

2024 Regular Session

SENATE BILL NO. 188

BY SENATOR COUSSAN (On Recommendation of the Louisiana State Law Institute)

FAMILY LAW. Provides for the Uniform Collaborative Family Law Act. (8/1/24)

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AN ACT

To enact Part VI of Chapter 1 of Code Title V of Code Book I of Title 9 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 9:377 through 377.19, relative to the Uniform Collaborative Family Law Act; to provide for applicability; to provide for definitions; to provide for participation agreements; to provide for the collaborative family law process; to provide for court approval; to provide for emergency orders; to provide for collaborative family law attorneys; to provide for confidentiality; to provide for a privilege against disclosure; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Part VI of Chapter 1 of Code Title V of Code Book I of Title 9 of the Louisiana Revised Statutes of 1950, comprised of R.S. 9:377 through 377.19, is hereby enacted to read as follows:

PART VI. UNIFORM COLLABORATIVE FAMILY LAW ACT

§377. Short title

This Part may be cited as the Uniform Collaborative Family Law Act.

§377.1. Legislative intent; conflicts; application and construction

1 (a) Marriage, divorce, dissolution, annulment, and property distribution.

2 (b) Child custody, visitation, and parenting time.

3 (c) Alimony, spousal support, maintenance, and child support.

4 (d) Adoption.

5 (e) Parentage.

6 (f) Premarital, marital, and post-marital agreements.

7 (3) "Collaborative family law participation agreement" means an
8 agreement by persons to participate in a collaborative family law process.

9 (4) "Collaborative family law process" means a procedure intended to
10 resolve a collaborative family law matter without intervention by a tribunal in
11 which persons:

12 (a) Sign a collaborative family law participation agreement.

13 (b) Are represented by collaborative lawyers.

14 (5) "Collaborative lawyer" means a lawyer who represents a party in a
15 collaborative family law process.

16 (6) "Law firm" means:

17 (a) Lawyers who practice law together in a partnership, professional
18 corporation, sole proprietorship, limited liability company, or association.

19 (b) Lawyers employed in a legal services organization, or the legal
20 department of a corporation or other organization, or the legal department of
21 a government or governmental subdivision, agency, or instrumentality.

22 (7) "Nonparty participant" means a person, other than a party and the
23 party's collaborative lawyer, who participates in a collaborative family law
24 process.

25 (8) "Party" means a person who signs a collaborative family law
26 participation agreement and whose consent is necessary to resolve a
27 collaborative family law matter.

28 (9) "Person" means an individual, corporation, business trust, estate,
29 trust, partnership, limited liability company, association, joint venture, public

1 corporation, government or governmental subdivision, agency, or
2 instrumentality, or any other legal or commercial entity.

3 (10) "Proceeding" means a judicial, administrative, arbitral, or other
4 adjudicative process before a tribunal, including related prehearing and
5 post-hearing motions, conferences, and discovery.

6 (11) "Prospective party" means a person who discusses with a
7 prospective collaborative lawyer the possibility of signing a collaborative family
8 law participation agreement.

9 (12) "Record" means information that is inscribed on a tangible medium
10 or that is stored in an electronic or other medium and is retrievable in
11 perceivable form.

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

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

17 (a) To execute or adopt a tangible symbol.

18 (b) To attach to or logically associate with the record an electronic
19 symbol, sound, or process.

20 (15) "Tribunal" means a court, arbitrator, administrative agency, or
21 other body acting in an adjudicative capacity that, after presentation of
22 evidence or legal argument, has jurisdiction to render a decision affecting a
23 party's interests in a family law matter.

24 §377.3. Applicability

25 This Part applies to a collaborative family law participation agreement
26 that meets the requirements of R.S. 9:377.4 and that is signed on or after August
27 1, 2024.

28 §377.4. Collaborative family law participation agreement; requirements

29 A. A collaborative family law participation agreement is a voluntary,

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contractually based alternative dispute resolution process that shall:

(1) Be in a record.

(2) Be signed by the parties.

(3) State the parties' intention to resolve a collaborative family law matter through a collaborative family law process in accordance with this Part.

(4) Describe the nature and scope of the family law matter.

(5) Identify the collaborative lawyer who represents each party in the process.

(6) Contain a statement by each collaborative lawyer confirming the lawyer's representation of a party in the collaborative family law process.

B. Parties may agree to include in a collaborative family law participation agreement additional provisions not inconsistent with this Part.

§377.5. Beginning and concluding collaborative family law process

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

B. A tribunal shall not order a party to participate in a collaborative family law process over that party's objection.

C. A collaborative family law process is concluded by any of the following:

(1) Resolution of a collaborative family law matter as evidenced by a signed record.

(2) Resolution of a part of the collaborative family law matter, evidenced by a signed record, in which the parties agree that the remaining parts of the family law matter will not be resolved in the process.

(3) Termination of the process.

D. A collaborative family law process terminates:

(1) When a party gives notice to other parties in a record that the process is ended.

(2) When a party:

1 (a) Begins a proceeding related to a collaborative family law matter
2 without the agreement of all parties.

3 (b) In a pending proceeding related to the family law matter:

4 (i) Initiates a pleading, motion, order to show cause, or request for a
5 conference with the tribunal.

6 (ii) Requests that the proceeding be put on the tribunal's active calendar.

7 (iii) Takes similar action requiring notice to be sent to the parties.

8 (3) Except as otherwise provided by Subsection G of this Section, when
9 a party discharges a collaborative lawyer, or a collaborative lawyer withdraws
10 from further representation of a party.

11 E. A party's collaborative lawyer shall give prompt notice to all other
12 parties in a record of a discharge or withdrawal.

13 F. A party may terminate a collaborative family law process with or
14 without cause.

15 G. Notwithstanding the discharge or withdrawal of a collaborative
16 lawyer, a collaborative family law process continues if, not later than thirty days
17 after the date that the notice of the discharge or withdrawal of a collaborative
18 lawyer required by Subsection E of this Section is sent to the parties:

19 (1) The unrepresented party engages a successor collaborative lawyer.

20 (2) In a signed record:

21 (a) The parties consent to continue the process by reaffirming the
22 collaborative family law participation agreement.

23 (b) The collaborative family law agreement is amended to identify the
24 successor collaborative lawyer.

25 (c) The successor collaborative lawyer confirms the lawyer's
26 representation of a party in the collaborative family law process.

27 H. A collaborative family law process does not conclude if, with the
28 consent of the parties, a party requests a tribunal to approve a resolution of the
29 collaborative family law matter or any part thereof as evidenced by a signed

1 record.

2 I. A collaborative family law participation agreement may provide
3 additional methods of concluding a collaborative family law process.

4 §377.6. Proceedings pending before tribunal; status report

5 A. Persons in a proceeding pending before a tribunal may sign a
6 collaborative family law participation agreement to seek to resolve a
7 collaborative family law matter related to the proceeding. The parties shall file
8 promptly with the tribunal a notice of the agreement after it is signed. Subject
9 to Subsection C of this Section and to R.S. 9:377.7 and 377.8, the filing operates
10 as an application for a stay of the proceeding.

11 B. The parties shall file promptly with the tribunal notice in a record
12 when a collaborative family law process concludes. The stay of the proceeding
13 in accordance with Subsection A of this Section is lifted when the notice is filed.
14 The notice shall not specify any reason for termination of the collaborative
15 family law process.

16 C. A tribunal in which a proceeding is stayed in accordance with
17 Subsection A of this Section may require the parties and collaborative lawyers
18 to provide a status report on the collaborative family law process and the
19 proceeding. A status report may include only information on whether the
20 process is ongoing or concluded. It shall not include a report, assessment,
21 evaluation, recommendation, finding, or other communication regarding a
22 collaborative family law process or collaborative family law matter.

23 D. A tribunal shall not consider a communication made in violation of
24 Subsection C of this Section.

25 E. A tribunal shall provide parties notice and an opportunity to be heard
26 before dismissing a proceeding in which a notice of collaborative family law
27 process is filed based on delay or failure to prosecute.

28 §377.7. Emergency order

29 During a collaborative family law process, a tribunal may issue

1 emergency orders to protect the health, safety, welfare, or interest of a party,
2 or of a family member or household member as those terms are defined in R.S.
3 46:2132.

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6 If a party to a collaborative family law process initiates a proceeding under
7 the Domestic Abuse Assistance Act, R.S. 46:2131 et seq., the collaborative process
8 terminates in accordance with R.S. 9:377.5. Emergency orders may include, among
9 other things, orders issued in accordance with Code of Civil Procedure Article 3945,
10 R.S. 13:1816, or Children's Code Articles 618, 1560, and 1564 et seq.

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12 §377.8. Approval of agreement by tribunal

13 A tribunal may approve an agreement resulting from a collaborative
14 family law process.

15 §377.9. Disqualification of collaborative lawyer and lawyers in associated law
16 firm

17 A. Except as otherwise provided in Subsection C of this Section, a
18 collaborative lawyer is disqualified from appearing before a tribunal to
19 represent a party in a proceeding related to the collaborative family law matter.

20 B. Except as otherwise provided in Subsection C of this Section and in
21 R.S. 9:377.10 and 377.11, a lawyer in a law firm with which the collaborative
22 lawyer is associated is disqualified from appearing before a tribunal to
23 represent a party in a proceeding related to the collaborative family law matter
24 if the collaborative lawyer is disqualified from doing so in accordance with
25 Subsection A of this Section.

26 C. A collaborative lawyer or a lawyer in a law firm with which the
27 collaborative lawyer is associated may represent a party:

28 (1) To ask a tribunal to approve an agreement resulting from the
29 collaborative family law process.

30 (2) To seek or defend an emergency order to protect the health, safety,
31 welfare, or interest of a party, or of a family member or household member as
32 those terms are defined in R.S. 46:2132, if a successor lawyer is not immediately
33 available to represent that person.

1 **D. If Paragraph (C)(2) of this Section applies, a collaborative lawyer or**
2 **a lawyer in a law firm with which the collaborative lawyer is associated may**
3 **represent a party, or a family member or household member as those terms are**
4 **defined in R.S. 46:2132, only until the person is represented by a successor**
5 **lawyer or reasonable measures are taken to protect the health, safety, welfare,**
6 **or interest of the person.**

7 **§377.10. Low-income parties**

8 **A. The disqualification of R.S. 9:377.9(A) applies to a collaborative**
9 **lawyer representing a party with or without fee.**

10 **B. After a collaborative family law process concludes, another lawyer in**
11 **a law firm with which a collaborative lawyer is associated may represent a party**
12 **without fee in the collaborative family law matter or a matter related to the**
13 **collaborative family law matter if all of the following conditions are satisfied:**

14 **(1) The party has an annual income that qualifies the party for free legal**
15 **representation in accordance with the criteria established by the law firm for**
16 **free legal representation.**

17 **(2) The collaborative family law participation agreement so provides.**

18 **(3) The collaborative lawyer is isolated from any participation in the**
19 **collaborative family law matter or a matter related to the collaborative family**
20 **law matter through procedures within the law firm that are reasonably**
21 **calculated to isolate the collaborative lawyer from participation.**

22 **§377.11. Governmental entity as party**

23 **A. The disqualification of R.S. 9:377.9(A) applies to a collaborative**
24 **lawyer representing a party that is a government or governmental subdivision,**
25 **agency, or instrumentality.**

26 **B. After a collaborative family law process concludes, another lawyer in**
27 **a law firm with which the collaborative lawyer is associated may represent a**
28 **government or governmental subdivision, agency, or instrumentality in the**
29 **collaborative family law matter or a matter related to the collaborative family**

1 law matter if all of the following conditions are satisfied:

2 (1) The collaborative family law participation agreement so provides.

3 (2) The collaborative lawyer is isolated from any participation in the
4 collaborative family law matter or a matter related to the collaborative family
5 law matter through procedures within the law firm that are reasonably
6 calculated to isolate the collaborative lawyer from participation.

7 §377.12. Disclosure of information

8 Except as provided by law other than this Part, during the collaborative
9 family law process, upon the request of another party, a party shall make
10 timely, full, candid, and informal disclosure of information related to the
11 collaborative family law matter without formal discovery. A party also shall
12 update promptly previously disclosed information that has materially changed.
13 The parties may define the scope of disclosure during the collaborative family
14 law process.

15 §377.13. Standards of professional responsibility and mandatory reporting not
16 affected

17 This Part does not affect any of the following:

18 (1) The professional responsibility obligations and standards applicable
19 to a lawyer or other licensed professional.

20 (2) The obligation of a person to report abuse or neglect, abandonment,
21 or exploitation of a child or adult under the laws of this state.

22 §377.14. Appropriateness of collaborative law process

23 Before a prospective party signs a collaborative family law participation
24 agreement, a prospective collaborative lawyer shall:

25 (1) Assess with the prospective party factors that the lawyer reasonably
26 believes relate to whether a collaborative family law process is appropriate for
27 the prospective party's family law matter.

28 (2) Provide the prospective party with information that the lawyer
29 reasonably believes is sufficient for the party to make an informed decision

1 about the material benefits and risks of a collaborative family law process as
 2 compared to the material benefits and risks of other reasonably available
 3 alternatives for resolving the proposed collaborative family law matter, such as
 4 litigation, mediation, arbitration, or expert evaluation.

5 (3) Advise the prospective party that:

6 (a) After signing an agreement, if a party initiates a proceeding or seeks
 7 tribunal intervention in a pending proceeding related to the collaborative family
 8 law matter, the collaborative family law process terminates.

9 (b) Participation in a collaborative family law process is voluntary and
 10 any party has the right to terminate unilaterally a collaborative family law
 11 process with or without cause.

12 (c) The collaborative lawyer and any lawyer in a law firm with which the
 13 collaborative lawyer is associated shall not appear before a tribunal to represent
 14 a party in a proceeding related to the collaborative family law matter, except as
 15 authorized by R.S. 9:377.9(C), 377.10(B), or 377.11(B).

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17 Paragraph (1) of this Section includes a reasonable assessment of whether the
 18 Post Separation Family Violence Relief Act or the Domestic Abuse Assistance Act
 19 would be applicable in the matter, and thus whether the collaborative family law
 20 process is an appropriate mechanism for resolving the parties' dispute. Therefore,
 21 Section 15 of the Uniform Collaborative Law Act, which specifically addresses
 22 domestic violence, is not reproduced in this Part.

23 §377.15. Confidentiality of collaborative family law communication
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25 A collaborative family law communication is confidential to the extent
 26 agreed by the parties in a signed record or as provided by the laws of this state
 27 other than this Part.

28 §377.16. Privilege against disclosure for collaborative family law
 29 communication; admissibility; discovery

30 A. Subject to R.S. 9:377.17 and 377.18, a collaborative family law
 31 communication is privileged in accordance with Subsection B of this Section, is
 32 not subject to discovery, and is not admissible in evidence.

33 B. In a proceeding, the following privileges apply:

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

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

6 C. Evidence or information that is otherwise admissible or subject to
7 discovery does not become inadmissible or protected from discovery solely
8 because of its disclosure or use in a collaborative family law process.

9 §377.17. Waiver and preclusion of privilege

10 A. A privilege in accordance with R.S. 9:377.16 may be waived in a
11 record or orally during a proceeding if it is expressly waived by all parties and,
12 in the case of the privilege of a nonparty participant, it is also expressly waived
13 by the nonparty participant.

14 B. A person who makes a disclosure or representation about a
15 collaborative family law communication that prejudices another person in a
16 proceeding may not assert a privilege in accordance with R.S. 9:377.16, but this
17 preclusion applies only to the extent necessary for the person prejudiced to
18 respond to the disclosure or representation.

19 §377.18. Limits of privilege

20 A. There is no privilege in accordance with R.S. 9:377.16 for a
21 collaborative family law communication that is any of the following:

22 (1) Available to the public in accordance with R.S. 44:1 et seq. or made
23 during a session of a collaborative family law process that is open, or is required
24 by law to be open, to the public.

25 (2) A threat or statement of a plan to inflict bodily injury or commit a
26 crime of violence.

27 (3) Intentionally used to plan a crime, commit or attempt to commit a
28 crime, or conceal an ongoing crime or ongoing criminal activity.

29 (4) In an agreement resulting from the collaborative family law process,

1 evidenced by a record signed by all parties to the agreement.

2 B. The privileges in accordance with R.S. 9:377.16 for a collaborative
3 family law communication do not apply to the extent that a communication is
4 any of the following:

5 (1) Sought or offered to prove or disprove a claim or complaint of
6 professional misconduct or malpractice arising from or related to a
7 collaborative family law process.

8 (2) Sought or offered to prove or disprove abuse, neglect, abandonment,
9 or exploitation of a child or adult, unless the Department of Children and
10 Family Services is a party to or otherwise participates in the process.

11 C. There is no privilege in accordance with R.S. 9:377.16 if a tribunal
12 finds, after a hearing in camera, that the party seeking discovery or the
13 proponent of the evidence has shown that the evidence is not otherwise
14 available, the need for the evidence substantially outweighs the interest in
15 protecting confidentiality, and the collaborative family law communication is
16 sought or offered in:

17 (1) A court proceeding involving a felony or misdemeanor.

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

21 D. If a collaborative family law communication is subject to an exception
22 in accordance with Subsection B or C of this Section, only the part of the
23 communication necessary for the application of the exception may be disclosed
24 or admitted.

25 E. Disclosure or admission of evidence excepted from the privilege in
26 accordance with Subsection B or C of this Section does not make the evidence
27 or any other collaborative family law communication discoverable or admissible
28 for any other purpose.

29 F. The privileges in accordance with R.S. 9:377.16 do not apply if the

1 **parties agree in advance in a signed record, or if a record of a proceeding**
 2 **reflects agreement by the parties, that all or part of a collaborative family law**
 3 **process is not privileged. This Subsection does not apply to a collaborative**
 4 **family law communication made by a person who did not receive actual notice**
 5 **of the agreement before the communication was made.**

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7 It is the communication made in the collaborative law process that is
 8 protected by the collaborative law communication privilege, not the underlying
 9 evidence giving rise to the communication. Evidence that is communicated in the
 10 collaborative law process is subject to discovery, just as it would be if the
 11 collaborative law process had not occurred. More specifically, there is no "fruit of
 12 the poisonous tree" doctrine in the collaborative law communication privilege. For
 13 instance, a party who learns about a witness during a collaborative law process is not
 14 precluded by the privilege from subpoenaing that witness if the collaborative law
 15 process terminates and the matter goes to court.

16 **§377.19. Authority of tribunal in case of noncompliance**

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 18 **A. If an agreement fails to meet the requirements of R.S. 9:377.4, or if**
 19 **a lawyer fails to comply with R.S. 9:377.14, a tribunal may nonetheless find that**
 20 **the parties intended to enter into a collaborative family law participation**
 21 **agreement if the parties:**

22 **(1) Signed a record indicating an intention to enter into a collaborative**
 23 **family law participation agreement.**

24 **(2) Reasonably believed that the parties were participating in a**
 25 **collaborative family law process.**

26 **B. If a tribunal makes the findings specified in Subsection A of this**
 27 **Section, and the interests of justice require, the tribunal may do the following:**

28 **(1) Enforce an agreement evidenced by a record resulting from the**
 29 **process in which the parties participated.**

30 **(2) Apply the disqualification provisions of R.S. 9:377.5, 377.6, 377.9,**
 31 **377.10, and 377.11.**

32 **(3) Apply a privilege in accordance with R.S. 9:377.16.**

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Angela L. De Jean.

DIGEST

SB 188 Engrossed

2024 Regular Session

Coussan

Proposed law (R.S. 9:377-377.19) adopts the Uniform Collaborative Law Act and limits its application to family law matters.

Proposed law (R.S. 9:377-377.1) provides for a short title and legislative intent, application, and construction.

Proposed law (R.S. 9:377.2) provides for definitions of key terms such as "collaborative family law process", "collaborative family law matter", and "collaborative family law communication."

Proposed law (R.S. 9:377.4) provides that the voluntary and contractual alternative dispute resolution method be in writing, be signed by the parties, describe the scope of the family law matter, and identify the attorney for each party.

Proposed law (R.S. 9:377.5) provides for the initiation and conclusion of a collaborative family law process. Proposed law further provides that a collaborative family law process terminates by giving notice to the other party, initiating a pleading, or requesting a court hearing or similar action.

Proposed law (R.S. 9:377.6) provides for a stay of the court proceedings once a collaborative family law participation agreement is filed with the court.

Proposed law (R.S. 9:377.7) authorizes a court, during a collaborative family law process, to enter an emergency order to protect the health, safety, and welfare of a party or family or household member.

Proposed law (R.S. 9:377.9-377.11) provides for the disqualification of a collaborative lawyer and members of his firm from appearing before a court in a proceeding related to the collaborative family law matter.

Proposed law (R.S. 9:377.12) requires the disclosure of information related to the collaborative family law matter without formal discovery.

Proposed law (R.S. 9:377.13) does not affect the professional responsibilities applicable to the participating licensed professionals.

Proposed law (R.S. 9:377.14) requires a collaborative attorney to assess and advise prospective parties as to whether a collaborative family law process is appropriate to resolve the parties' family law matter.

Proposed law (R.S. 9:377.15-377.18) provides for the confidentiality of collaborative family law communications and privileges against disclosure. Proposed law further provides for the waiver and limitations of privileges.

Proposed law (R.S. 9:377.19) authorizes courts to uphold collaborative family law participation agreements that fail to meet certain requirements based upon the parties' intent.

Effective August 1, 2024.

(Adds R.S. 9:377-377.19)