

**SENATE, No. 1224**  
**STATE OF NEW JERSEY**  
**216th LEGISLATURE**

INTRODUCED JANUARY 30, 2014

**Sponsored by:**

**Senator LORETTA WEINBERG**

**District 37 (Bergen)**

**Senator NICHOLAS P. SCUTARI**

**District 22 (Middlesex, Somerset and Union)**

**Co-Sponsored by:**

**Senator Bateman**

**SYNOPSIS**

Establishes the "New Jersey Collaborative Family Law Act."

**CURRENT VERSION OF TEXT**

As introduced.

**AN ACT** concerning collaborative family law and supplementing Title 2A of the New Jersey Statutes.

**BE IT ENACTED** *by the Senate and General Assembly of the State of New Jersey:*

1. This act shall be known and may be cited as the "New Jersey Collaborative Family Law Act."
2. The Legislature finds and declares:
  - a. Since at least 2005, attorneys in New Jersey have participated in the dispute resolution method known as collaborative law, in which an attorney is retained for the limited purpose of assisting his client in resolving disputes in a voluntary, non-adversarial manner, without court intervention.

b. The collaborative law process is distinct from other dispute resolution mechanisms because the parties intend to resolve their dispute without litigation. Instead, each party, represented by his attorney, meets together with the other party to the dispute, that party's attorney, and, as needed, one or more nonparty participants who are not attorneys but are professionals in their fields, such as certified financial planners, certified public accountants, licensed clinical social workers, psychologists, licensed professional counselors, licensed marriage and family therapists, and psychiatrists. All participants in the collaborative law process understand and agree that the process is intended to replace litigation and that the process will terminate if either party or either attorney commences a proceeding related to the subject matter to be addressed through the collaborative process before a court or other tribunal other than to seek incorporation of a settlement agreement into a final judgment.

c. In order to facilitate full and fair disclosure by the parties to the collaborative process, the parties must have an evidentiary privilege to protect them from disclosure of any collaborative law communication. The nonparty participants in the collaborative law process, who serve as neutral experts, need a privilege from disclosure of communications made by them during the process similar to the privilege created for mediators in the "Uniform Mediation Act," P.L.2004, c.157 (C.2A:23C-1 et seq.). This will enable nonparty participants to participate candidly in the process and thereby facilitate resolution of the family law dispute.

3. As used in this act:

a. "Collaborative family law communication" means a statement, whether oral or in a record, that is made in the course of a collaborative family law process and occurs after the parties sign a collaborative family law participation agreement but before the collaborative family law process is concluded.

b. "Collaborative family law participation agreement" means a written agreement by the parties to participate in a collaborative family law process, in accordance with section 5 of P.L. , c. (C. ) (pending before the Legislature as this bill) in order to resolve their family law dispute.

c. "Collaborative family law process" means a procedure intended to resolve the family law dispute without intervention by a tribunal provided that the individuals in the dispute: (1) sign a collaborative family law participation agreement; and (2) are represented by collaborative family lawyers.

d. "Collaborative family lawyer" means a lawyer who represents a party in a collaborative family law process and whom the party acknowledges is retained for that limited purpose.

e. "Family law dispute" means a dispute, claim or issue which is described in a participation agreement and arises under the family or domestic relations law of this State, including but not limited to:

(1) marriage, civil union, domestic partnership, divorce, dissolution, annulment, or property distribution;

(2) child custody, visitation, or parenting time;

(3) alimony, maintenance, or child support; or

(4) premarital, marital or post-marital agreements, or comparable agreements affecting civil unions or domestic partnerships.

f. "Nonparty participant" means a person, other than a party and the party's collaborative family lawyer, who participates in a collaborative family law process.

g. "Party" means an individual who signs a collaborative family law participation agreement and whose consent is necessary to resolve a family law dispute under P.L. , c. (C. ) (pending before the Legislature as this bill).

h. "Proceeding" means a judicial or arbitral or adjudicative process before a tribunal.

i. "Prospective party" means an individual who discusses with a prospective collaborative family lawyer the possibility of signing a collaborative family law participation agreement.

j. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

k. "Related to the family law dispute" means involving the same parties, transaction or occurrence, nucleus of operative fact, claim, matter or issue as the family law dispute.

l. "Settlement agreement" means a signed agreement entered into by the parties to a collaborative family law participation agreement that sets forth a resolution of the parties' family law dispute.

m. "Sign" means, with present intent to authenticate or adopt a record to execute or adopt a tangible symbol; or attach to or logically associate with the record an electronic symbol, sound, or process.

n. "Tribunal" means a court, arbitrator, or administrative agency, as applicable, that after presentation of evidence or legal argument, has jurisdiction to render a decision affecting a party's interests in a matter.

4. P.L. , c. (C. ) (pending before the Legislature as this bill) applies to a collaborative family law process that is subject to a collaborative family law participation agreement, meets the requirements set forth in section 5 of P.L. , c. (C. ) (pending before the Legislature as this bill), and is signed on or after the effective date of this act.

P.L. , c. (C. ) (pending before the Legislature as this bill) does not apply to any other collaborative law process or any other collaborative law participation agreement.

5. a. A collaborative family law participation agreement shall:

(1) be in a record;

(2) be signed by the parties;

- (3) state the parties' intention to resolve a family law dispute through a collaborative family law process pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill);
  - (4) describe the nature and scope of the family law dispute;
  - (5) identify the collaborative family lawyer who represents each party in the process;
  - (6) contain a statement that a collaborative family lawyer's role is limited as defined in P.L. , c. (C. ) (pending before the Legislature as this bill), consistent with the Rules of Professional Conduct promulgated by the Supreme Court of New Jersey;
  - (7) set forth the manner by which a collaborative family law process begins and the manner by which it terminates or concludes in accordance with sections 6 and 7 of P.L. , c. (C. ) (pending before the Legislature as this bill);
  - (8) state that any collaborative family law communication of a party or a nonparty participant is confidential and subject to an evidentiary privilege under section 12 of P.L. , c. (C. ) (pending before the Legislature as this bill), and that the privilege may be waived only expressly and by both parties or in the case of a nonparty participant, by the nonparty participant having the right to exercise the privilege; and
  - (9) state that the conduct of the collaborative family lawyer is governed by P.L. , c. (C. ) (pending before the Legislature as this bill), the Rules of Court adopted by the Supreme Court of New Jersey, and the Rules of Professional Conduct promulgated by the Supreme Court of New Jersey and that P.L. , c. (C. ) (pending before the Legislature as this bill) does not alter the collaborative family lawyer's responsibilities to the client under the Rules of Professional Conduct and any other applicable Rules of Court.
- b. Parties may agree to include in a collaborative family law participation agreement additional provisions not inconsistent with P.L. , c. (C. ) (pending before the Legislature as this bill) or other applicable law.

6. a. A collaborative family law process begins when the parties sign a collaborative family law participation agreement.

b. Participation in a collaborative family law process is voluntary and may not be compelled by a tribunal.

7. a. A collaborative family law process is concluded by either:

- (1) resolution of a family law dispute as evidenced by a signed settlement agreement; or
- (2) termination of the process.

b. A collaborative family law process terminates when:

- (1) a party gives notice to other parties in a record that the process is ended, which a party may do with or without cause; or
- (2) a party files a document without the agreement of all parties that initiates a proceeding related to the family law dispute; or

(3) either party is subject to, or obtains, a temporary or final restraining order in accordance with the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et seq.); or

(4) an action is commenced requesting that a tribunal issue emergency relief to protect the health, safety, welfare, or interests of a party or the defense against such a request is commenced; or

(5) except as provided by section 8 of P.L. , c. (C. ) (pending before the Legislature as this bill), a party discharges a collaborative family lawyer; or

(6) a party fails to provide information pursuant to section 9 of P.L. , c. (C. ) (pending before the Legislature as this bill) that is necessary to address the issues in dispute, and one of the parties chooses to terminate the collaborative process as a result; or

(7) a collaborative family lawyer ceases further representation of a party.

c. A collaborative family law process does not terminate if, with the consent of the parties, a party, or the party's collaborative family lawyer on the party's behalf, requests a tribunal to incorporate a settlement agreement into a final judgment.

d. A collaborative family law participation agreement may provide additional methods of terminating or concluding a collaborative family law process consistent with P.L. , c. (C. ) (pending before the Legislature as this bill) and the Rules of Professional Conduct promulgated by the Supreme Court of New Jersey.

e. In the event the collaborative family law process does not result in a judgment resolving the family law dispute and the dispute is, instead, submitted to a tribunal for adjudication, the collaborative family lawyer shall not continue to represent the party in that family law dispute.

8. a. If a collaborative family lawyer ceases or is disqualified from representation of a party, prompt notice of the cessation of representation or discharge shall be given to all parties in a record.

b. Notwithstanding the provisions of paragraph (5) of subsection b. of section 7 of P.L. , c. (C. ) (pending before the Legislature as this bill), and subject to this subsection, if a collaborative family lawyer is discharged or ceases representation of a party, the collaborative family law process continues if, not later than 30 days after the date of notice of the discharge or cessation of representation is sent to the parties pursuant to subsection a. of this section, the unrepresented party:

(1) retains a successor collaborative family lawyer who is identified in an amended collaborative family law participation agreement; and

(2) in that amended collaborative family law participation agreement, the parties consent to continue the process and the successor lawyer confirms representation of the party.

9. Except as otherwise provided by law, during the collaborative family law process a party shall, in good faith, provide timely, full, and candid disclosure of information related to the family

law dispute without formal discovery. A party shall also promptly update previously disclosed information that has materially changed. The parties may define the scope of disclosure during the collaborative family law process except as provided by law.

10. P.L. , c. (C. ) (pending before the Legislature as this bill) does not affect, waive or supersede:

a. The professional responsibility obligations and standards applicable to a lawyer or other licensed professional in this State, including but not limited to the Rules of Professional Conduct promulgated by the Supreme Court of New Jersey; or

b. The obligation of a person to report abuse or neglect, abandonment, or exploitation of a child or adult under the law of this State.

11. A collaborative family law communication is confidential to the extent agreed to by the parties in a signed record or as provided by law.

12. a. Subject to sections 13 and 14 of P.L. , c. (C. ) (pending before the Legislature as this bill), a collaborative family law communication made by a party or any nonparty participant is privileged under subsection b. of this section, is not subject to discovery, and is not admissible in evidence.

b. In a proceeding, and in addition to application of the lawyer-client privilege provided under the laws of this State, the following privileges apply:

(1) A party may refuse to disclose, and may prevent the party's lawyer, or a nonparty participant, or any other person from disclosing, a collaborative family law communication.

(2) A nonparty participant may refuse to disclose, and may prevent a party, a party's lawyer or any other person from disclosing, a collaborative family law communication of the nonparty participant.

c. The privilege created by this section may be claimed by the party or nonparty participant in person, or if the party or nonparty participant is incapacitated or deceased, by his guardian or personal representative. Where a corporation or association or other legal entity is the nonparty participant claiming the privilege, and the corporation, association or other entity has been dissolved, the privilege may be claimed by its successors, assigns or trustees in dissolution.

d. Evidence or information that is otherwise admissible, readily available from other sources, or subject to discovery does not become inadmissible or protected from discovery solely because of its disclosure or use in a collaborative family law process.

13. a. A privilege under section 12 of P.L. , c. (C. ) (pending before the Legislature as this bill) may be waived in a record or orally during a proceeding if it is expressly waived by

both parties and, in the case of the privilege of a nonparty participant, it is also expressly waived by the nonparty participant.

b. A person who discloses or makes a representation about a collaborative family law communication that prejudices another person in a proceeding is precluded from asserting a privilege under section 12 of P.L. , c. (C. ) (pending before the Legislature as this bill), but this preclusion applies only to the extent necessary for the person prejudiced to respond to the disclosure or representation.

14. a. There is no privilege under section 12 of P.L. , c. (C. ) (pending before the Legislature as this bill) for a collaborative family law communication that is:

(1) made during a session of a collaborative family law process that is open, or is required by law to be open, to the public; or

(2) sought, obtained, or used to threaten or plan to inflict bodily injury or a crime, or to commit or attempt to commit a crime, or to conceal an ongoing crime or ongoing criminal activity; or

(3) in a settlement agreement resulting from the collaborative family law process, evidenced by a record signed by both parties to the agreement; or

(4) a disclosure in a report of suspected domestic violence or suspected child abuse to an appropriate agency under the laws of this State.

b. There is no privilege under section 12 of P.L. , c. (C. ) (pending before the Legislature as this bill) if a tribunal finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown the evidence is not otherwise available, the need for the evidence substantially outweighs the interest in protecting confidentiality, and the collaborative family law communication is sought or offered in:

(1) a court proceeding involving a crime; or

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

c. The privileges under section 12 of P.L. , c. (C. ) (pending before the Legislature as this bill) for a collaborative family law communication do not apply to the extent that a communication is:

(1) sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice or the unreasonableness of a collaborative family lawyer's fee arising from or related to a collaborative family law process; or

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

d. If a collaborative family law communication is subject to an exception under subsection b. or c. of this section, only the part of the communication necessary for the application of the exception may be disclosed or admitted.

e. Disclosure or admission of evidence excepted from the privilege under subsection b. or c. of this section does not make the evidence or any other collaborative family law communication discoverable or admissible for any other purpose.

f. The privileges under section 12 of P.L. , c. (C. ) (pending before the Legislature as this bill) do not apply if the parties agree in advance in a signed record that all or part of a collaborative family law process is not privileged.

15. If a collaborative family law participation agreement fails to meet the requirements of section 5 of P.L. , c. (C. ) (pending before the Legislature as this bill), the parties may be found to have intended to enter into a collaborative family law participation agreement if they signed a record indicating an intention to enter into a collaborative family law participation agreement and reasonably believed they were participating in a collaborative family law process.

16. In applying and construing this act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact a collaborative family law act.

17. This act modifies, limits, and supersedes the federal "Electronic Signatures in Global and National Commerce Act," 15 U.S.C. s.7001 et seq., but this act does not modify, limit, or supersede section 101(c) of that act, or authorize electronic delivery of any of the notices described in section 103(b) of that act.

18. If any provision of P.L. , c. (C. ) (pending before the Legislature as this bill), or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of P.L. , c. (C. ) (pending before the Legislature as this bill) which can be given effect without the invalid provision or application, and to this end the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill) are severable.

19. This act shall take effect on the 90th day after enactment.

#### STATEMENT

This bill enacts the "New Jersey Collaborative Family Law Act." Collaborative law is a voluntary, non-adversarial settlement process in which the parties, with the assistance of their



lawyers, attempt to negotiate in good faith a mutually acceptable resolution of the parties' dispute without court involvement. This bill would authorize the application of a collaborative law process in family law disputes.

Under the provisions of the bill, family law disputes could be resolved using the collaborative law process without intervention by a tribunal, provided the individuals in the dispute have signed a collaborative family law participation agreement and are represented by collaborative family lawyers.

A collaborative family lawyer is defined under the bill as a lawyer who represents a party in a collaborative family law process and whom the party acknowledges is retained for that limited purpose. Therefore, in the event the collaborative family law process does not resolve the family law dispute and the dispute is, instead, submitted to a tribunal, the collaborative family lawyer would not continue to represent the party. A collaborative family law participation agreement would provide that a complaint, petition, or claim may not be filed with a tribunal before or during the collaborative family law process, although a party may request that a tribunal incorporate a settlement agreement into a final judgment.

Under the provisions of the bill, a party is required to provide timely, full, and candid disclosure of information related to the family law dispute without formal discovery. A party would also be required to promptly update previously disclosed information that has materially changed. Failure to comply with these disclosure provisions would be a basis for termination of the collaborative family law process.

A collaborative family law process is concluded by either: a resolution of the dispute as evidenced by a signed settlement agreement, or by termination of the process. The process terminates if: (1) a party gives notice to other parties in a record that the process is ended, which a party may do with or without cause; (2) a party files a document without the agreement of all parties that initiates a proceeding related to the family law dispute without the agreement of all parties; (3) either party is subject to, or obtains, a temporary or final restraining order in accordance with the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et seq.); (4) an action is commenced requesting that a tribunal issue emergency relief to protect the health, safety, welfare, or interests of a party or the defense against such a request is commenced; (5) a party discharges a collaborative family lawyer except as provided in the act; (6) a party fails to provide information that is necessary to address the issues in dispute, and one of the parties chooses to terminate the collaborative process as a result; or (7) a collaborative family lawyer ceases further representation of a party.

This bill would not affect, waive or supersede the professional responsibility obligations and standards applicable to a collaborative family lawyer or affect an obligation to report abuse or neglect, abandonment, or exploitation of a child or adult.

Under the bill, a collaborative family law communication is confidential to the extent agreed to by the parties in a signed record or as provided by law. Except as provided for in the bill, a

collaborative family law communication made by a party or any nonparty participant is privileged and is not subject to discovery, and is not admissible in evidence. The following privileges apply in a proceeding: (1) a party may refuse to disclose, and may prevent the party's lawyer, a nonparty participant, or any other person from disclosing a collaborative family law communication; and (2) a nonparty participant may refuse to disclose, and may prevent a party, a party's lawyer or any other person from disclosing, a collaborative family law communication of the nonparty participant. These privileges may be claimed by the party or nonparty participant in person, or if the party or nonparty participant is incapacitated or deceased, by his guardian or personal representative.

These privileges may be waived in a record or orally during a proceeding if expressly waived by both parties and, in the case of the privilege of a nonparty participant, it is also expressly waived by the nonparty participant. A person who discloses or makes a representation about a collaborative family law communication that prejudices another person in a proceeding is precluded from asserting a privilege, but this preclusion applies only to the extent necessary for the person prejudiced to respond to the disclosure or representation.

These privileges are inapplicable if: (1) made during a session of a collaborative family law process that is open, or is required by law to be open, to the public; (2) sought, obtained or used to threaten or plan to inflict bodily injury or a crime, or to commit or attempt to commit a crime, or to conceal an ongoing crime or ongoing criminal activity; (3) in a settlement agreement resulting from the collaborative family law process, evidenced by a record signed by both parties to the agreement; or (4) a disclosure in a report of suspected domestic or suspected child abuse. In addition, there is no privilege if a tribunal finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown the evidence is not otherwise available, the need for the evidence substantially outweighs the interest in protecting confidentiality, and the collaborative family law communication is sought or offered in a court proceeding involving a crime or other, limited purposes. These privileges do not apply if the parties agree in advance in a signed record that all or part of a collaborative family law process is not privileged.

This bill is modeled on the final report of the New Jersey Law Revision Commission ("NJLRC") on the New Jersey Family Collaborative Law Act, dated July 23, 2013. The NJLRC based its recommendations on the Uniform Collaborative Law Rules/Act promulgated in 2010 by the National Conference of Commissioners on Uniform State Laws (now known as the Uniform Law Commission).