
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1644 Session of
2017

INTRODUCED BY KLUNK, CUTLER, MILLARD, PHILLIPS-HILL, WHEELAND,
LONGIETTI, BAKER, SCHEMEL, SAYLOR, MAHER, STEPHENS, WATSON,
ZIMMERMAN, KAUFFMAN, NESBIT, BRIGGS, MULLERY, KNOWLES, WARREN
AND JOZWIAK, JUNE 30, 2017

REFERRED TO COMMITTEE ON JUDICIARY, JUNE 30, 2017

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, providing for
3 collaborative law process.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Title 42 of the Pennsylvania Consolidated
7 Statutes is amended by adding a chapter to read:

8 CHAPTER 74

9 COLLABORATIVE LAW PROCESS

10 Sec.

11 7401. Short title and scope of chapter.

12 7402. Definitions.

13 7403. Beginning the collaborative law process.

14 7404. Assessment and review.

15 7405. Collaborative law participation agreement.

16 7406. Concluding the collaborative law process.

17 7407. Disqualification of collaborative attorney.

1 7408. Disclosure of information.

2 7409. Confidentiality.

3 7410. Privilege.

4 7411. Professional responsibility.

5 § 7401. Short title and scope of chapter.

6 (a) Short title.--This chapter shall be known and may be
7 cited as the Collaborative Law Act.

8 (b) Scope.--This chapter shall apply to a collaborative law
9 process between family members and arising from a participation
10 agreement that meets the requirements of section 7405 (relating
11 to collaborative law participation agreement).

12 § 7402. Definitions.

13 The following words and phrases when used in this chapter
14 shall have the meanings given to them in this section unless the
15 context clearly indicates otherwise:

16 "Collaborative communication." A statement or question that
17 concerns the collaborative law process or a collaborative matter
18 and that occurs after the parties sign a collaborative law
19 participation agreement but before the collaborative law process
20 is concluded. The term does not include a written settlement
21 agreement that is signed by all parties to the agreement.

22 "Collaborative law process." A procedure to resolve a claim,
23 transaction, dispute or issue without intervention by a
24 tribunal, in which procedure all parties sign a collaborative
25 law participation agreement, all parties are represented by
26 counsel and counsel is disqualified from representing the
27 parties in a proceeding before a tribunal.

28 "Collaborative matter." A dispute, transaction, claim or
29 issue for resolution that is described in a participation
30 agreement concerning any of the following:

- 1 (1) Marriage, divorce and annulment.
- 2 (2) Property distribution, usage and ownership.
- 3 (3) Child custody, visitation and parenting time.
- 4 (4) Parentage.
- 5 (5) Alimony, alimony pendente lite, spousal support and
6 child support.
- 7 (6) Prenuptial, marital and postnuptial agreements.
- 8 (7) Adoption.
- 9 (8) Termination of parental rights.
- 10 (9) A matter arising under 20 Pa.C.S. (relating to
11 decedents, estates and fiduciaries).
- 12 (10) A matter arising under 15 Pa.C.S. Pt. II (relating
13 to corporations).
- 14 "Family members." All of the following:
- 15 (1) Spouses and former spouses.
- 16 (2) Parents and children, including individuals acting
17 in loco parentis.
- 18 (3) Individuals currently or formerly cohabiting.
- 19 (4) Other individuals related by consanguinity or
20 affinity.
- 21 "Nonparty participant." A person other than a party or a
22 party's attorney that participates in the collaborative law
23 process. The term may include, but is not limited to, support
24 persons, mental health professionals, financial neutrals and
25 potential parties.
- 26 "Party." A person that signs a collaborative law
27 participation agreement and whose consent is necessary to
28 resolve a collaborative matter.
- 29 "Person." An individual, corporation, business trust,
30 estate, trust, partnership, limited liability company,

1 association, joint venture, public corporation, government or
2 governmental subdivision, agency or instrumentality or any other
3 legal or commercial entity.

4 "Proceeding." A judicial, administrative, arbitral or other
5 adjudicative process before a tribunal.

6 "Related matter." A matter involving the same parties,
7 dispute, transaction, claim or issue as a collaborative matter.

8 "Tribunal." A court, arbitrator, administrative agency or
9 other body acting in an adjudicative capacity that has
10 jurisdiction to render a binding decision directly affecting a
11 party's interests in a matter.

12 § 7403. Beginning the collaborative law process.

13 (a) Voluntariness.--Participation in a collaborative law
14 process is voluntary and may not be compelled by a tribunal. A
15 party may terminate the collaborative law process at any time
16 with or without cause.

17 (b) Commencement.--A collaborative law process shall begin
18 when the parties sign a collaborative law participation
19 agreement. Parties to a proceeding pending before a tribunal may
20 enter into a collaborative law process to resolve a matter
21 related to the proceeding.

22 § 7404. Assessment and review.

23 (a) General assessment.--Before entering into a
24 collaborative law participation agreement, a prospective party
25 shall:

26 (1) Assess factors the prospective party's attorney
27 reasonably believes relate to whether the collaborative law
28 process is appropriate for the matter and for the parties,
29 including a prospective party or nonparty participant's
30 history, if any, of violent or threatening behavior.

1 (2) Review information that the attorney reasonably
2 believes is sufficient for the prospective party to make an
3 informed decision about the material benefits and risks of a
4 collaborative law process, as compared with other
5 alternatives.

6 (b) Threatening or violent behavior.--

7 (1) Before a prospective party signs a collaborative law
8 participation agreement, an attorney shall inquire whether
9 the prospective party has a history of threatening or violent
10 behavior toward any party or nonparty participant who will be
11 part of the collaborative law process.

12 (2) If an attorney learns or reasonably believes, before
13 commencing or at any point in the collaborative law process,
14 that a party or prospective party has engaged in or has a
15 history of threatening or violent behavior toward any other
16 party or nonparty participant, the attorney may not begin or
17 continue the collaborative law process unless the party or
18 prospective party:

19 (i) Requests beginning or continuing the
20 collaborative law process.

21 (ii) Indicates that the safety of all parties to the
22 collaborative law process can be protected adequately
23 during the collaborative law process.

24 (c) Private cause of action.--An attorney's failure to
25 protect a party under this section shall not give rise to a
26 private cause of action against the attorney.

27 § 7405. Collaborative law participation agreement.

28 (a) Requirements.--A collaborative law participation
29 agreement must:

30 (1) Be in writing.

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 (4) Describe the nature and scope of the collaborative
5 matter.

6 (5) Identify the attorney who represents each party in
7 the collaborative law process.

8 (6) Include a statement that the representation of each
9 attorney is limited to the collaborative law process and that
10 the attorneys are disqualified from representing any party or
11 nonparty participant in a proceeding related to a
12 collaborative matter, consistent with this chapter.

13 (b) Optional provisions.--Parties may include in a
14 collaborative law participation agreement additional provisions
15 not inconsistent with this chapter or other applicable law,
16 including, but not limited to:

17 (1) An agreement concerning confidentiality of
18 collaborative communications.

19 (2) An agreement that part or all of the collaborative
20 law process will not be privileged in a proceeding.

21 (3) The scope of voluntary disclosure.

22 (4) The role of nonparty participants.

23 (5) The retention and role of nonparty experts.

24 (6) The manner and duration of a collaborative law
25 process under section 7403 (relating to beginning the
26 collaborative law process) and 7406 (relating to concluding
27 the collaborative law process).

28 (c) Nonconforming agreements.--This chapter shall apply to
29 an agreement that does not meet the requirements of subsection

30 (a) if:

1 (1) The agreement indicates an intent to enter into a
2 collaborative law participation agreement.

3 (2) The agreement is signed by all parties.

4 (3) A tribunal determines that the parties intended to
5 and reasonably believed that they were entering into a
6 collaborative law agreement subject to the requirements of
7 this chapter.

8 § 7406. Concluding the collaborative law process.

9 (a) General rule.--A collaborative law process shall be
10 concluded by:

11 (1) Resolution of the collaborative matter, as evidenced
12 by a signed record.

13 (2) Resolution of a part of the collaborative matter and
14 agreement by all parties that the remaining parts of the
15 collaborative matter will not be resolved in the
16 collaborative law process, as evidenced by a signed record.

17 (3) Termination under subsection (b).

18 (4) A method specified in the collaborative law
19 participation agreement.

20 (b) Termination.--A collaborative law process shall be
21 terminated when:

22 (1) A party gives written notice to all parties that the
23 collaborative law process is terminated.

24 (2) A party begins or resumes a pending proceeding
25 before a tribunal related to a collaborative matter without
26 the agreement of all parties.

27 (3) Except as provided in subsection (c), a party
28 discharges the party's attorney or the attorney withdraws
29 from further representation of a party. An attorney who is
30 discharged or withdraws shall give prompt written notice to

1 all parties and nonparty participants.

2 (c) Continuation.--Notwithstanding the discharge or
3 withdrawal of a collaborative attorney, a collaborative law
4 process shall continue if, not later than 30 days after the date
5 that the notice under subsection (b)(3) is sent, the
6 unrepresented party engages a successor attorney and the
7 participation agreement is amended to identify the successor
8 attorney.

9 § 7407. Disqualification of collaborative attorney.

10 (a) Rule.--

11 (1) Except as provided in subsection (b), an attorney
12 who represents a party in a collaborative law process and any
13 law firm or government agency with which the attorney is
14 associated shall be disqualified from representing any party
15 or nonparty participant in a proceeding related to the
16 collaborative matter.

17 (2) Requesting the approval of a settlement agreement by
18 a tribunal shall be considered part of the collaborative law
19 process and not a related proceeding.

20 (b) Exception.--Disqualification under subsection (a) shall
21 not operate to prevent a collaborative attorney from seeking or
22 defending an emergency order to protect the health, safety or
23 welfare of a party or a family member.

24 § 7408. Disclosure of information.

25 During the collaborative law process, parties shall provide
26 timely, full, candid and informal disclosure of information
27 related to the collaborative matter without formal discovery,
28 and shall update promptly previously disclosed information that
29 has materially changed.

30 § 7409. Confidentiality.

1 A collaborative law communication shall be confidential to
2 the extent provided by the laws of this Commonwealth or as
3 specified in the collaborative law participation agreement.
4 § 7410. Privilege.

5 (a) General rule.--Except as otherwise provided in this
6 section, a collaborative communication is privileged, may not be
7 compelled through discovery and shall not be admissible as
8 evidence in an action or proceeding. Evidence that is otherwise
9 admissible and subject to discovery shall not become
10 inadmissible or protected from discovery solely because of its
11 disclosure or use in a collaborative law process.

12 (b) Waiver.--

13 (1) A party may waive a privilege belonging to the party
14 only if all parties waive the privilege and, in the case of a
15 communication by a nonparty participant, only if the nonparty
16 participant and all parties waive the privilege.

17 (2) If a party discloses a privileged collaborative
18 communication that prejudices another party, the disclosing
19 party waives the right to assert a privilege under this
20 section to the extent necessary for the party prejudiced to
21 respond to the disclosure or representation.

22 (c) Nonapplicability.--Privilege under subsection (a) shall
23 not apply to:

24 (1) A communication that is not subject to the privilege
25 by agreement of the parties according to the terms of a
26 participation agreement.

27 (2) A communication that is made during a session of a
28 collaborative law process that is open, or required by law to
29 be open, to the public.

30 (3) A communication sought, obtained or used to:

1 (i) threaten or plan to inflict bodily injury,
2 commit or attempt to commit a crime; or
3 (ii) conceal ongoing criminal activity.

4 (d) Exceptions.--The following exceptions apply to the
5 privilege under subsection (a):

6 (1) A communication sought or offered to prove or
7 disprove facts relating to a claim or complaint of
8 professional misconduct or malpractice or a fee dispute.

9 (2) A communication sought or offered to prove facts
10 relating to the abuse, neglect, abandonment or exploitation
11 of a child or abuse of an adult.

12 (3) A communication sought or offered in a criminal
13 proceeding or in an action to enforce, void, set aside or
14 modify a settlement agreement where a tribunal or court of
15 competent jurisdiction finds that the evidence is not
16 otherwise available and the need for the evidence
17 substantially outweighs the interest in protecting the
18 privilege.

19 (e) Limitation.--

20 (1) If a collaborative communication is subject to an
21 exception under subsection (d), only the part of the
22 collaborative communication necessary for the application of
23 the exception may be disclosed or admitted.

24 (2) Disclosure or admission of evidence under subsection
25 (d) does not make the evidence or any other collaborative
26 communication discoverable or admissible for any other
27 purpose.

28 (f) Construction.--This section shall not be construed to
29 affect the scope of another applicable privilege under State law
30 or rule of court.

1 § 7411. Professional responsibility.

2 This chapter shall not affect the professional responsibility
3 obligations and standards applicable to an attorney or other
4 person professionally licensed or certified under State law.

5 Section 2. This act shall take effect in 60 days.