaborative law process is a
14 voluntary act. Except as otherwise provided in subsection (c),
15 a collaborative lawyer is disqualified from appearing before a
16 tribunal to represent a party in a proceeding related to the
17 collaborative matter.

18 (b) Except as otherwise provided in subsection (c), a
19 lawyer in a law firm with which the collaborative lawyer is
20 associated is disqualified from appearing before a tribunal to
21 represent a party in a proceeding related to the collaborative
22 matter if the collaborative lawyer is disqualified from doing
23 so under subsection (a).

24 (c) A collaborative lawyer or a lawyer in a law firm with

1 which the collaborative lawyer is associated may represent a
2 party:

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

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

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

17 Section 10. (Blank).

18 Section 11. (Blank).

19 Section 12. Disclosure of information. Voluntary informal
20 disclosure of information related to a matter is a defining
21 characteristic of the collaborative law process. Except as
22 provided by law other than this Act, during the collaborative
23 law process, on the request of another party, a party shall

1 make timely, full, candid, and informal disclosure of
2 information related to the collaborative matter without formal
3 discovery. A party also shall update promptly previously
4 disclosed information that has materially changed. The parties
5 may define the scope of disclosure during the collaborative law
6 process.

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

9 (1) the professional responsibility obligations and
10 standards applicable to a lawyer or other licensed
11 professional; or

12 (2) the obligation of a person to report abuse or
13 neglect, abandonment, or exploitation of a child or adult
14 under the law of this State.

15 Section 14. Appropriateness of collaborative law process.
16 Before a prospective party signs a collaborative law
17 participation agreement, a prospective collaborative lawyer
18 shall:

19 (1) assess with the prospective party factors
20 reasonable under the circumstances related to whether a
21 collaborative law process is appropriate for the
22 prospective party's matter;

23 (2) provide the prospective party with information
24 that the lawyer reasonably believes is sufficient for the

1 party to make an informed decision about the material
2 benefits and risks of a collaborative law process as
3 compared to the material benefits and risks of other
4 reasonably available alternatives for resolving the
5 proposed collaborative matter, such as litigation,
6 mediation, arbitration, or expert evaluation; and

7 (3) advise the prospective party that:

8 (A) after signing an agreement if a party initiates
9 a proceeding or seeks tribunal intervention in a
10 pending proceeding related to the collaborative
11 matter, the collaborative law process terminates;

12 (B) participation in a collaborative law process
13 is voluntary and any party has the right to terminate
14 unilaterally a collaborative law process with or
15 without cause; and

16 (C) the collaborative lawyer and any lawyer in a
17 law firm with which the collaborative lawyer is
18 associated may not appear before a tribunal to
19 represent a party in a proceeding related to the
20 collaborative matter, except as authorized by Section
21 9(c).

22 Section 15. (Blank).

23 Section 16. Confidentiality of collaborative law
24 communication. A collaborative law communication is

1 confidential to the extent agreed by the parties in a signed
2 record or as provided by law of this State other than this Act.

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

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

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

9 (1) A party may refuse to disclose, and may prevent any
10 other person from disclosing, a collaborative law
11 communication.

12 (2) A nonparty participant may refuse to disclose, and
13 may prevent any other person from disclosing, a
14 collaborative law communication of the nonparty
15 participant.

16 (c) Evidence or information that is otherwise admissible or
17 subject to discovery does not become inadmissible or protected
18 from discovery solely because of its disclosure or use in a
19 collaborative law process.

20 Section 18. Waiver and preclusion of privilege.

21 (a) A privilege under Section 17 may be waived in a record
22 or orally during a proceeding if it is expressly waived by all
23 parties and, in the case of the privilege of a nonparty
24 participant, it is also expressly waived by the nonparty

1 participant.

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

8 Section 19. Limits of privilege.

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

11 (1) available to the public under the Freedom of
12 Information Act or made during a session of a collaborative
13 law process that is open, or is required by law to be open,
14 to the public;

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

17 (3) intentionally used to plan a crime, commit or
18 attempt to commit a crime, or conceal an ongoing crime or
19 ongoing criminal activity; or

20 (4) in an agreement resulting from the collaborative
21 law process, evidenced by a record signed by all parties to
22 the agreement.

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

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

4 (2) sought or offered to prove or disprove abuse,
5 neglect, abandonment, or exploitation of a child or adult,
6 unless a child protective services agency or adult
7 protective services agency is a party to or otherwise
8 participates in the process.

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

16 (1) a court proceeding involving a felony or
17 misdemeanor; or

18 (2) a proceeding seeking rescission or reformation of a
19 contract arising out of the collaborative law process or in
20 which a defense to avoid liability on the contract is
21 asserted.

22 (d) If a collaborative law communication is subject to an
23 exception under subsection (b) or (c), only the part of the
24 communication necessary for the application of the exception
25 may be disclosed or admitted.

26 (e) Disclosure or admission of evidence excepted from the

1 privilege under subsection (b) or (c) does not make the
2 evidence or any other collaborative law communication
3 discoverable or admissible for any other purpose.

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

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

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

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

18 (2) reasonably believed they were participating in a
19 collaborative law process.

20 (b) If a tribunal makes the findings specified in
21 subsection (a), and the interests of justice require, the
22 tribunal may:

23 (1) enforce an agreement evidenced by a record
24 resulting from the process in which the parties
25 participated;

- 1 (2) apply the disqualification provisions of Sections
2 5, 6, and 9; and
3 (3) apply a privilege under Section 17.

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

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

16 Section 23. (Blank).

17 Section 24. (Blank).

18 Section 25. Authority of Supreme Court. This Act is subject
19 to the supervisory authority of the Supreme Court.".