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974.90 L415, 2013d

Revised tentative report relating to New Jersey Family Collaborative Law Act

Dated: February 21, 2013 by New Jersey Law Revision Commission

New Jersey State Library: Draft Tentative Reports

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974.90 L415, 2013s

Final Report Relating to New Jersey Family Collaborative Law Act

Dated: July 23, 2013 by New Jersey Law Revision Commission

New Jersey State Library: Law Revision Commission Final Reports

<http://hdl.handle.net/10929/32607>

LAW/RWH

Title 2A.
Subtitle 6.
Chapter 23D.
(New)
Collaborative
Family Law
§§1-18 -
C.2A:23D-1 to
2A:23D-18
§19 - Note

P.L.2014, CHAPTER 50, *approved September 10, 2014*
Assembly, No. 1477 (*First Reprint*)

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.

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

12

13 3. As used in this act:

14 a. **“Collaborative family”** “Family collaborative” law
15 communication” means a statement, whether oral or in a record, that
16 is made in the course of a **collaborative** family collaborative
17 law process and occurs after the parties sign a **collaborative**
18 family collaborative law participation agreement but before the
19 **collaborative** family collaborative law process is concluded.

20 b. **“Collaborative family”** “Family collaborative”
21 participation agreement” means a written agreement by the parties
22 to participate in a **collaborative** family collaborative law
23 process, in accordance with section 5 of P.L. , c. (C.)
24 (pending before the Legislature as this bill) in order to resolve their
25 family law dispute.

26 c. **“Collaborative family”** “Family collaborative” law
27 process” means a procedure intended to resolve the family law
28 dispute without intervention by a tribunal provided that the
29 individuals in the dispute: (1) sign a **collaborative** family
30 collaborative law participation agreement; and (2) are represented
31 by **collaborative** family collaborative lawyers.

32 d. **“Collaborative family”** “Family collaborative” lawyer”
33 means a lawyer who represents a party in a **collaborative** family
34 collaborative law process and whom the party acknowledges is
35 retained for that limited purpose.

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

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

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

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

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

- 1 f. “Nonparty participant” means a person, other than a party
2 and the party’s **‘[collaborative]’** family ‘collaborative’ lawyer,
3 who participates in a **‘[collaborative]’** family ‘collaborative’ law
4 process. ‘This includes, but is not limited to, financial practitioners,
5 including certified financial planners and certified public
6 accountants, and mental health professionals, including licensed
7 clinical social workers, psychologists, licensed professional
8 counselors, licensed marriage and family therapists, and
9 psychiatrists.’¹
- 10 g. “Party” means an individual who signs a **‘[collaborative]’**
11 family ‘collaborative’ law participation agreement and whose
12 consent is necessary to resolve a family law dispute under P.L. ,
13 c. (C.) (pending before the Legislature as this bill).
- 14 h. “Proceeding” means a judicial or arbitral or adjudicative
15 process before a tribunal.
- 16 i. “Prospective party” means an individual who discusses with
17 a prospective **‘[collaborative]’** family ‘collaborative’ lawyer the
18 possibility of signing a **‘[collaborative]’** family ‘collaborative’ law
19 participation agreement.
- 20 j. “Record” means information that is inscribed on a tangible
21 medium or that is stored in an electronic or other medium and is
22 retrievable in perceivable form.
- 23 k. “Related to the family law dispute” means involving the
24 same parties, transaction or occurrence, nucleus of operative fact,
25 claim, matter or issue as the family law dispute.
- 26 l. “Settlement agreement” means a signed agreement entered
27 into by the parties to a **‘[collaborative]’** family ‘collaborative’ law
28 participation agreement that sets forth a resolution of the parties’
29 family law dispute.
- 30 m. “Sign” means, with present intent to authenticate or adopt a
31 record to execute or adopt a tangible symbol; or attach to or
32 logically associate with the record an electronic symbol, sound, or
33 process.
- 34 n. “Tribunal” means a court, arbitrator, or administrative
35 agency, as applicable, that after presentation of evidence or legal
36 argument, has jurisdiction to render a decision affecting a party’s
37 interests in a matter.
- 38
- 39 4. P.L. , c. (C.) (pending before the Legislature as
40 this bill) applies to a **‘[collaborative]’** family ‘collaborative’ law
41 process that is subject to a **‘[collaborative]’** family ‘collaborative’
42 law participation agreement, meets the requirements set forth in
43 section 5 of P.L. , c. (C.) (pending before the Legislature
44 as this bill), and is signed on or after the effective date of this act.

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

4
5 5. a. A **‘[collaborative]’** family ‘collaborative’ law
6 participation agreement shall:

7 (1) be in a record;

8 (2) be signed by the parties;

9 (3) state the parties’ intention to resolve a family law dispute
10 through a **‘[collaborative]’** family ‘collaborative’ law process
11 pursuant to P.L. , c. (C.) (pending before the Legislature
12 as this bill);

13 (4) describe the nature and scope of the family law dispute;

14 (5) identify the **‘[collaborative]’** family ‘collaborative’ lawyer
15 who represents each party in the process;

16 (6) contain a statement that a **‘[collaborative]’** family
17 ‘collaborative’ lawyer’s role is limited as defined in P.L. ,
18 c. (C.) (pending before the Legislature as this bill),
19 consistent with the Rules of Professional Conduct promulgated by
20 the Supreme Court of New Jersey;

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

25 (8) state that any **‘[collaborative]’** family ‘collaborative’ law
26 communication of a party or a nonparty participant is confidential
27 and subject to an evidentiary privilege under section **‘[12] 13’**
28 of P.L. , c. (C.) (pending before the Legislature as this bill),
29 and that the privilege may be waived only expressly and by both
30 parties or in the case of a nonparty participant, by the nonparty
31 participant having the right to exercise the privilege; and

32 (9) state that the conduct of the **‘[collaborative]’** family
33 ‘collaborative’ lawyer is governed by P.L. , c. (C.)
34 (pending before the Legislature as this bill), the Rules of Court
35 adopted by the Supreme Court of New Jersey, and the Rules of
36 Professional Conduct promulgated by the Supreme Court of New
37 Jersey and that P.L. , c. (C.) (pending before the
38 Legislature as this bill) does not alter the **‘[collaborative]’** family
39 ‘collaborative’ lawyer’s responsibilities to the client under the
40 Rules of Professional Conduct and any other applicable Rules of
41 Court.

42 b. Parties may agree to include in a **‘[collaborative]’** family
43 ‘collaborative’ law participation agreement additional provisions
44 not inconsistent with P.L. , c. (C.) (pending before the
45 Legislature as this bill) or other applicable law.

- 1 6. a. A **‘[collaborative]’** family ‘collaborative’ law process
2 begins when the parties sign a **‘[collaborative]’** family
3 ‘collaborative’ law participation agreement.
- 4 b. Participation in a **‘[collaborative]’** family ‘collaborative’ law
5 process is voluntary and may not be compelled by a tribunal.
6
- 7 7. a. A **‘[collaborative]’** family ‘collaborative’ law process is
8 concluded by either:
- 9 (1) resolution of a family law dispute as evidenced by a signed
10 settlement agreement; or
11 (2) termination of the process.
- 12 b. A **‘[collaborative]’** family ‘collaborative’ law process
13 terminates when:
- 14 (1) a party gives notice to other parties in a record that the
15 process is ended, which a party may do with or without cause; or
16 (2) a party files a document without the agreement of all parties
17 that initiates a proceeding related to the family law dispute; or
18 (3) either party is subject to, or obtains, a temporary or final
19 restraining order ‘against the other party’ in accordance with the
20 “Prevention of Domestic Violence Act of 1991,” P.L.1991, c.261
21 (C.2C:25-17 et seq.); or
22 (4) an action is commenced requesting that a tribunal issue
23 emergency relief to protect the health, safety, welfare, or interests
24 of a party or the defense against such a request is commenced; or
25 (5) except as provided by section **‘[8] 9’** of P.L. , c. (C.)
26 (pending before the Legislature as this bill), a party discharges a
27 **‘[collaborative]’** family ‘collaborative’ lawyer; or
28 (6) a party fails to provide information pursuant to section **‘[9]**
29 **10’** of P.L. , c. (C.) (pending before the Legislature as
30 this bill) that is necessary to address the issues in dispute, and one
31 of the parties chooses to terminate the collaborative process as a
32 result; or
33 (7) a **‘[collaborative]’** family ‘collaborative’ lawyer ceases
34 further representation of a party.
- 35 c. A **‘[collaborative]’** family ‘collaborative’ law process does
36 not terminate if, with the consent of the parties, a party, or the
37 party’s **‘[collaborative]’** family ‘collaborative’ lawyer on the
38 party’s behalf, requests a tribunal to incorporate a settlement
39 agreement into a final judgment.
- 40 d. A **‘[collaborative]’** family ‘collaborative’ law participation
41 agreement may provide additional methods of terminating or
42 concluding a **‘[collaborative]’** family ‘collaborative’ law process
43 consistent with P.L. , c. (C.) (pending before the Legislature
44 as this bill) and the Rules of Professional Conduct promulgated by
45 the Supreme Court of New Jersey.

1 ~~1~~~~10.~~ 11.¹ P.L. , c. (C.) (pending before the
2 Legislature as this bill) does not affect, waive or supersede:

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

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

10

11 ~~1~~~~11.~~ 12.¹ A ~~1~~~~collaborative~~¹ family collaborative¹ law
12 communication is confidential to the extent agreed to by the parties
13 in a signed record or as provided by law.

14

15 ~~1~~~~12.~~ 13.¹ a. Subject to sections ~~1~~~~13.~~ 14.¹ and ~~1~~~~14.~~ 15.¹ of
16 P.L. , c. (C.) (pending before the Legislature as this bill),
17 a ~~1~~~~collaborative~~¹ family collaborative¹ law communication made
18 by a party or any nonparty participant is privileged under subsection
19 b. of this section, is not subject to discovery, and is not admissible
20 in evidence.

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

24 (1) A party may refuse to disclose, and may prevent the party's
25 lawyer, or a nonparty participant, or any other person from
26 disclosing, a ~~1~~~~collaborative~~¹ family collaborative¹ law
27 communication.

28 (2) A nonparty participant may refuse to disclose, and may
29 prevent a party, a party's lawyer or any other person from
30 disclosing, a ~~1~~~~collaborative~~¹ family collaborative¹ law
31 communication of the nonparty participant.

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

40 d. Evidence or information that is otherwise admissible, readily
41 available from other sources, or subject to discovery does not
42 become inadmissible or protected from discovery solely because of
43 its disclosure or use in a ~~1~~~~collaborative~~¹ family collaborative¹
44 law process.

45

46 ~~1~~~~13.~~ 14.¹ a. A privilege under section ~~1~~~~12.~~ 13.¹ of P.L. ,
47 c. (C.) (pending before the Legislature as this bill) may be

1 waived in a record or orally during a proceeding if it is expressly
2 waived by both parties and, in the case of the privilege of a
3 nonparty participant, it is also expressly waived by the nonparty
4 participant.

5 b. A person who discloses or makes a representation about a
6 **'[collaborative]'** family 'collaborative' law communication that
7 prejudices another person in a proceeding is precluded from
8 asserting a privilege under section **'[12] 13'** of P.L. , c. (C.)
9 (pending before the Legislature as this bill), but this preclusion
10 applies only to the extent necessary for the person prejudiced to
11 respond to the disclosure or representation.

12

13 **'[14.] 15.'** a. There is no privilege under section **'[12] 13'** of
14 P.L. , c. (C.) (pending before the Legislature as this bill) for a
15 **'[collaborative]'** family 'collaborative' law communication that is:

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

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

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

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

28 b. There is no privilege under section **'[12] 13'** of P.L. ,
29 c. (C.) (pending before the Legislature as this bill) if a
30 tribunal finds, after a hearing in camera, that the party seeking
31 discovery or the proponent of the evidence has shown the evidence
32 is not otherwise available, the need for the evidence substantially
33 outweighs the interest in protecting confidentiality, and the
34 **'[collaborative]'** family 'collaborative' law communication is
35 sought or offered in:

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

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

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

45 (1) sought or offered to prove or disprove a claim or complaint
46 of professional misconduct or malpractice or the unreasonableness

1 of a **1** **1** family collaborative lawyer's fee arising
2 from or related to a **1** **1** family collaborative law
3 process; or

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

8 d. If a **1** **1** family collaborative law
9 communication is subject to an exception under subsection b. or c.
10 of this section, only the part of the communication necessary for the
11 application of the exception may be disclosed or admitted.

12 e. Disclosure or admission of evidence excepted from the
13 privilege under subsection b. or c. of this section does not make the
14 evidence or any other **1** **1** family collaborative law
15 communication discoverable or admissible for any other purpose.

16 f. The privileges under section **1** **12** **13** of P.L. , c. (C.)
17 (pending before the Legislature as this bill) do not apply if the
18 parties agree in advance in a signed record that all or part of a
19 **1** **1** family collaborative law process is not
20 privileged.

21
22 **1** **15.** **16.** If a **1** **1** family collaborative law
23 participation agreement fails to meet the requirements of section 5
24 of P.L. , c. (C.) (pending before the Legislature as this
25 bill), the parties may be found to have intended to enter into a
26 **1** **1** family collaborative law participation
27 agreement if they signed a record indicating an intention to enter
28 into a **1** **1** family collaborative law participation
29 agreement and reasonably believed they were participating in a
30 **1** **1** family collaborative law process.

31
32 **1** **16.** **17.** In applying and construing this act, consideration
33 shall be given to the need to promote uniformity of the law with
34 respect to its subject matter among states that enact a
35 **1** **1** family collaborative law act.

36
37 **1** **17.** This act modifies, limits, and supersedes the federal
38 Electronic Signatures in Global and National Commerce Act, 15
39 U.S.C. section 7001 et seq., but this act does not modify, limit, or
40 supersede section 101(c) of that act, or authorize electronic delivery
41 of any of the notices described in section 103(b) of that act. **1**

42
43 18. If any provision of P.L. , c. (C.), (pending before
44 the Legislature as this bill) or its application to any person or
45 circumstance is held invalid, the invalidity shall not affect other
46 provisions or applications of P.L. , c. (C.), (pending

1 before the Legislature as this bill) which can be given effect without
2 the invalid provision or application, and to this end the provisions
3 of P.L. , c. (C.), (pending before the Legislature as this
4 bill) are severable.

5

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

7

8

9

10

11 Establishes the “New Jersey Family Collaborative Law Act.”

ASSEMBLY, No. 1477

STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

Sponsored by:

Assemblyman PATRICK J. DIEGNAN, JR.

District 18 (Middlesex)

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

Assemblywoman HOLLY SCHEPISI

District 39 (Bergen and Passaic)

Co-Sponsored by:

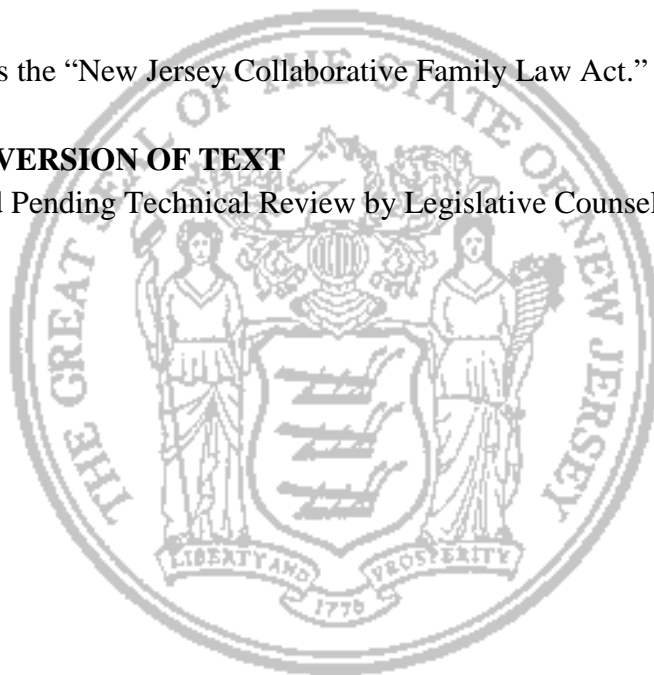
**Assemblymen Carroll, Eustace, Assemblywoman N.Munoz and
Assemblyman Lagana**

SYNOPSIS

Establishes the “New Jersey Collaborative Family Law Act.”

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



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

1 AN ACT concerning collaborative family law and supplementing
2 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 Collaborative Family 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
13 collaborative law, in which an attorney is retained for the limited
14 purpose of assisting his client in resolving disputes in a voluntary,
15 non-adversarial manner, without court intervention.

16 b. The collaborative law process is distinct from other dispute
17 resolution mechanisms because the parties intend to resolve their
18 dispute without litigation. Instead, each party, represented by his
19 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 collaborative law process
26 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 collaborative process before a court or other
30 tribunal other than to seek incorporation of a settlement agreement
31 into a final judgment.

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

42

43 3. As used in this act:

44 a. “Collaborative family law communication” means a
45 statement, whether oral or in a record, that is made in the course of
46 a collaborative family law process and occurs after the parties sign

- 1 a collaborative family law participation agreement but before the
2 collaborative family law process is concluded.
- 3 b. “Collaborative family law participation agreement” means a
4 written agreement by the parties to participate in a collaborative
5 family law process, in accordance with section 5 of P.L. ,
6 c. (C.), (pending before the Legislature as this bill) in order
7 to resolve their family law dispute.
- 8 c. “Collaborative family law process” means a procedure
9 intended to resolve the family law dispute without intervention by a
10 tribunal provided that the individuals in the dispute: (1) sign a
11 collaborative family law participation agreement; and (2) are
12 represented by collaborative family law lawyers.
- 13 d. “Collaborative family lawyer” means a lawyer who
14 represents a party in a collaborative family law process and whom
15 the party acknowledges is retained for that limited purpose.
- 16 e. “Family law dispute” means a dispute, claim or issue which
17 is described in a participation agreement and arises under the family
18 or domestic relations law of this State, including but not limited to:
19 (1) marriage, civil union, domestic partnership, divorce,
20 dissolution, annulment, or property distribution;
21 (2) child custody, visitation, or parenting time;
22 (3) alimony, maintenance, or child support; or
23 (4) premarital, marital or post-marital agreements, or comparable
24 agreements affecting civil unions or domestic partnerships.
- 25 f. “Nonparty participant” means a person, other than a party
26 and the party’s collaborative family lawyer, who participates in a
27 collaborative family law process.
- 28 g. “Party” means an individual who signs a collaborative
29 family law participation agreement and whose consent is necessary
30 to resolve a family law dispute under P.L. , c. (C.),
31 (pending before the Legislature as this bill).
- 32 h. “Proceeding” means a judicial or arbitral or adjudicative
33 process before a tribunal.
- 34 i. “Prospective party” means an individual who discusses with
35 a prospective collaborative family lawyer the possibility of signing
36 a collaborative family law participation agreement.
- 37 j. “Record” means information that is inscribed on a tangible
38 medium or that is stored in an electronic or other medium and is
39 retrievable in perceivable form.
- 40 k. “Related to the family law dispute” means involving the
41 same parties, transaction or occurrence, nucleus of operative fact,
42 claim, matter or issue as the family law dispute.
- 43 l. “Settlement agreement” means a signed agreement entered
44 into by the parties to a collaborative family law participation
45 agreement that sets forth a resolution of the parties’ family law
46 dispute.

1 m. “Sign” means, with present intent to authenticate or adopt a
2 record to execute or adopt a tangible symbol; or attach to or
3 logically associate with the record an electronic symbol, sound, or
4 process.

5 n. “Tribunal” means a court, arbitrator, or administrative
6 agency, as applicable, that after presentation of evidence or legal
7 argument, has jurisdiction to render a decision affecting a party’s
8 interests in a matter.

9
10 4. P.L. , c. (C.) (pending before the Legislature as
11 this bill) applies to a collaborative family law process that is subject
12 to a collaborative family law participation agreement, meets the
13 requirements set forth in section 5 of P.L. , c. (C.)
14 (pending before the Legislature as this bill), and is signed on or
15 after the effective date of this act.

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

19

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

21 (1) be in a record;

22 (2) be signed by the parties;

23 (3) state the parties’ intention to resolve a family law dispute
24 through a collaborative family law process pursuant to P.L. ,
25 c. (C.) (pending before the Legislature as this bill);

26 (4) describe the nature and scope of the family law dispute;

27 (5) identify the collaborative family lawyer who represents each
28 party in the process;

29 (6) contain a statement that a collaborative family lawyer’s role
30 is limited as defined in P.L. , c. (C.) (pending before the
31 Legislature as this bill), consistent with the Rules of Professional
32 Conduct promulgated by the Supreme Court of New Jersey;

33 (7) set forth the manner by which a collaborative family law
34 process begins and the manner by which it terminates or concludes
35 in accordance with sections 6 and 7 of P.L. , c. (C.)
36 (pending before the Legislature as this bill);

37 (8) state that any collaborative family law communication of a
38 party or a nonparty participant is confidential and subject to an
39 evidentiary privilege under section 12 of P.L. , c. (C.)
40 (pending before the Legislature as this bill), and that the privilege
41 may be waived only expressly and by both parties or in the case of a
42 nonparty participant, by the nonparty participant having the right to
43 exercise the privilege; and

44 (9) state that the conduct of the collaborative family lawyer is
45 governed by P.L. , c. (C.) (pending before the Legislature
46 as this bill), the Rules of Court adopted by the Supreme Court of
47 New Jersey, and the Rules of Professional Conduct promulgated by

- 1 the Supreme Court of New Jersey and that P.L. , c. (C.)
2 (pending before the Legislature as this bill) does not alter the
3 collaborative family lawyer’s responsibilities to the client under the
4 Rules of Professional Conduct and any other applicable Rules of
5 Court.
- 6 b. Parties may agree to include in a collaborative family law
7 participation agreement additional provisions not inconsistent with
8 P.L. , c. (C.) (pending before the Legislature as this bill)
9 or other applicable law.
- 10
- 11 6. a. A collaborative family law process begins when the parties
12 sign a collaborative family law participation agreement.
- 13 b. Participation in a collaborative family law process is voluntary
14 and may not be compelled by a tribunal.
- 15
- 16 7. a. A collaborative family law process is concluded by either:
17 (1) resolution of a family law dispute as evidenced by a signed
18 settlement agreement; or
19 (2) termination of the process.
- 20 b. A collaborative family law process terminates when:
21 (1) a party gives notice to other parties in a record that the
22 process is ended, which a party may do with or without cause; or
23 (2) a party files a document without the agreement of all parties
24 that initiates a proceeding related to the family law dispute; or
25 (3) either party is subject to, or obtains, a temporary or final
26 restraining order in accordance with the “Prevention of Domestic
27 Violence Act of 1991,” P.L. 1991, c. 261 (C.2C:25-17 et seq.); or
28 (4) an action is commenced requesting that a tribunal issue
29 emergency relief to protect the health, safety, welfare, or interests
30 of a party or the defense against such a request is commenced; or
31 (5) except as provided by section 8 of P.L. , c. (C.)
32 (pending before the Legislature as this bill), a party discharges a
33 collaborative family lawyer; or
34 (6) a party fails to provide information pursuant to section 9 of
35 P.L. , c. (C.) (pending before the Legislature as this bill)
36 that is necessary to address the issues in dispute, and one of the
37 parties chooses to terminate the collaborative process as a result; or
38 (7) a collaborative family lawyer ceases further representation of
39 a party.
- 40 c. A collaborative family law process does not terminate if,
41 with the consent of the parties, a party, or the party’s collaborative
42 family lawyer on the party’s behalf, requests a tribunal to
43 incorporate a settlement agreement into a final judgment.
- 44 d. A collaborative family law participation agreement may
45 provide additional methods of terminating or concluding a
46 collaborative family law process consistent with P.L. , c. (C.)
47 (pending before the Legislature as this bill) and the Rules of

1 Professional Conduct promulgated by the Supreme Court of New
2 Jersey.

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

8

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

12 b. Notwithstanding the provisions of paragraph (3) of
13 subsection b. of section 7 of P.L. , c. (C.) (pending before
14 the Legislature as this bill), and subject to this subsection, if a
15 collaborative family lawyer is discharged or ceases representation
16 of a party, the collaborative family law process continues if, not
17 later than 30 days after the date of notice of the discharge or
18 cessation of representation is sent to the parties pursuant to
19 subsection a. of this section, the unrepresented party:

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

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

26

27 9. Except as otherwise provided by law, during the collaborative
28 family law process a party shall, in good faith, provide timely, full,
29 and candid disclosure of information related to the family law
30 dispute without formal discovery. A party shall also promptly
31 update previously disclosed information that has materially
32 changed. The parties may define the scope of disclosure during the
33 collaborative family law process except as provided by law.

34

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

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

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

44

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

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

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

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

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

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

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

28
29 13. a. A privilege under section 12 of P.L. , c. (C.)
30 (pending before the Legislature as this bill) may be waived in a
31 record or orally during a proceeding if it is expressly waived by
32 both parties and, in the case of the privilege of a nonparty
33 participant, it is also expressly waived by the nonparty participant.

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

41
42 14. a. There is no privilege under section 12 of P.L. ,
43 c. (C.) (pending before the Legislature as this bill) for a
44 collaborative family law communication that is:

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

- 1 (2) sought, obtained, or used to threaten or plan to inflict bodily
2 injury or a crime, or to commit or attempt to commit a crime, or to
3 conceal an ongoing crime or ongoing criminal activity; or
4 (3) in a settlement agreement resulting from the collaborative
5 family law process, evidenced by a record signed by both parties to
6 the agreement; or
7 (4) a disclosure in a report of suspected domestic violence or
8 suspected child abuse to an appropriate agency under the laws of
9 this State.
- 10 b. There is no privilege under section 12 of P.L. ,
11 c. (C.) (pending before the Legislature as this bill) if a
12 tribunal finds, after a hearing in camera, that the party seeking
13 discovery or the proponent of the evidence has shown the evidence
14 is not otherwise available, the need for the evidence substantially
15 outweighs the interest in protecting confidentiality, and the
16 collaborative family law communication is sought or offered in:
- 17 (1) a court proceeding involving a crime; or
18 (2) a proceeding seeking rescission or reformation of a contract
19 arising out of the collaborative family law process or in which a
20 defense to avoid liability on the contract is asserted.
- 21 c. The privileges under section 12 of P.L. , c. (C.)
22 (pending before the Legislature as this bill) for a collaborative
23 family law communication do not apply to the extent that a
24 communication is:
- 25 (1) sought or offered to prove or disprove a claim or complaint
26 of professional misconduct or malpractice or the unreasonableness
27 of a collaborative family lawyer's fee arising from or related to a
28 collaborative family law process; or
29 (2) sought or offered to prove or disprove abuse, neglect,
30 abandonment, or exploitation of a child or adult, unless the
31 appropriate protective services agency is a party to or otherwise
32 participates in the process.
- 33 d. If a collaborative family law communication is subject to an
34 exception under subsection b. or c. of this section, only the part of
35 the communication necessary for the application of the exception
36 may be disclosed or admitted.
- 37 e. Disclosure or admission of evidence excepted from the
38 privilege under subsection b. or c. of this section does not make the
39 evidence or any other collaborative family law communication
40 discoverable or admissible for any other purpose.
- 41 f. The privileges under section 12 of P.L. , c. (C.)
42 (pending before the Legislature as this bill) do not apply if the
43 parties agree in advance in a signed record that all or part of a
44 collaborative family law process is not privileged.
- 45
46 15. If a collaborative family law participation agreement fails to
47 meet the requirements of section 5 of P.L. , c. (C.)

1 (pending before the Legislature as this bill), the parties may be
2 found to have intended to enter into a collaborative family law
3 participation agreement if they signed a record indicating an
4 intention to enter into a collaborative family law participation
5 agreement and reasonably believed they were participating in a
6 collaborative family law process.

7
8 16. In applying and construing this act, consideration shall be
9 given to the need to promote uniformity of the law with respect to
10 its subject matter among states that enact a collaborative family law
11 act.

12
13 17. This act modifies, limits, and supersedes the federal
14 Electronic Signatures in Global and National Commerce Act, 15
15 U.S.C. section 7001 et seq., but this act does not modify, limit, or
16 supersede section 101(c) of that act, or authorize electronic delivery
17 of any of the notices described in section 103(b) of that act.

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

27
28 19. This act shall take effect on the 90th day after enactment.
29
30

31 STATEMENT
32

33 This bill enacts the “New Jersey Collaborative Family Law Act.”
34 Collaborative law is a voluntary, non-adversarial settlement process
35 in which the parties, with the assistance of their lawyers, attempt to
36 negotiate in good faith a mutually acceptable resolution of the
37 parties’ dispute without court involvement. This bill would
38 authorize the application of a collaborative law process in family
39 law disputes.

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

45 A collaborative family lawyer is defined under the bill as a
46 lawyer who represents a party in a collaborative family law process
47 and whom the party acknowledges is retained for that limited

1 purpose. Therefore, in the event the collaborative family process
2 does not resolve the family law dispute and the dispute is, instead,
3 submitted to a tribunal, the collaborative family lawyer would not
4 continue to represent the party. A collaborative family law
5 participation agreement would provide that a complaint, petition, or
6 claim may not be filed with a tribunal before or during the
7 collaborative family law process, although a party may request that
8 a tribunal incorporate a settlement agreement into a final judgment.

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

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

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

39 Under the bill, a collaborative family law communication is
40 confidential to the extent agreed to by the parties in a signed record
41 or as provided by law. Except as provided for in the bill, a
42 collaborative family law communication made by a party or any
43 nonparty participant is privileged and is not subject to discovery,
44 and is not admissible in evidence. The following privileges apply in
45 a proceeding: (1) a party may refuse to disclose, and may prevent
46 the party's lawyer, a nonparty participant, or any other person from
47 disclosing a collaborative family law communication; and (2) a

1 nonparty participant may refuse to disclose, and may prevent a
2 party, a party's lawyer or any other person from disclosing, a
3 collaborative family law communication of the nonparty participant.
4 These privileges may be claimed by the party or nonparty
5 participant in person, or if the party or nonparty participant is
6 incapacitated or deceased, by his guardian or personal
7 representative.

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

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

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

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1477

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 12, 2014

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 1477.

This bill as amended enacts the “New Jersey Family Collaborative 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 family collaborative law participation agreement and are represented by family collaborative lawyers.

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

A family collaborative 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 against the other party 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 family collaborative 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 family collaborative lawyer ceases further representation of a party.

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

Under the bill, a family collaborative 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 family collaborative 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 committee amended the bill to clarify that a nonparty participant includes, but is not limited to, financial practitioners, including certified financial planners and certified public accountants, and mental health professionals, including licensed clinical social workers, psychologists, licensed professional counselors, licensed marriage and family therapists, and psychiatrists.

The bill provides that 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 family collaborative 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 family collaborative 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 family collaborative 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 family collaborative 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 family collaborative 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 family collaborative 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 family collaborative 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).

As amended by the committee, this bill is identical to Senate Bill No. 1224(1R).

This bill was pre-filed for introduction in the 2014-2015 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

COMMITTEE AMENDMENTS:

(1) Change the title of the bill to the “New Jersey Family Collaborative Law Act,” and update references throughout the bill to “family collaborative law.” The bill as introduced used the phrase “collaborative family law”; the switch is intended to more clearly recognize the area of practice as a type of “collaborative law”;

(2) Clarify that a nonparty participant involved in a family collaborative law process may include, but is not limited to, financial practitioners, including certified financial planners and certified public accountants, and mental health professionals, including licensed clinical social workers, psychologists, licensed professional counselors, licensed marriage and family therapists, and psychiatrists;

(3) Indicate that, with respect to a discontinuation of representation in a family collaborative law process, not only is the individual lawyer required to stop representation, but also any lawyers in the law firm with whom that lawyer is associated; and

(4) Eliminate, as unnecessary, references to the federal “Electronic Signatures in Global and National Commerce Act,” 15 U.S.C. s.7001 et seq., as issues related to electronic records and electronic signatures in family law matters are already elsewhere addressed by federal law and the “Uniform Electronic Transactions Act,” P.L.2001, c.116 (C.12A:12-1 et seq.).

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.



(Sponsorship Updated As Of: 3/25/2014)

1 AN ACT concerning collaborative family law and supplementing
2 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 Collaborative Family 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
13 collaborative law, in which an attorney is retained for the limited
14 purpose of assisting his client in resolving disputes in a voluntary,
15 non-adversarial manner, without court intervention.

16 b. The collaborative law process is distinct from other dispute
17 resolution mechanisms because the parties intend to resolve their
18 dispute without litigation. Instead, each party, represented by his
19 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 collaborative law process
26 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 collaborative process before a court or other
30 tribunal other than to seek incorporation of a settlement agreement
31 into a final judgment.

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

42

43 3. As used in this act:

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

- 1 b. “Collaborative family law participation agreement” means a
2 written agreement by the parties to participate in a collaborative
3 family law process, in accordance with section 5 of P.L. ,
4 c. (C.) (pending before the Legislature as this bill) in order to
5 resolve their family law dispute.
- 6 c. “Collaborative family law process” means a procedure
7 intended to resolve the family law dispute without intervention by a
8 tribunal provided that the individuals in the dispute: (1) sign a
9 collaborative family law participation agreement; and (2) are
10 represented by collaborative family lawyers.
- 11 d. “Collaborative family lawyer” means a lawyer who
12 represents a party in a collaborative family law process and whom
13 the party acknowledges is retained for that limited purpose.
- 14 e. “Family law dispute” means a dispute, claim or issue which
15 is described in a participation agreement and arises under the family
16 or domestic relations law of this State, including but not limited to:
17 (1) marriage, civil union, domestic partnership, divorce,
18 dissolution, annulment, or property distribution;
19 (2) child custody, visitation, or parenting time;
20 (3) alimony, maintenance, or child support; or
21 (4) premarital, marital or post-marital agreements, or
22 comparable agreements affecting civil unions or domestic
23 partnerships.
- 24 f. “Nonparty participant” means a person, other than a party
25 and the party’s collaborative family lawyer, who participates in a
26 collaborative family law process.
- 27 g. “Party” means an individual who signs a collaborative
28 family law participation agreement and whose consent is necessary
29 to resolve a family law dispute under P.L. , c. (C.)
30 (pending before the Legislature as this bill).
- 31 h. “Proceeding” means a judicial or arbitral or adjudicative
32 process before a tribunal.
- 33 i. “Prospective party” means an individual who discusses with
34 a prospective collaborative family lawyer the possibility of signing
35 a collaborative family law participation agreement.
- 36 j. “Record” means information that is inscribed on a tangible
37 medium or that is stored in an electronic or other medium and is
38 retrievable in perceivable form.
- 39 k. “Related to the family law dispute” means involving the
40 same parties, transaction or occurrence, nucleus of operative fact,
41 claim, matter or issue as the family law dispute.
- 42 l. “Settlement agreement” means a signed agreement entered
43 into by the parties to a collaborative family law participation
44 agreement that sets forth a resolution of the parties’ family law
45 dispute.
- 46 m. “Sign” means, with present intent to authenticate or adopt a
47 record to execute or adopt a tangible symbol; or attach to or

1 logically associate with the record an electronic symbol, sound, or
2 process.

3 n. “Tribunal” means a court, arbitrator, or administrative
4 agency, as applicable, that after presentation of evidence or legal
5 argument, has jurisdiction to render a decision affecting a party’s
6 interests in a matter.

7

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

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

17

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

19 (1) be in a record;

20 (2) be signed by the parties;

21 (3) state the parties’ intention to resolve a family law dispute
22 through a collaborative family law process pursuant to P.L. ,
23 c. (C.) (pending before the Legislature as this bill);

24 (4) describe the nature and scope of the family law dispute;

25 (5) identify the collaborative family lawyer who represents each
26 party in the process;

27 (6) contain a statement that a collaborative family lawyer’s role
28 is limited as defined in P.L. , c. (C.) (pending before the
29 Legislature as this bill), consistent with the Rules of Professional
30 Conduct promulgated by the Supreme Court of New Jersey;

31 (7) set forth the manner by which a collaborative family law
32 process begins and the manner by which it terminates or concludes
33 in accordance with sections 6 and 7 of P.L. , c. (C.)
34 (pending before the Legislature as this bill);

35 (8) state that any collaborative family law communication of a
36 party or a nonparty participant is confidential and subject to an
37 evidentiary privilege under section 12 of P.L. , c. (C.)
38 (pending before the Legislature as this bill), and that the privilege
39 may be waived only expressly and by both parties or in the case of a
40 nonparty participant, by the nonparty participant having the right to
41 exercise the privilege; and

42 (9) state that the conduct of the collaborative family lawyer is
43 governed by P.L. , c. (C.) (pending before the Legislature
44 as this bill), the Rules of Court adopted by the Supreme Court of
45 New Jersey, and the Rules of Professional Conduct promulgated by
46 the Supreme Court of New Jersey and that P.L. , c. (C.)
47 (pending before the Legislature as this bill) does not alter the
48 collaborative family lawyer’s responsibilities to the client under the

1 Rules of Professional Conduct and any other applicable Rules of
2 Court.

3 b. Parties may agree to include in a collaborative family law
4 participation agreement additional provisions not inconsistent with
5 P.L. , c. (C.) (pending before the Legislature as this bill)
6 or other applicable law.

7

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

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

12

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

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

17 (2) termination of the process.

18 b. A collaborative family law process terminates when:

19 (1) a party gives notice to other parties in a record that the
20 process is ended, which a party may do with or without cause; or

21 (2) a party files a document without the agreement of all parties
22 that initiates a proceeding related to the family law dispute; or

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

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

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

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

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

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

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

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

6
7 8. a. If a collaborative family lawyer ceases or is disqualified
8 from representation of a party, prompt notice of the cessation of
9 representation or discharge shall be given to all parties in a record.

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

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

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

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

33
34 10. P.L. , c. (C.) (pending before the Legislature as
35 this bill) does not affect, waive or supersede:

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

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

43
44 11. A collaborative family law communication is confidential to
45 the extent agreed to by the parties in a signed record or as provided
46 by law.

47

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

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

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

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

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

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

28

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

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

41

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45

46 15. If a collaborative family law participation agreement fails to
47 meet the requirements of section 5 of P.L. , c. (C.)
48 (pending before the Legislature as this bill), the parties may be

1 found to have intended to enter into a collaborative family law
2 participation agreement if they signed a record indicating an
3 intention to enter into a collaborative family law participation
4 agreement and reasonably believed they were participating in a
5 collaborative family law process.

6
7 16. In applying and construing this act, consideration shall be
8 given to the need to promote uniformity of the law with respect to
9 its subject matter among states that enact a collaborative family law
10 act.

11
12 17. This act modifies, limits, and supersedes the federal
13 “Electronic Signatures in Global and National Commerce Act,” 15
14 U.S.C. s.7001 et seq., but this act does not modify, limit, or
15 supersede section 101(c) of that act, or authorize electronic delivery
16 of any of the notices described in section 103(b) of that act.

17
18 18. If any provision of P.L. , c. (C.) (pending before
19 the Legislature as this bill), or its application to any person or
20 circumstance is held invalid, the invalidity shall not affect other
21 provisions or applications of P.L. , c. (C.) (pending before
22 the Legislature as this bill) which can be given effect without the
23 invalid provision or application, and to this end the provisions of
24 P.L. , c. (C. (pending before the Legislature as this bill)
25 are severable.

26
27 19. This act shall take effect on the 90th day after enactment.

28
29

30 STATEMENT

31
32 This bill enacts the “New Jersey Collaborative Family Law Act.”
33 Collaborative law is a voluntary, non-adversarial settlement process
34 in which the parties, with the assistance of their lawyers, attempt to
35 negotiate in good faith a mutually acceptable resolution of the
36 parties’ dispute without court involvement. This bill would
37 authorize the application of a collaborative law process in family
38 law disputes.

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

44 A collaborative family lawyer is defined under the bill as a
45 lawyer who represents a party in a collaborative family law process
46 and whom the party acknowledges is retained for that limited
47 purpose. Therefore, in the event the collaborative family law
48 process does not resolve the family law dispute and the dispute is,

1 instead, submitted to a tribunal, the collaborative family lawyer
2 would not continue to represent the party. A collaborative family
3 law participation agreement would provide that a complaint,
4 petition, or claim may not be filed with a tribunal before or during
5 the collaborative family law process, although a party may request
6 that a tribunal incorporate a settlement agreement into a final
7 judgment.

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

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

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

38 Under the bill, a collaborative family law communication is
39 confidential to the extent agreed to by the parties in a signed record
40 or as provided by law. Except as provided for in the bill, a
41 collaborative family law communication made by a party or any
42 nonparty participant is privileged and is not subject to discovery,
43 and is not admissible in evidence. The following privileges apply in
44 a proceeding: (1) a party may refuse to disclose, and may prevent
45 the party's lawyer, a nonparty participant, or any other person from
46 disclosing a collaborative family law communication; and (2) a
47 nonparty participant may refuse to disclose, and may prevent a
48 party, a party's lawyer or any other person from disclosing, a

1 collaborative family law communication of the nonparty participant.
2 These privileges may be claimed by the party or nonparty
3 participant in person, or if the party or nonparty participant is
4 incapacitated or deceased, by his guardian or personal
5 representative.

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

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

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

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 1224

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 24, 2014

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 1224.

This bill as amended enacts the “New Jersey Family Collaborative 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 family collaborative law participation agreement and are represented by family collaborative lawyers.

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

A family collaborative 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 against the other party 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 family collaborative 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 family collaborative lawyer ceases further representation of a party.

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

Under the bill, a family collaborative 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 family collaborative 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 committee amended the bill to clarify that a nonparty participant includes, but is not limited to, financial practitioners, including certified financial planners and certified public accountants, and mental health professionals, including licensed clinical social workers, psychologists, licensed professional counselors, licensed marriage and family therapists, and psychiatrists.

The bill provides that 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 family collaborative 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 family collaborative 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 family collaborative 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 family collaborative 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 family collaborative 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 family collaborative 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 family collaborative 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).

The committee amendments to the bill:

- changed the title of the bill to the “New Jersey Family Collaborative Law Act,” and updated references throughout the bill to the subject of “family collaborative law.” The bill as introduced used the phrase “collaborative family law,” but the switch is intended to more clearly recognize the area of practice as a type of “collaborative law”;

- clarify that a nonparty participant involved in a family collaborative law process may include, but is not limited to, financial practitioners, including certified financial planners and certified public accountants, and mental health professionals, including licensed clinical social workers, psychologists, licensed professional counselors, licensed marriage and family therapists, and psychiatrists;

- indicate that, with respect to a discontinuation of representation in a family collaborative law process, not only is the individual lawyer required to stop representation, but also any lawyers in the law firm with whom that lawyer is associated; and

- eliminates, as unnecessary, references to the federal “Electronic Signatures in Global and National Commerce Act,” 15 U.S.C. s.7001 et seq., as issues related to electronic records and electronic signatures in family law matters is already elsewhere addressed by federal law and the “Uniform Electronic Transactions Act,” P.L.2001, c.116 (C.12A:12-1 et seq.).

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 1224

STATE OF NEW JERSEY

DATED: JUNE 5, 2014

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1224 (1R).

This bill enacts the “New Jersey Family Collaborative 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 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 family collaborative law participation agreement and are represented by family collaborative lawyers.

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

Under 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 family collaborative law process.

A family collaborative 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 of 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 against the other party 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 family collaborative 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 family collaborative lawyer ceases further representation of a party.

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

Under the bill, a family collaborative law communication is confidential to the extent agreed to by the parties. Except as provided for in the bill, a family collaborative law communication made by a party or any nonparty participant is privileged and is not subject to discovery, and is not admissible in evidence.

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).

FISCAL IMPACT:

The Administrative Office of the Courts (AOC) has informally stated that the bill codifies the current collaborative law practice, a voluntary settlement process in which the parties attempt to negotiate a mutually acceptable resolution of their dispute without court involvement. Thus, because the process is accomplished outside the court, the Judiciary anticipates that this legislation would not result in either increased revenue or expenditures. The OLS concurs and further notes that since this bill could avoid and ultimately reduce the number of family court proceedings, it could generate an unknown savings for the Judiciary. The OLS has no information with which to determine the number of individuals who would participate in the program and therefore cannot estimate the potential savings.