

[First Reprint]

ASSEMBLY, No. 1477

STATE OF NEW JERSEY

216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

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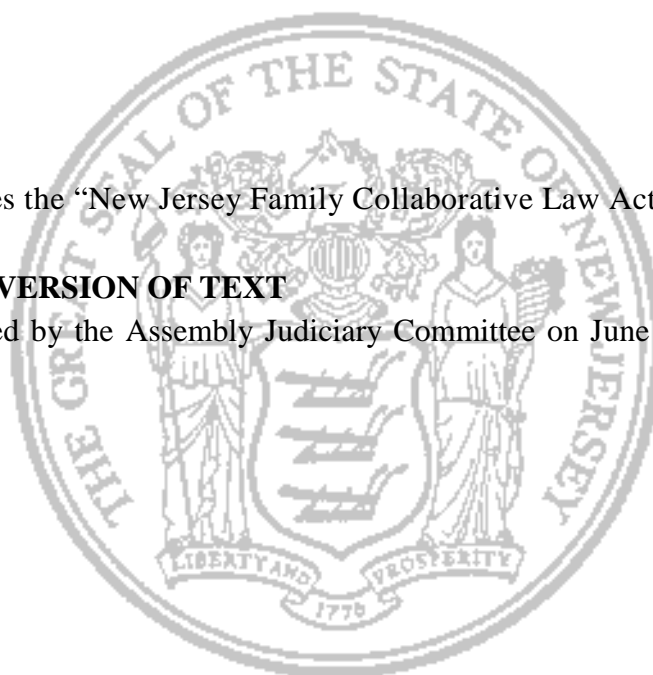
Assemblymen Carroll, Eustace, Assemblywoman N.Munoz, Assemblyman Lagana, Assemblywomen Lampitt, Jasey, Senators Weinberg, Scutari, Bateman, Stack, P.Barnes, III and Allen

SYNOPSIS

Establishes the “New Jersey Family Collaborative Law Act.”

CURRENT VERSION OF TEXT

As reported by the Assembly Judiciary Committee on June 12, 2014, with amendments.



(Sponsorship Updated As Of: 6/27/2014)

1 AN ACT concerning ¹**【collaborative】**¹ family ¹collaborative¹ law
 2 and supplementing Title 2A of the New Jersey Statutes.

3
 4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
 5 *of New Jersey:*

6
 7 1. This act shall be known and may be cited as the “New Jersey
 8 ¹**【Collaborative】**¹ Family ¹Collaborative¹ Law Act.”

9
 10 2. The Legislature finds and declares:

11 a. Since at least 2005, attorneys in New Jersey have
 12 participated in the dispute resolution method known as ¹family¹
 13 collaborative law, in which an attorney is retained for the limited
 14 purpose of assisting his client in resolving ¹family¹ disputes in a
 15 voluntary, non-adversarial manner, without court intervention.

16 b. The ¹family¹ collaborative law process is distinct from other
 17 dispute resolution mechanisms because the parties intend to resolve
 18 their dispute without litigation. Instead, each party, represented by
 19 his attorney, meets together with the other party to the dispute, that
 20 party’s attorney, and, as needed, one or more nonparty participants
 21 who are not attorneys but are professionals in their fields, such as
 22 certified financial planners, certified public accountants, licensed
 23 clinical social workers, psychologists, licensed professional
 24 counselors, licensed marriage and family therapists, and
 25 psychiatrists. All participants in the ¹family¹ collaborative law
 26 process understand and agree that the process is intended to replace
 27 litigation and that the process will terminate if either party or either
 28 attorney commences a proceeding related to the subject matter to be
 29 addressed through the ¹family¹ collaborative process before a court
 30 or other tribunal other than to seek incorporation of a settlement
 31 agreement into a final judgment.

32 c. In order to facilitate full and fair disclosure by the parties to
 33 the ¹family¹ collaborative ¹law¹ process, the parties must have an
 34 evidentiary privilege to protect them from disclosure of any
 35 collaborative law communication. The nonparty participants in the
 36 ¹family¹ collaborative law process, who serve as neutral experts,
 37 need a privilege from disclosure of communications made by them
 38 during the process similar to the privilege created for mediators in
 39 the “Uniform Mediation Act,” P.L.2004, c.157 (C.2A:23C-1 et
 40 seq.). This will enable nonparty participants to participate candidly
 41 in the process and thereby facilitate resolution of the family law
 42 dispute.

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AJU committee amendments adopted June 12, 2014.

1 3. As used in this act:

2 a. **“Collaborative family”** “Family collaborative”¹ law
3 communication” means a statement, whether oral or in a record, that
4 is made in the course of a **“collaborative”** family “collaborative”¹
5 law process and occurs after the parties sign a **“collaborative”**¹
6 family “collaborative”¹ law participation agreement but before the
7 **“collaborative”** family “collaborative”¹ law process is concluded.

8 b. **“Collaborative family”** “Family collaborative”¹
9 participation agreement” means a written agreement by the parties
10 to participate in a **“collaborative”** family “collaborative”¹ law
11 process, in accordance with section 5 of P.L. , c. (C.)
12 (pending before the Legislature as this bill) in order to resolve their
13 family law dispute.

14 c. **“Collaborative family”** “Family collaborative”¹ law
15 process” means a procedure intended to resolve the family law
16 dispute without intervention by a tribunal provided that the
17 individuals in the dispute: (1) sign a **“collaborative”** family
18 “collaborative”¹ law participation agreement; and (2) are represented
19 by **“collaborative”** family “collaborative”¹ lawyers.

20 d. **“Collaborative family”** “Family collaborative”¹ lawyer”
21 means a lawyer who represents a party in a **“collaborative”** family
22 “collaborative”¹ law process and whom the party acknowledges is
23 retained for that limited purpose.

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

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

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

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

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

34 f. “Nonparty participant” means a person, other than a party
35 and the party’s **“collaborative”** family “collaborative”¹ lawyer,
36 who participates in a **“collaborative”** family “collaborative”¹ law
37 process. “This includes, but is not limited to, financial practitioners,
38 including certified financial planners and certified public
39 accountants, and mental health professionals, including licensed
40 clinical social workers, psychologists, licensed professional
41 counselors, licensed marriage and family therapists, and
42 psychiatrists.”¹

43 g. “Party” means an individual who signs a **“collaborative”**¹
44 family “collaborative”¹ law participation agreement and whose
45 consent is necessary to resolve a family law dispute under P.L. ,
46 c. (C.) (pending before the Legislature as this bill).

- 1 h. “Proceeding” means a judicial or arbitral or adjudicative
2 process before a tribunal.
- 3 i. “Prospective party” means an individual who discusses with
4 a prospective **‘[collaborative]’** family ‘collaborative’ lawyer the
5 possibility of signing a **‘[collaborative]’** family ‘collaborative’ law
6 participation agreement.
- 7 j. “Record” means information that is inscribed on a tangible
8 medium or that is stored in an electronic or other medium and is
9 retrievable in perceivable form.
- 10 k. “Related to the family law dispute” means involving the
11 same parties, transaction or occurrence, nucleus of operative fact,
12 claim, matter or issue as the family law dispute.
- 13 l. “Settlement agreement” means a signed agreement entered
14 into by the parties to a **‘[collaborative]’** family ‘collaborative’ law
15 participation agreement that sets forth a resolution of the parties’
16 family law dispute.
- 17 m. “Sign” means, with present intent to authenticate or adopt a
18 record to execute or adopt a tangible symbol; or attach to or
19 logically associate with the record an electronic symbol, sound, or
20 process.
- 21 n. “Tribunal” means a court, arbitrator, or administrative
22 agency, as applicable, that after presentation of evidence or legal
23 argument, has jurisdiction to render a decision affecting a party’s
24 interests in a matter.
- 25
- 26 4. P.L. , c. (C.) (pending before the Legislature as
27 this bill) applies to a **‘[collaborative]’** family ‘collaborative’ law
28 process that is subject to a **‘[collaborative]’** family ‘collaborative’
29 law participation agreement, meets the requirements set forth in
30 section 5 of P.L. , c. (C.) (pending before the Legislature
31 as this bill), and is signed on or after the effective date of this act.
- 32 P.L. , c. (C.) (pending before the Legislature as this
33 bill) does not apply to any other collaborative law process or any
34 other collaborative law participation agreement.
- 35
- 36 5. a. A **‘[collaborative]’** family ‘collaborative’ law
37 participation agreement shall:
- 38 (1) be in a record;
- 39 (2) be signed by the parties;
- 40 (3) state the parties’ intention to resolve a family law dispute
41 through a **‘[collaborative]’** family ‘collaborative’ law process
42 pursuant to P.L. , c. (C.) (pending before the Legislature
43 as this bill);
- 44 (4) describe the nature and scope of the family law dispute;
- 45 (5) identify the **‘[collaborative]’** family ‘collaborative’ lawyer
46 who represents each party in the process;

1 (6) contain a statement that a **'[collaborative]'** family
 2 'collaborative' lawyer's role is limited as defined in P.L. ,
 3 c. (C.) (pending before the Legislature as this bill),
 4 consistent with the Rules of Professional Conduct promulgated by
 5 the Supreme Court of New Jersey;

6 (7) set forth the manner by which a **'[collaborative]'** family
 7 'collaborative' law process begins and the manner by which it
 8 terminates or concludes in accordance with sections 6 and 7 of
 9 P.L. , c. (C.) (pending before the Legislature as this bill);

10 (8) state that any **'[collaborative]'** family 'collaborative' law
 11 communication of a party or a nonparty participant is confidential
 12 and subject to an evidentiary privilege under section **'[12] 13'** of
 13 P.L. , c. (C.) (pending before the Legislature as this bill),
 14 and that the privilege may be waived only expressly and by both
 15 parties or in the case of a nonparty participant, by the nonparty
 16 participant having the right to exercise the privilege; and

17 (9) state that the conduct of the **'[collaborative]'** family
 18 'collaborative' lawyer is governed by P.L. , c. (C.)
 19 (pending before the Legislature as this bill), the Rules of Court
 20 adopted by the Supreme Court of New Jersey, and the Rules of
 21 Professional Conduct promulgated by the Supreme Court of New
 22 Jersey and that P.L. , c. (C.) (pending before the
 23 Legislature as this bill) does not alter the **'[collaborative]'** family
 24 'collaborative' lawyer's responsibilities to the client under the
 25 Rules of Professional Conduct and any other applicable Rules of
 26 Court.

27 b. Parties may agree to include in a **'[collaborative]'** family
 28 'collaborative' law participation agreement additional provisions
 29 not inconsistent with P.L. , c. (C.) (pending before the
 30 Legislature as this bill) or other applicable law.

31
 32 6. a. A **'[collaborative]'** family 'collaborative' law process
 33 begins when the parties sign a **'[collaborative]'** family
 34 'collaborative' law participation agreement.

35 b. Participation in a **'[collaborative]'** family 'collaborative' law
 36 process is voluntary and may not be compelled by a tribunal.

37
 38 7. a. A **'[collaborative]'** family 'collaborative' law process is
 39 concluded by either:

40 (1) resolution of a family law dispute as evidenced by a signed
 41 settlement agreement; or

42 (2) termination of the process.

43 b. A **'[collaborative]'** family 'collaborative' law process
 44 terminates when:

45 (1) a party gives notice to other parties in a record that the
 46 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 ¹against the other party¹ 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 ¹**[8]** ¹9¹ of P.L. , c. (C.) (pending before the Legislature as this bill), a party discharges a ¹**[collaborative]**¹ family ¹collaborative¹ lawyer; or

(6) a party fails to provide information pursuant to section ¹**[9]** ¹10¹ 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 ¹**[collaborative]**¹ family ¹collaborative¹ lawyer ceases further representation of a party.

c. A ¹**[collaborative]**¹ family ¹collaborative¹ law process does not terminate if, with the consent of the parties, a party, or the party’s ¹**[collaborative]**¹ family ¹collaborative¹ lawyer on the party’s behalf, requests a tribunal to incorporate a settlement agreement into a final judgment.

d. A ¹**[collaborative]**¹ family ¹collaborative¹ law participation agreement may provide additional methods of terminating or concluding a ¹**[collaborative]**¹ family ¹collaborative¹ 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 ¹**[collaborative]**¹ family ¹collaborative¹ 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 ¹**[collaborative]**¹ family ¹collaborative¹ lawyer ¹and the lawyers in the law firm with whom the collaborative family lawyer is associated¹ shall not continue to represent the party in that family law dispute.

¹8. A lawyer in a law firm with which the family collaborative lawyer is associated in a partnership, professional corporation, sole proprietorship, limited liability company, or law association is disqualified from appearing before a tribunal to represent a party in a proceeding related to a family collaborative law matter if the family collaborative lawyer is disqualified from doing so in subsection e. of section 7 of P.L. , c. (C.) (pending before the Legislature as this bill).¹

1 **1[8.] 9.**¹ a. If a **1[collaborative]**¹ family **1collaborative**¹
2 lawyer ceases or is disqualified from representation of a party,
3 prompt notice of the cessation of representation or discharge shall
4 be given to all parties in a record.

5 b. Notwithstanding the provisions of paragraph (5) of
6 subsection b. of section 7 of P.L. , c. (C.) (pending before
7 the Legislature as this bill), and subject to this subsection, if a
8 **1[collaborative]**¹ family **1collaborative**¹ lawyer is discharged or
9 ceases representation of a party, the **1[collaborative]**¹ family
10 **1collaborative**¹ law process continues if, not later than 30 days after
11 the date of notice of the discharge or cessation of representation is
12 sent to the parties pursuant to subsection a. of this section, the
13 unrepresented party:

14 (1) retains a successor **1[collaborative]**¹ family **1collaborative**¹
15 lawyer who is identified in an amended **1[collaborative]**¹ family
16 **1collaborative**¹ law participation agreement; and

17 (2) in that amended **1[collaborative]**¹ family **1collaborative**¹ law
18 participation agreement, the parties consent to continue the process
19 and the successor lawyer confirms representation of the party.
20

21 **1[9.] 10.**¹ Except as otherwise provided by law, during the
22 **1[collaborative]**¹ family **1collaborative**¹ law process a party shall,
23 in good faith, provide timely, full, and candid disclosure of
24 information related to the family law dispute without formal
25 discovery. A party shall also promptly update previously disclosed
26 information that has materially changed. The parties may define the
27 scope of disclosure during the collaborative family law process
28 except as provided by law.
29

30 **1[10.] 11.**¹ P.L. , c. (C.) (pending before the
31 Legislature as this bill) does not affect, waive or supersede:

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

36 b. The obligation of a person to report abuse or neglect,
37 abandonment, or exploitation of a child or adult under the law of
38 this State.
39

40 **1[11.] 12.**¹ A **1[collaborative]**¹ family **1collaborative**¹ law
41 communication is confidential to the extent agreed to by the parties
42 in a signed record or as provided by law.
43

44 **1[12.] 13.**¹ a. Subject to sections **1[13] 14**¹ and **1[14] 15**¹ of
45 P.L. , c. (C.) (pending before the Legislature as this bill),
46 a **1[collaborative]**¹ family **1collaborative**¹ law communication made

1 by a party or any nonparty participant is privileged under subsection
2 b. of this section, is not subject to discovery, and is not admissible
3 in evidence.

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

7 (1) A party may refuse to disclose, and may prevent the party's
8 lawyer, or a nonparty participant, or any other person from
9 disclosing, a ¹["collaborative"]¹ family ¹collaborative¹ law
10 communication.

11 (2) A nonparty participant may refuse to disclose, and may
12 prevent a party, a party's lawyer or any other person from
13 disclosing, a ¹["collaborative"]¹ family ¹collaborative¹ law
14 communication of the nonparty participant.

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

23 d. Evidence or information that is otherwise admissible, readily
24 available from other sources, or subject to discovery does not
25 become inadmissible or protected from discovery solely because of
26 its disclosure or use in a ¹["collaborative"]¹ family ¹collaborative¹
27 law process.

28

29 ¹["13."] ¹14.¹ a. A privilege under section ¹["12"] ¹13¹ of P.L. ,
30 c. (C.) (pending before the Legislature as this bill) may be
31 waived in a record or orally during a proceeding if it is expressly
32 waived by both parties and, in the case of the privilege of a
33 nonparty participant, it is also expressly waived by the nonparty
34 participant.

35 b. A person who discloses or makes a representation about a
36 ¹["collaborative"]¹ family ¹collaborative¹ law communication that
37 prejudices another person in a proceeding is precluded from
38 asserting a privilege under section ¹["12"] ¹13¹ of P.L. , c. (C.)
39 (pending before the Legislature as this bill), but this preclusion
40 applies only to the extent necessary for the person prejudiced to
41 respond to the disclosure or representation.

42

43 ¹["14."] ¹15.¹ a. There is no privilege under section ¹["12"] ¹13¹ of
44 P.L. , c. (C.) (pending before the Legislature as this bill) for a
45 ¹["collaborative"]¹ family ¹collaborative¹ law communication that is:

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

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

7 (3) in a settlement agreement resulting from the
8 **'[collaborative]'** family 'collaborative' law process, evidenced by
9 a record signed by both parties to the agreement; or

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

13 b. There is no privilege under section **'[12] 13'** of P.L. ,

14 c. (C.) (pending before the Legislature as this bill) if a
15 tribunal finds, after a hearing in camera, that the party seeking
16 discovery or the proponent of the evidence has shown the evidence
17 is not otherwise available, the need for the evidence substantially
18 outweighs the interest in protecting confidentiality, and the
19 **'[collaborative]'** family 'collaborative' law communication is
20 sought or offered in:

21 (1) a court proceeding involving a crime; or

22 (2) a proceeding seeking rescission or reformation of a contract
23 arising out of the **'[collaborative]'** family 'collaborative' law
24 process or in which a defense to avoid liability on the contract is
25 asserted.

26 c. The privileges under section **'[12] 13'** of P.L. , c. (C.)
27 (pending before the Legislature as this bill) for a **'[collaborative]'**
28 family 'collaborative' law communication do not apply to the
29 extent that a communication is:

30 (1) sought or offered to prove or disprove a claim or complaint
31 of professional misconduct or malpractice or the unreasonableness
32 of a **'[collaborative]'** family 'collaborative' lawyer's fee arising
33 from or related to a **'[collaborative]'** family 'collaborative' law
34 process; or

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

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

43 e. Disclosure or admission of evidence excepted from the
44 privilege under subsection b. or c. of this section does not make the
45 evidence or any other **'[collaborative]'** family 'collaborative' law
46 communication discoverable or admissible for any other purpose.

1 f. The privileges under section **12** 13 of P.L. , c. (C.)
2 (pending before the Legislature as this bill) do not apply if the
3 parties agree in advance in a signed record that all or part of a
4 **collaborative** family collaborative law process is not
5 privileged.

6
7 **15.** 16. If a **collaborative** family collaborative law
8 participation agreement fails to meet the requirements of section 5
9 of P.L. , c. (C.) (pending before the Legislature as this
10 bill), the parties may be found to have intended to enter into a
11 **collaborative** family collaborative law participation
12 agreement if they signed a record indicating an intention to enter
13 into a **collaborative** family collaborative law participation
14 agreement and reasonably believed they were participating in a
15 **collaborative** family collaborative law process.

16
17 **16.** 17. In applying and construing this act, consideration
18 shall be given to the need to promote uniformity of the law with
19 respect to its subject matter among states that enact a
20 **collaborative** family collaborative law act.

21
22 **17.** This act modifies, limits, and supersedes the federal
23 Electronic Signatures in Global and National Commerce Act, 15
24 U.S.C. section 7001 et seq., but this act does not modify, limit, or
25 supersede section 101(c) of that act, or authorize electronic delivery
26 of any of the notices described in section 103(b) of that act.

27
28 18. If any provision of P.L. , c. (C.), (pending before
29 the Legislature as this bill) or its application to any person or
30 circumstance is held invalid, the invalidity shall not affect other
31 provisions or applications of P.L. , c. (C.), (pending
32 before the Legislature as this bill) which can be given effect without
33 the invalid provision or application, and to this end the provisions
34 of P.L. , c. (C.), (pending before the Legislature as this
35 bill) are severable.

36
37 19. This act shall take effect on the 90th day after enactment.