

DRAFT
FOR DISCUSSION ONLY

COLLABORATIVE LAW ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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COLLABORATIVE LAW ACT

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1 **UNIFORM COLLABORATIVE LAW ACT**

2 **SECTION 1. SHORT TITLE.** This act may be cited as the Uniform Collaborative
3 Law Act.

4 **SECTION 2. DEFINITIONS.** In this act:

5 (1) “Collaborative law” means a process voluntarily entered into by the parties to a
6 dispute represented by collaborative lawyers in which the parties state their intention to negotiate
7 the resolution of the dispute without judicial intervention under the terms and conditions set forth
8 in a collaborative law participation agreement.

9 (2) “Collaborative law participation agreement” means a written agreement voluntarily
10 signed by the parties to a dispute and their collaborative lawyers which describes the rights and
11 duties of the parties and their collaborative lawyers during collaborative law and which meets the
12 requirements of section 3 of this act.

13 (3) “Party” means a person in a dispute who signs a collaborative law participation
14 agreement.

15 (4) “Collaborative lawyer” means a lawyer retained by a party for the limited purpose of
16 representing that party in the attempted resolution of the dispute through collaborative law.

17 (5) “Dispute” means a dispute between the parties as described in a collaborative law
18 participation agreement.

19 (6) “Collaborative law communication” means a statement, whether oral or in a record or
20 verbal or nonverbal, that occurs between the time collaborative law commences and it is
21 terminated and is made for purposes of conducting, participating in, initiating, continuing, or
22 reconvening collaborative law.

23 (7) “Nonparty participant” means a person, other than a party or collaborative lawyer,

1 who participates in collaborative law. A nonparty participant includes:

2 (a) a mediator retained by the parties to facilitate resolution of the dispute;

3 (b) a mental health professional, a health care professional, a financial
4 professional, an appraiser or other expert jointly retained by the parties to facilitate resolution of
5 a dispute through collaborative law;

6 (c) a professional or person retained or serving as an advisor to a party to
7 collaborative law.

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

11 (9) “Proceeding” means a judicial, administrative, arbitral, or other adjudicative process,
12 including related pre-hearing and post-hearing motions, conferences, and discovery;

13 (10) “Record” means information that is inscribed on a tangible medium or that is stored
14 in an electronic or other medium and is retrievable in perceivable form.

15 (11) “Sign” or “signed” means to execute or adopt a tangible symbol with the present
16 intent to authenticate a record; or to attach or logically associate an electronic symbol, sound, or
17 process to or with a record with the present intent to authenticate a record.

18 **SECTION 3. COLLABORATIVE LAW PARTICIPATION AGREEMENT.**

19 (a) A collaborative law participation agreement must be in writing and be signed by the
20 parties and signed or acknowledged by their collaborative lawyers;

21 (b) A collaborative law participation agreement must contain following terms:

22 (1) a party will make timely, full, candid and informal disclosure of information
23 reasonably related to the dispute and have an obligation to promptly update information

1 previously provided in which there has been a material change;

2 (2) parties will jointly retain neutral experts to participate in collaborative law to
3 facilitate the resolution of the dispute;

4 (3) a neutral expert retained for purposes of facilitating the resolution of the
5 dispute in collaborative law is disqualified from testifying as a witness in any proceeding
6 reasonably related to the dispute;

7 (4) court intervention in the dispute is suspended pursuant to applicable court
8 rules until collaborative law terminates;

9 (5) a party has the right to unilaterally terminate collaborative law at any time and
10 for any cause or reason or no cause or reason;

11 (6) a collaborative lawyer is authorized to terminate collaborative law on a party's
12 behalf;

13 (7) a collaborative lawyer must withdraw from further representation of a party on
14 matters reasonably related to a dispute and is disqualified from representing any party in any
15 proceeding or matter reasonably related to the dispute if collaborative law terminates;

16 (8) a collaborative lawyer and any lawyer associated in the practice of law with
17 that collaborative lawyer is disqualified from representing any party in any matter or proceeding
18 reasonably related to the dispute if collaborative law terminates;

19 (9) collaborative law terminates when any of the events described in Section 4
20 occurs;

21 (10) collaborative law communications are privileged from admissibility into
22 evidence in a proceeding as provided in Section 7;

23 (c) A collaborative law participation agreement must also contain:

1 (1) an agreement by the parties to participate in collaborative law to attempt to
2 resolve the dispute;

3 (2) a description of the dispute the parties seek to resolve through collaborative
4 law;

5 (3) a signed acknowledgment by each party that the party:

6 (A) has entered into the collaborative law participation agreement
7 voluntarily;

8 (B) has been provided with adequate information and explanation about
9 the material benefits and risks to make an informed decision whether to enter into collaborative
10 law as compared to other reasonably available alternatives for attempting to resolve the dispute
11 such as negotiation, litigation, arbitration, mediation or evaluation;

12 (C) recognizes that by signing a collaborative law participation agreement
13 that the party waives certain legal rights, such as discovery and court hearings until collaborative
14 law terminates;

15 (D) recognizes that the party is entering into a retainer agreement with a
16 collaborative lawyer for the limited purpose of engaging the collaborative lawyer to represent the
17 party in collaborative law;

18 (E) recognizes that collaborative lawyers for other parties represent the
19 interests of those parties in collaborative law;

20 (F) acknowledges that by signing a collaborative law participation
21 agreement, the party authorizes his or her collaborative lawyer to terminate collaborative law on
22 the party's behalf;

23 (G) acknowledges that a collaborative lawyer will withdraw from further

1 representation of the party in any matter reasonably related to the dispute if collaborative law
2 terminates;

3 (H) acknowledges that the collaborative lawyer for the party and any
4 lawyer associated in the practice of law with that collaborative lawyer, is disqualified from
5 representing the party in any proceeding reasonably related to the dispute if collaborative law
6 terminates.

7 (d) Parties cannot agree to waive the provisions of this section and participate in
8 collaborative law.

9 (e) Parties can agree to include additional terms and provisions in a collaborative law
10 participation agreements not inconsistent with the provisions of this section.

11 (f) A collaborative law participation agreement shall be interpreted and enforced in the
12 same manner as any other contract.

13 **SECTION 4. COMMENCING AND TERMINATING COLLABORATIVE LAW.**

14 (a) Collaborative law commences when parties and their collaborative lawyers sign a
15 collaborative law participation agreement which meets the requirements of section 3.

16 (b) A party may terminate collaborative law at any time after it commences, for any
17 reason or no reason, with or without cause.

18 (c) Collaborative law terminates when:

19 (1) a party terminates the lawyer-client relationship with that party's collaborative
20 lawyer, unless the party retains a successor collaborative lawyer who signs a collaborative law
21 participation agreement within thirty days after termination;

22 (2) a collaborative lawyer withdraws from further representation of a party in
23 collaborative law, unless the party retains a successor collaborative lawyer who signs a

1 collaborative law participation agreement within thirty days after withdrawal;

2 (3) a party commences a proceeding reasonably related to the dispute against
3 another party;

4 (4) a party initiates a contested pleading, motion, order to show cause, request for
5 a conference with the court, request that a case be put on the court's trial calendar or takes
6 similar action in a pending proceeding reasonably related to the dispute;

7 (d) A collaborative lawyer or a party who terminates collaborative law shall promptly
8 provide written notice of termination to other parties and their collaborative lawyers. The notice
9 need not specify a reason for terminating collaborative law.

10 **SECTION 5. INTERPRETATION AND ENFORCMENT OF AGREEMENTS**

11 **RESULTING FROM COLLABORATIVE LAW.** An agreement or contract between parties
12 resulting from collaborative law that resolves a dispute in whole or in part shall be interpreted
13 and enforced in the same manner as any other agreement or contract.

14 **SECTION 6. DISQUALIFICATION OF A COLLABORATIVE LAWYER.**

15 A collaborative lawyer and any lawyer associated in the practice of law with the
16 collaborative lawyer is disqualified from representing any party to collaborative law in any
17 proceeding or other matter reasonably related to the dispute if collaborative law terminates.

18 **SECTION 7. EVIDENTIARY PRIVILEGE FOR COLLABORATIVE LAW**
19 **COMMUNICATIONS.**

20 (a) Except as otherwise provided in subsections (g) through (i), a collaborative law
21 communication is privileged as provided in subsection (b) and is not subject to discovery or
22 admissible in evidence in a proceeding unless waived or precluded as provided by subsections
23 (d) through (f).

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

2 (1) a party may refuse to disclose, and may prevent any other person from
3 disclosing, a collaborative law communication.

4 (2) a nonparty participant may refuse to disclose, and may prevent any other
5 person from disclosing, a collaborative law communication of the nonparty participant.

6 (c) Evidence or information that is otherwise admissible or subject to discovery does not
7 become inadmissible or protected from discovery solely by reason of its disclosure or use in
8 collaborative law.

9 (d) A privilege under this section may be waived in a record or orally during a
10 proceeding if it is expressly waived by all parties to a collaborative law participation agreement
11 and, in the case of the privilege of a nonparty participant, it is also expressly waived by the
12 nonparty participant.

13 (e) A person who discloses or makes a representation about a collaborative law
14 communication which prejudices another person in a proceeding is precluded from asserting a
15 privilege under this section, but only to the extent necessary for the person prejudiced to respond
16 to the representation or disclosure.

17 (f) A person who intentionally uses collaborative law to plan, attempt to commit or
18 commit a crime, or to conceal an ongoing crime or ongoing criminal activity, is precluded from
19 asserting a privilege under this section.

20 (g) There is no privilege under this section for a collaborative law communication that is:

21 (1) in an agreement evidenced by a record signed by all parties to a collaborative
22 law participation agreement;

23 (2) a threat or statement of a plan to inflict bodily injury or commit a crime of

1 violence;

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

4 (4) sought or offered to prove or disprove a claim or complaint of professional
5 misconduct or malpractice arising from or related to collaborative law; or

6 (5) sought or offered to prove or disprove abuse, neglect, abandonment, or
7 exploitation in a proceeding in which the abuse or neglect of a child [or a vulnerable adult as
8 defined by state law] is an issue.

9 (h) There is no privilege under this section if a court, administrative agency, or arbitrator
10 finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence
11 has shown that the evidence is not otherwise available, that there is a need for the evidence that
12 substantially outweighs the interest in protecting confidentiality, and that the collaborative law
13 communication is sought or offered in:

14 (1) a court proceeding involving a felony [or misdemeanor]; or

15 (2) a proceeding to prove a claim to rescind or reform or a defense to avoid
16 liability on a contract arising out of collaborative law.

17 (i) If a collaborative law communication is not privileged under subsection (g) or (h),
18 only the portion of the communication necessary for the application of the exception from
19 nondisclosure may be admitted.

20 (j) Admission of evidence under subsection (g) or (h) does not render the evidence, or
21 any other collaborative law communication, discoverable or admissible for any other purpose.

22 (k) If the parties agree in advance in a signed record, or a record of proceeding reflects
23 agreement by the parties, that all or part of collaborative law is not privileged, the privileges

1 under subsections (a) through (j) do not apply to collaborative law or part agreed upon.
2 However, subsections (a) through (j) apply to a collaborative law communication made by a
3 person that has not received actual notice of the agreement before the communication is made.

4 **SECTION 8. CONFIDENTIALITY OF COLLABORATIVE LAW**
5 **COMMUNICATIONS.** Collaborative law communications are confidential to the extent
6 agreed by the parties in a signed agreement or as provided by other law or rule of this State.

7 **SECTION 9. STANDARDS OF PROFESSIONAL RESPONSIBILITY AND**
8 **MANDATORY REPORTING FOR COLLABORATIVE LAWYERS AND**
9 **NONPARTIES WHO PARTICIPATE IN COLLABORATIVE LAW.**

10 (a) The professional responsibility obligations or standards of collaborative lawyers are
11 not changed, modified, or limited by reason of such representation.

12 (b) The professional responsibility obligations or standards applicable to any licensed
13 professional who serves as a nonparty participant in collaborative law are not changed, modified
14 or limited by reason of such engagement.

15 (c) The obligation of any person to report child abuse or neglect [or the abuse or neglect
16 of a vulnerable adult] as required by the laws of this State are not changed, modified or limited
17 by that person's participation in collaborative law.

18 **SECTION 10. COLLABORATIVE LAW AND THE JUDICIAL PROCESS.**

19 (a) Parties and their collaborative lawyers may engage in collaborative law before a
20 proceeding related to a dispute is commenced in court or other forum.

21 (b) Parties and their collaborative lawyers may engage in collaborative law after
22 commencement of a proceeding reasonably related to the dispute.

23 (c) A collaborative lawyer shall file a notice of collaborative law with the court promptly

1 after a collaborative law participation agreement is signed when a proceeding reasonably related
2 to the dispute is pending at that time.

3 (d) A collaborative lawyer may not appear in court to represent a party for a contested
4 hearing in a proceeding reasonably related to a dispute after collaborative law commences,
5 absent an emergency involving a credible threat to the life or physical well being of a party or a
6 party's child when no successor counsel is available to represent the party.

7 (e) A collaborative lawyer shall promptly notify the court in writing if collaborative law
8 is terminated in any proceeding in which a notice of collaborative law has been filed with the
9 court.

10 **SECTION 11. JUDICIAL RULE MAKING REGULATING COLLABORATIVE**
11 **LAW.**

12 (a) The [rule making body of the judicial system of the State]:

13 (1) shall prescribe rules of practice and procedure that:

14 (A) suspend case management and judicial supervision of proceedings in
15 civil cases when a notice of collaborative law is filed with a court until a court receives written
16 notice that collaborative law is terminated or for other reasonable time;

17 (B) authorize parties to make applications to the court for emergency
18 orders to protect the life, bodily integrity or financial welfare of a party or a child of a party;

19 (C) provide for resumption of case management and entry of appropriate
20 orders when a court is notified that collaborative law is terminated in a pending proceeding;

21 (D) provide that the court shall not dismiss a pending proceeding in which
22 a notice of collaborative law is filed based on failure to prosecute or delay without providing
23 collaborative lawyers and the parties appropriate notice and an opportunity to be heard.

1 (2) may promulgate additional rules of practice and procedure regulating
2 collaborative law not inconsistent with the provisions of this act which promote the better
3 administration of justice;

4 (3) may promulgate standard forms for a collaborative law participation
5 agreement, notice of collaborative law, termination of collaborative law and other aspects of
6 collaborative law that promotes the better administration of justice.

7 (b) The [rule making body of the judicial system of the State] may create a committee of
8 members of the bar, the bench, other professions and lay persons to recommend proposed rules
9 regulating collaborative law.

10 (c) A rule prescribed under the authority of this act shall be prescribed only after giving
11 appropriate public notice and an opportunity for comment. The notice shall include the text of
12 proposed rule, an explanatory note describing its provisions, and a written report describing the
13 reasons for the proposed rule, and arguments for and against

14 **SECTION 12. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
15 **NATIONAL COMMERCE ACT.** This act modifies, limits, and supersedes the federal
16 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et. seq.,
17 but does not modify, limit or supercede Section 101 (c) of that act, 15 U.S.C. Section 7001(c), or
18 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
19 U.S.C. Section 7003(b).

20 **SECTION 13. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
21 applying and construing this [act], consideration should be given to the need to promote
22 uniformity of the law with respect to its subject matter among states that enact it.

23 **SECTION 14. SEVERABILITY CLAUSE.** If any provision of this [act] or its

1 application to any person or circumstance is held invalid, the invalidity does not affect other
2 provisions or applications of this [act] which can be given effect without the invalid provision or
3 application, and to this end the provisions of this [act] are severable.

4 **SECTION 15. EFFECTIVE DATE.** This [act] takes effect

5 **SECTION 16. APPLICATION TO EXISTING AGREEMENTS.**

6 (a) This [act] governs a collaborative law participation agreement made on or after [the
7 effective date of this [act]].

8 (b) On or after [a delayed date], this [act] governs a collaborative law participation
9 agreement whenever made.