

# Public Act 100-0205 – Illinois Collaborative Process Act

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AN ACT concerning alternative dispute resolution.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

## Section 1. Short title. This Act may be cited as the Collaborative Process Act.

Section 5. **Definitions.** In this Act:

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

- (A) is made to conduct, participate in, continue, or reconvene a collaborative process; and
- (B) occurs after the parties sign a collaborative process participation agreement and before the collaborative process is concluded.

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

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

- (A) sign a collaborative process participation agreement; and
- (B) are represented by collaborative process lawyers.

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

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

- (A) marriage, divorce, dissolution, annulment, legal separation, and property distribution;
- (B) significant decision making and parenting time of children;
- (C) maintenance and child support;
- (D) adoption;
- (E) parentage; and
- (F) premarital, marital, and post-marital agreements.

"Collaborative process matter" does not include any dispute, transaction, claim, problem, or issue

that:

- (i) is the subject of a pending action under the Juvenile Court Act of 1987;
- (ii) is under investigation by the Illinois Department of Children and Family Services pursuant to the Abused and Neglected Child Reporting Act; or
- (iii) resulted in a currently open case with the Illinois Department of Children and Family Services.

(6) "*Law firm*" means:

- (A) lawyers who practice law together in a partnership, professional corporation, sole proprietorship, limited liability company, or association; and
- (B) lawyers employed in a legal services organization, law school or the legal department of a corporation or other organization.

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

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

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

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

(11) "*Prospective party*" means a person that discusses with a prospective collaborative process lawyer the possibility of signing a collaborative process participation agreement.

(12) "*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.

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

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

- (A) to execute or adopt a tangible symbol; or
- (B) to attach to or logically associate with the record an electronic symbol, sound, or process.

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

Section 15. **Collaborative process participation agreement; requirements.**

- (a) A collaborative process participation agreement *must*:
- (1) be in a record;
  - (2) be signed by the parties;
  - (3) state the parties' intention to resolve a collaborative process matter through a collaborative process under this Act;
  - (4) state the parties' agreement to discharge their collaborative process lawyers and law firms if the collaborative process fails.
  - (5) describe the nature and scope of the matter;
  - (6) identify the collaborative process lawyer who represents each party in the process; and
  - (7) contain a statement by each collaborative process lawyer confirming the lawyer's representation of a party in the collaborative process.
- (b) Parties may agree to include in a collaborative process participation agreement additional provisions not inconsistent with this Act.

**Section 20. Beginning and concluding the collaborative process.**

- (a) A collaborative process begins when the parties sign a collaborative process participation agreement.
- (b) A court may not order a party to participate in a collaborative process over that party's objection.
- (c) A collaborative process is concluded by:
- (1) resolution of a collaborative process matter as evidenced by a signed record of the parties;
  - (2) resolution of a part of the collaborative process matter, evidenced by a signed record of the parties, in which the parties agree that the remaining parts of the matter will not be resolved in the process; or
  - (3) termination of the process.
- (d) A collaborative process terminates:
- (1) when a party gives notice to other parties in a record that the process is ended;
  - (2) when a party:
    - (A) begins a proceeding related to a collaborative process matter without the agreement of all parties; or
    - (B) in a pending proceeding related to the matter:
      - (i) initiates a pleading, motion, order to show cause, or request for a conference with the court;
      - (ii) requests that the proceeding be put on the court's active calendar; or
      - (iii) takes similar action requiring notice to be sent to the parties;
  - (3) except as otherwise provided by subsection (g), when a party discharges a collaborative process lawyer or a collaborative process lawyer withdraws from further representation of a party; or

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

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

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

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

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

(2) in a signed record:

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

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

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

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

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

#### **Section 25. Proceedings pending before a court; status report.**

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

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

(c) A court in which a proceeding is stayed under subsection (a) may require the parties and collaborative process lawyers to provide a status report on the collaborative process and the proceeding. A status report may include only information on:

(i) whether the process is ongoing or concluded; or

(ii) the anticipated duration of the collaborative process.

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

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

**Section 30. Emergency order.** Nothing in the collaborative process may prohibit a party from seeking an emergency order to protect the health, safety, welfare, or interest of a party or person identified as protected in Section 201 of the Illinois Domestic Violence Act of 1986, or may prohibit a party or nonparty participant from making a report of abuse, neglect, abandonment, or exploitation of a child or adult under the law of this State. Section 35. Approval of agreement by the court. A court may approve an agreement resulting from a collaborative process. An agreement resulting from the collaborative process shall be presented to the court for approval if the agreement is to be enforceable.

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

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

- (1) the professional responsibility obligations and standards applicable to a lawyer or other licensed professional; or
- (2) the obligation of a person to report abuse or neglect, abandonment, or exploitation of a child or adult under the law of this State.

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

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

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

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

- (1) A party may refuse to disclose, and may prevent any other person from disclosing, a collaborative process communication.
- (2) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a collaborative process communication of the nonparty participant.

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

process.

### **Section 60. Waiver and preclusion of privilege.**

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

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

### **Section 65. Limits of privilege.**

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

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

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

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

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

(b) The privileges under Section 55 for a collaborative process 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 arising from or related to a collaborative process; or

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

(c) There is no privilege under Section 55 if a court 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 process communication is sought or offered in:

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

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

(d) If a collaborative process communication is subject to an exception under subsection (b) or (c), 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) does not make the evidence or any other collaborative process communication discoverable or admissible for any other purpose.

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

**Section 70. Authority of the Illinois Supreme Court.**

This Act is subject to the supervisory authority of the Illinois Supreme Court.

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